

**AGREEMENT FOR CONSULTING ENGINEERING SERVICES
(Yamhill County and Tetra Tech, Inc.)**

THIS AGREEMENT (“Agreement”) is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon, acting through its Department of Public Works (referred to as County in this Agreement) and **Tetra Tech, Inc.**, a Delaware corporation, operating under the assumed business name (referred to as Contractor in this Agreement) for the consulting engineering services (referred to in this Agreement as the “Project”) for which quotes and proposals were received and reviewed and Contractor’s quote was determined to best meet the County’s needs.

STATEMENT OF PURPOSE AND IDENTIFICATION OF CONTRACT DOCUMENTS

A. County has budgeted funds to perform the Project. County conducted a competitive selection process to select the best qualified proposer to complete the Project. Contractor was the deemed the best qualified proposer. This Agreement is made to specify the mutual obligations of County and Contractor for completion of the Project.

B. This Agreement includes by reference the following Contract Documents that are part of the Project:

- (A) Request for Proposals
- (B) Addenda (if any)
- (C) Responsive Proposal
- (D) This Agreement
- (E) Agreement Amendments (if any)
- (F) Insurance Certificates
- (G) Notice to Proceed
- (H) Change Orders (if any)
- (I) Project Acceptance

AGREEMENT: In consideration of the mutual covenants contained below, County and Contractor hereby agree as follows:

1. **Scope of work.** The Contractor will commence and complete the Project in strict accordance with the Contract Documents identified above. The Contractor acknowledges receipt of all Contract Documents in existence at the date it executed this Agreement. See attached Attachment A, Scope of Services, dated ~~September 24, 2021~~, which is incorporated herein by this reference (“Scope of Services”). **OCTOBER 12,**

2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an Independent Contractor under this Agreement. Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Agreement. County will not withhold any state or federal income taxes from payments owed Contractor. As an independent contractor, Contractor acknowledges and agrees that Contractor is not entitled to any benefits granted to County employees. Without limitation, but by way of illustration, the benefits which are not granted to Contractor include vacation, holiday and sick leave, other leaves with pay, tenure, medical, and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits, except as otherwise required by law.

3. **Commencement and completion date.** The Contractor will commence the work required by the Contract Documents within 7 calendar days after the County's approval of this Agreement and will complete the same no later than SEPTEMBER 2, 2022, unless the Agreement Period is extended or otherwise modified by written notice or executed Change Order.

4. **Termination; Default.**

(a) **Termination.** Either party may terminate this Agreement on ten (10) calendar days written notice to the other party. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of immediate termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County. Termination shall not excuse liabilities incurred prior to the termination date.

(b) **Default.** If Contractor defaults in the performance of any of its material obligations under this Agreement for a period of thirty (30) days after the County sends notice of such default to the address on this Agreement, County may, at its option, terminate the Agreement, such termination to be effective immediately upon expiration of the thirty day notice period; provided, however, that in the event Contractor provides written notice to County that the default cannot reasonably be cured by Contractor within said thirty (30) day period and the Contractor provides written certification that it is, in good faith, endeavoring to cure said default, then the thirty (30) day cure period shall be extended for an additional reasonable period to allow for such cure, but any such extended period shall not exceed 30 additional days, unless otherwise mutually agreed in writing by both County and Contractor.

5. **Compensation.** The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein at the rates set forth in Contractor's Scope of Services; provided, however, that the maximum amount due Contractor for completion of the Scope of Services, is **\$70,060.00** unless this amount is modified by executed Change Order signed by both parties. Any expenses incurred by Contractor in the performance of the

Project under the terms and conditions of this Agreement not specifically provided for herein shall be the sole and separate responsibility of Contractor, unless preapproved in writing by County. Payment shall be made by County either in a single payment following final acceptance of the Project by the Project Supervisor, or at Contractor's option, in monthly progress payments for work accepted by the Project Supervisor.

6. **Incorporation of statutory provisions required for public contracts.** Contractor agrees to comply with the rules and regulations of County, applicable state and federal regulations and all other provisions of state and federal law relating to Contractor's performance of Services under this Agreement. The Contractor certifies it shall comply with all applicable Public Contract Laws to including, but not limited to, ORS 279B.200 through 279B.270 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.270 and ORS 279C.500 through 279C.45 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference. Contractor expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor will provide services to County and County clients without regard for race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1954.

7. **Workers' compensation.** The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer under ORS 656.403 et. seq.

8. **Certification of compliance with tax laws.** The Contractor certifies, under penalty of perjury, that the Contractor's Company is not in violation of any Oregon tax laws and that Contractor has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620, 305.380(4) and ORS Chapters 316, 317 and 318.

9. **Certification of reading and understanding of documents.** The Contractor certifies it has read and fully understands all Contract Documents including Solicitation Documents and terms and conditions. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same. **In the event of a discrepancy or inconsistency between Contractor's Proposal documents, Contractor's Scope of Services, Fee Summary or any other Contract Documents and this Agreement, this Agreement shall take precedence.**

10. **Status of the Project Supervisor.** Mark Lago, Public Works Director, is the Project Supervisor (the "Supervisor"). The Supervisor or their designee shall perform technical inspections of work and shall have authority to stop the work whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Supervisor or his designee may

reject all work and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the work. The Supervisor has authority to reject or accept the work.

11. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement, no contractor, subcontractor or any person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap, sex or sexual orientation discriminate against a person who is qualified and available to perform work to which employment relates.

12. **Risk of Loss.** The risk of loss or damage to the subject matter of this Agreement arising from any cause whatsoever, shall be upon the Contractor until such time as the County has accepted the work as provided in this Agreement.

13. **Indemnification.** The Contractor shall indemnify defend and save harmless County and its officers and employees from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and reasonable attorney fees, in any way connected with any injury to any person or damage to any property to the extent caused by the negligence of Contractor's or Contractor's subcontractors' prosecution of work under this Agreement.

14. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of County to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of County to thereafter enforce each and every provision.

15. **Contractor's Representation.** Contractor, by entering into this Agreement, represents that its proposal for this project is made without connection with any person, firm or corporation making or refraining from making a proposal for the same or similar project and was in all respects fair and without collusion or fraud.

16. **Severability.** Should any clause or section of this Agreement be declared by court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

17. **Dispute resolution through mediation and litigation.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service or a similar mediation and arbitration service located in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then exercise their rights under law

18. **Attorney fees and costs.** In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

19. **Governing Law; Jurisdiction; Venue.** This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Oregon without regard to its conflicts of laws rules. Any claim, action, suit or proceeding between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Yamhill County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.

20. **Subcontractors; Assignments.** The Contractor may not engage any subcontractor(s) to perform work under this Agreement without the express written consent of the County. If the County does grant consent, the Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

21. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

22. **Successors bound.** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

23. **No Third Party Beneficiaries.** Except as expressly provided herein, nothing contained in this Agreement is intended, nor shall it be construed to create rights for the benefit of third parties.

24. **Insurance.** Contractor, at Contractor's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- (a) Workers' Compensation Insurance in compliance with statutory requirements;
- (b) Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;

- (c) Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the Project work or Services provided under the Agreement.
- (d) Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. Evidence of such insurance shall be furnished to the County before commencing the work at the Project site. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name County, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

25. **Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

26. **Integration.** This Agreement, along with its Exhibits which are incorporated herein by this reference, constitutes the entire agreement between and among the parties, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

27. **Standard of Care.** Services provided by Contractor under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor makes no other warranty or guaranty, either express or implied. Contractor will not be liable for the cost of any omission that adds value to the Project.

THIS AGREEMENT AND THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE

SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth adjacent to their signatures below.

TETRA TECH, INC.

YAMHILL COUNTY, OREGON

By: 
(Signature)


MARK LAGO, Public Works Director

Date: 10/8/2021

Date: 10/12/21

Kevin J. Dour, PE, PMP
(Printed name)


KEN HUFFER
County Administrator

Title: Vice President

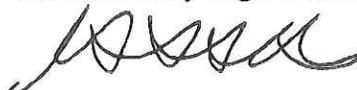
Date: 10/29/21

Fed. Tax I.D. No: 95-4148514

APPROVED AS TO FORM

Contractor
Registration No: N/A

By: 
CHRISTIAN BOENISCH,
Yamhill County Legal Counsel


MARY STARRETT, Chair
Yamhill County Commissioner

Date: 10/28/21

Accepted by Yamhill County
Board of Commissioners on
10/28/21 by Board Order
21-436

Exhibit A
(see attached)

B.D. 21-436
Exhibit "A"
Pg 1 of 7



**Professional Services Agreement
Attachment A – Project Requirements**

Client: Yamhill County Public Works

Project Description

Mercury TMDL Implementation Plan

Scope of Services

**Effort /
Cost Assumed**

Consultant shall provide the services as detailed in the Scope of Work attached hereto.

\$70,060

Special Assumptions

Project Schedule

Task

Date

Method of Compensation

Standard Rates Compensation for these services will be based on Consultant staff efforts, times their standard billing rate, plus subcontracted services times 10%, plus reimbursable expense times 10%, not to exceed \$70,060 without prior written authorization. Standard rates are subject to change at Consultant's sole discretion.

Supplemental Terms and Conditions

SCOPE OF WORK

Scope of Work: The scope of work will be for development of a Mercury TMDL implementation plan as defined by the DEQ Final Revised Willamette Basin Mercury TMDL and WQMP. The county does not have a MS4 permit. Based upon section 13.3.1.12 Counties and table 13-12 the following program elements are required:

- Pollution Prevention and Good Housekeeping for County Operations
- Public Education and Outreach
- Enforcement of Prohibited Pollutants
- Construction Site Runoff Control

Items that are not contained in the scope of work include:

- It is assumed that the strategies selected will be developed after the implementation plan has been approved. Items such as updating or adopting new ordinances, modifying design standards, putting in place new procedures are not included in this scope of work.
- Outreach to other stakeholders such as the public, developers and others.

Items that the Yamhill County will provide:

- Data pertaining to lands owned by the County.
- Existing strategies.
- Copies of plans, ordinances and standards.
- Participation in selection of strategies.
- Participation by appropriate staff including land use planners, engineering, operations.

Schedule - The work will begin ~~September 1, 2021~~ ^{OCTOBER 12,} and will be completed by September 1, 2022.

Fee - The proposed fee is \$70,060 as shown on the attached proposal.

TASK 1 — PROJECT MANAGEMENT

- 1.1 Management** – Coordination of staff, project start-up, preparation of monthly billings with a cover letter providing a brief progress report.
- 1.2 Quality Assurance/Quality Control (QA/QC)** – Provide quality control reviews of deliverables that entails review by a senior engineer who is not involved with the work effort.
- 1.3 Coordination Meetings** – There will be a start-up meeting, draft plan review meeting and on-going coordination meetings Yamhill County and DEQ.

TASK 2 — DATA COLLECTION & INVENTORY

- 2.1 **Land Use** – Review the Comprehensive Plan and ordinances for Yamhill County with regard to water quality, stormwater, riparian zones and water pollution control. Identify specific ordinances addressing erosion control, vegetation requirements, impervious surfaces, floodplains, septic systems and riparian areas. Review the Statewide Land Use Planning goals 5 and 6 with regard to County actions.
- 2.2 **Planning Efforts** – Identify if the County has participated in source water protection, drinking water protection, watershed management or other efforts.
- 2.3 **Identify Existing BMP** – Identify what the County is already doing with regard to: pollution control, public outreach and education, regional coordination, enforcement activities, and erosion control. This includes identifying storm water facilities that the County has such as UIC's, treatment, and detention.
- 2.4 **Land Ownership** – Identify all the lands that the County has ownership of including roads, parks, maintenance facilities and other lands.
- 2.5 **Pollutant Sources** – Identify the sources of the mercury.

TASK 3 — DEVELOP PLAN

- 3.1 **Background and Implementation Plan Goals** – Describe the general intent of the implementation plan.
- 3.2 **Water Quality Assessment** – List the waterbodies that may be affected by runoff and list the TMDL's for the waterbodies. Describe the concerns with the pollutants.
- 3.3 **Management Strategies** – For each pollutant source identify the management strategy(s) and the timeline for implementation. This will be done for the four program elements identified for Counties.
- 3.4 **Performance Monitoring** - Develop a tracking matrix of the strategies that show each strategy, the timeline, status and effectiveness.
- 3.5 **Review and Reporting Requirements** – Description of the review and reporting requirements.
- 3.6 **Land Use Compliance** – Compare the proposed strategies with the current land use regulations, and show how the implementation plan is compliant.
- 3.7 **Additional Requirements** – Perform a fiscal evaluation to determine if additional resources are required to develop, implement and maintain the management strategies. Provide options for obtaining the resources required.
- 3.8 **Prepare Draft Plan** – Prepare a draft implementation plan for review by the County. Address comments and submit the draft plan to the DEQ for review.

TASK 4 — FINAL PLAN

- 4.1 **Develop Final Plan** – Respond to DEQ comments with regard to the implementation plan. It is assumed that there will be an iterative process with DEQ and Yamhill County.

TT Price Proposal		Revision Date: Jul 26, 2021		Labor Plan							Price Summary / Totals								
Yamhill Co. Mercury TMDL Implementation Plan				6 Resource							Task Pricing Totals 70,060								
Develop an Implementation plan. Submitted to: Yamhill County											Specify Add'l Fees on Setup 0								
Contract Type: T&M											Technology Use Fee								
											Total Price 70,060								
											Pricing by Resource								
Project Phases / Tasks	Schedule					Total Labor Hrs	QA/QC (Certified Person)	Professional Engineer (State License)	Engineer/ Planner/ Scientist/ Designer	IT/ (Admin/ Meeting)	Technical writer (Non-person)	Admin/ (Bookkeeping/ etc)	Labor Rate Est.	Labor	Subs	Travel	Mat'l's & Equip	ODCs	Task Pricing Totals
	From	Thru	Months	Week Days	Week Days														
Task 1 - Project Management						42	8	22	8	-	-	4	8,335	-	220	-	-	8,556	
1.1 Management						10		6				4	1,760					1,760	
1.2 QA/QC						8							1,920					1,920	
1.3 Coordination meetings						24		16	8				4,656		220			4,876	
Task 2 - Data Collection & Inventory						127	8	17	30	72	-	-	17,695	-	-	-	-	17,695	
2.1 Land Use						18		6	4	6	31		6,628					6,628	
2.2 Planning efforts						9			1		8		1,024					1,024	
2.3 Existing BIFPs						18		7	4	16	16		5,300					5,300	
2.4 Land ownership						24			4	4	16		3,176					3,176	
2.5 Pollutant Sources						8			4	4			1,448					1,448	
Task 3 - Develop Plan						214	14	52	72	68	6	2	33,368	-	-	-	-	33,368	
3.1 Background & Goals						2		7					460					460	
3.2 Water Quality Assessment						4				4			568					568	
3.3 Management Strategies						97		17	24	24	31		15,024					15,024	
3.4 Performance Monitoring						16			8	8			2,888					2,888	
3.5 Review & Reporting						4				4			568					568	
3.6 Land Use Compatibility						13		2	2		8		1,784					1,784	
3.7 Additional Requirements						52			4	32	16		7,152					7,152	
3.8 Draft Plan						32			12	17	6	2	4,936					4,936	
Task 4 - Final Plan						64	8	16	16	16	6	2	16,440	-	-	-	-	16,440	
4.1 Develop Final Plan						64		8	16	16	16	6	16,440					16,440	
Totals						447	38	107	126	156	17	8	69,840	-	220	-	-	70,060	

Tetra Tech, Inc.**Engineering Services Standard Terms & Conditions**

Services Consultant will perform services for the Project as set forth in Attachment A and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement

are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule in Attachment A. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate
Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage

Professional Liability (E&O) - \$1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices, together with all costs arising out of such termination, within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute

contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Limitation of Liability In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed \$50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Lien Rights Consultant may file a lien against the Client's property in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by Consultant are considered property improvements and the Client waives the right to any legal defense to the contrary.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.