

Consultant Responsibilities

STANDARD OF CARE

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

CODE COMPLIANCE

Consultant shall review applicable laws, codes, and regulations and, in the provision of its Services, shall respond to such requirements imposed by the governmental authorities having jurisdiction over the Project and reasonably known to Consultant at the time services are provided. Client acknowledges that the requirements of federal, state, and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations. Consultant will use reasonable professional efforts and judgment to correctly interpret and apply such requirements. Consultant, however, cannot and does not warrant or guarantee that its services and documents will comply with all such interpretations and requirements.

COST EVALUATION

Evaluations of Client's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work prepared by Consultant, represent Consultant's judgment as a design professional. It is recognized, however, that neither Consultant nor Client has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by Consultant.

DELIVERABLES (PER SCOPE OF SERVICES)

Consultant shall provide deliverables, including drawings, specifications, reports, and studies, as defined in the Scope of Services section.

Client Responsibilities

PROJECT SCOPE AND BUDGET

Client shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the Cost of the Work. The Project budget shall include contingencies for design development and, when required by the scope of the Project, construction of the project. Client shall not significantly increase or decrease the overall Project scope, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of Consultant to a corresponding change in the Project scope, quality, schedule, and compensation of Consultant.

DESIGNATED CLIENT REPRESENTATIVE

Client shall identify an individual ("Designated Representative") authorized to act on its behalf with respect to the Project. Client or its Designated Representative shall render decisions and approve Consultant's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services and Project schedule.

TESTS, INSPECTIONS, AND REPORTS

When required by the scope of the Project, Client shall furnish tests, inspections, and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

CLIENT PROVIDED SERVICES AND INFORMATION

Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project. In addition, Client shall furnish the services of design professionals other than those designated as the responsibility of Consultant in this Agreement, or authorize Consultant to furnish them as an Additional Service, when Consultant requests such services and demonstrates that they are reasonably required by the

scope of the Project.

Consultant shall be entitled to rely on the accuracy, completeness, and timeliness of services and information furnished by Client, its Designated Representative, and Client's Consultants. Consultant shall have no responsibility for the technical content of Client's, its Designated Representative's, and Client's Consultants' services and information but shall provide prompt written notice to Client if Consultant becomes aware of any error, omission, or inconsistency in such services or information.

CONSTRUCTION CONTRACTS & RESPONSIBILITIES

When applicable to the scope of the Project, Client shall retain a qualified contractor, licensed in the jurisdiction of the Project ("Contractor"), to implement the construction of the Project ("Work") utilizing a construction contract based on AIA A201™-2017 General Conditions of the Contract for Construction. In the construction contract, Client shall require Contractor to: (1) obtain Commercial General Liability Insurance and name Client, Consultant, and Consultant's employees and subconsultants as additional insureds of that policy; and

(2) indemnify and hold harmless Client, Consultant, and Consultant's employees and subconsultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorneys' fees and economic or consequential damages, arising in whole or in part out of any negligent act or omission of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Client understands and acknowledges that: (1) Consultant has no control over, charge of, or responsibility for construction activities or jobsite safety on the Project; (2) Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, jobsite safety, and security; and (3) Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

CLIENT'S REDUCTION OF SCOPE OF SERVICES

~~If Client elects to terminate, modify, or reduce any portion of Consultant's Services under this Agreement, Client shall indemnify and hold Consultant and its subconsultants harmless from and against damages, losses, and judgments arising from claims by Client or any third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, related to the services or activities Consultant did not provide or in which Consultant did not participate.~~

General Provisions

LIMITATION OF LIABILITY

~~The Services covered by this Agreement are of a preliminary or limited nature; therefore, neither Consultant, Consultant's subconsultants (if any), nor their agents or employees shall be jointly, severally, or individually liable to Client in excess of the compensation to be paid pursuant to this Agreement (or add dollar amount if required), by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.~~

OWNERSHIP OF DOCUMENTS (Verify Final Ownership of Documents)

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain ownership and property interest therein, including all copyrights. Upon payment in full for services rendered, Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying, or maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, or use of documents after termination, shall be at Client's sole risk, ~~and Client agrees to indemnify, defend, and hold Consultant harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.~~

USE OF CONSULTANT-PROVIDED INFORMATION

The information provided by Consultant is intended for the exclusive use of Client for the Scope of Services defined herein, and is not to be transmitted for the use of any other party nor used for any other project. ~~Client agrees to defend, indemnify, and hold Consultant harmless from any claims, costs, and expenses, including attorneys' fees and costs of litigation, which result from any unauthorized or unintended use of Consultant's provided information, or transmission by Client to others of the information resulting from Consultant's Scope of Services.~~

MUTUAL INDEMNIFICATION

Consultant and ~~Client~~ ^{Client} each agree to indemnify the ~~other~~ ^{Client} against liability, damages, costs, and expenses including reasonable attorneys' fees and expenses recoverable under applicable law (collectively "Damages") that are caused to the other due to the negligence of the indemnifying party, but only to the extent of the indemnifying party's negligence. ~~Neither Consultant nor Client shall be required to indemnify the other to the extent Damages arise from or are caused by the indemnified party's own negligence (whether sole, concurrent, or contributory). Neither Consultant nor Client shall have a duty to provide the other an up-front defense of any claim.~~ ^{Consultant not be Client}

MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

Consultant and Client waive consequential damages (such as lost profits, lost revenues, loss of use, loss of financing, and loss of reputation) for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, or equity, or that might arise out of the parties' indemnification obligations.

DISPUTE RESOLUTION

Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be ~~subject to a meet-and-confer session as a condition precedent to mediation.~~

~~Client and Consultant shall endeavor to resolve claims, disputes, and other matters in question during the meet-and-confer session. The meet-and-confer session shall be attended by Client and Consultant or their authorized representatives who shall have the authority to bind the parties. The meet-and-confer session shall take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meet-and-confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute, or controversy.~~

~~If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation as a condition precedent to binding dispute resolution. If the parties do not resolve a dispute through mediation, the parties shall mutually agree on a method of binding dispute resolution, either litigation in a court of competent jurisdiction or arbitration.~~

HAZARDOUS MATERIALS

Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project site. If hazardous materials are present, Client shall be responsible to remove them from the Project site in a manner that will not adversely affect the health of any person and will comply with any applicable governmental laws and regulations. Client shall indemnify and hold Consultant harmless from any liability, loss, damage, or expense arising out of or with respect to the presence of hazardous materials on the Project site. The presence or discovery of any hazardous or toxic substance on the site shall be cause for extension of the schedule of Consultant's services and equitable adjustment of fees for Consultant as mutually agreed by the parties.

EXISTING CONDITIONS

Documents prepared by Consultant will be prepared based upon reasonable assumptions derived from existing information provided by Client and from observations of the existing conditions by Consultant without the benefit of field measurements and invasive investigation made undesirable by expense and inconvenience to Client. It is understood and agreed that unforeseen conditions uncovered during the progress of the Work may require changes in the Work resulting in additional cost and delay for which Client shall maintain sufficient contingency. Services required by such changes shall be provided as additional services per this Agreement.

DISCLAIMER OF THIRD PARTY RELIANCE

Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against either the Client or Consultant.

GOVERNING LAW

This Agreement shall be governed by, and Professional Services shall be performed in compliance with, the laws of the state wherein the Project is located.

ASSIGNMENT

Client and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to this Agreement. Neither Client nor Consultant shall assign this Agreement without the

written consent of the other, except that Client may assign this Agreement to a lender providing financing for the Project, provided that all monies owed Consultant are paid prior to the date of assignment and that lender agrees to assume all of Client's duties and obligations under this Agreement. Any expense incurred by Consultant as a result of the assignment shall be considered as an Additional Service and compensated in accordance with this Agreement.

PROJECT SCHEDULE

In the event Consultant is hindered, delayed, or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including but not limited to delays due to power or data system outages, acts of nature, public health emergencies including but not limited to infectious disease outbreaks and pandemics, governmental orders or directives, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or review Consultant's services or design documents, or delays caused by faulty performance by Client's contractors or consultants, the time for completion of Consultant's services shall be extended by the period of resulting delay and compensation equitably adjusted. Client agrees that Consultant shall not be responsible for damages, nor shall the Consultant be deemed in default of this Agreement due to such delays.

Payments Due

Consultant shall present monthly invoices for Professional Services earned and reimbursable expenses incurred, and Client shall pay the full amount thereof within thirty (30) days after presentation. Any charges held to be in dispute by Client shall be identified in writing to Consultant within ten (10) days of presentation of Consultant's invoice or shall be paid in full per the terms of this Agreement. If payment in full is not received per the terms of this Agreement, Consultant shall have the right to suspend Services and withhold all documents until payment is received and apply a 1.5% delinquency charge on the unpaid balance from the date of the invoice. Payment of such charge shall not excuse the default in payment or terminate the unperformed portion of this Agreement.

Suspension and Termination

In the event of suspension of Services, as outlined above or for any other reason beyond Consultant's control, Consultant shall have no liability to Client for delay or damage resulting from such suspension. Prior to resuming Services, Consultant shall be paid all fees earned prior to suspension together with all reimbursable expenses then due, along with any costs and expenses, including attorneys' fees, incurred collecting delinquent payments. In addition, Consultant's fees for remaining Services and associated time schedules will also be equitably adjusted.

This Agreement may be terminated for cause after a seven (7) days cure period by either party or for convenience upon notice period; seven (7) days written notice by Client. Upon termination, all invoices presented by Consultant for Services provided, including reimbursable expenses then due and any costs incurred in pursuit of delinquent payments, shall become immediately due and payable. In the event of termination for convenience, Client shall pay to Consultant a termination fee of 10% of fees not yet earned.