



## STANDARD AGREEMENT TERMS AND CONDITIONS

### 1. COOPERATION AND PROJECT UNDERSTANDING

- a) Client will make available to Consultant all information regarding existing and proposed conditions of the site. The information shall include, but not be limited to, plot plans, topographic surveys, hydrographic data, and previous soil data including borings, field or laboratory tests, and written reports. Client will immediately transmit to consultant any new information which becomes available or any change in plans.
- b) Consultant shall not be liable for any incorrect advice, judgement, or decision based on any inaccurate information furnished by client, his agents or his other consultants, and client will indemnify Consultant against claims, demands, or liability arising out of or contributed to by such information.
- c) No warranty of any kind whatsoever, express or implied, is made or intended in connection with the work to be performed by consultant or by the proposal for consulting or other services or by the furnishing of oral or written reports or findings made by Consultant.

### 2. PROJECT SITE

- a) Client shall grant free access to the site for all necessary equipment and personnel. The client shall notify any and all possessors of the project site, that Client has granted Consultant free access to the project site.
- b) Client shall take steps to see that the property is protected, on and off site. Consultant will not be responsible for damage to lawns, shrubs, landscapes, walks, sprinkler systems, caused by movement of earth or equipment.
- c) Client shall locate for consultant and shall assume responsibility for the accuracy of his representations as to the locations of all underground utilities and installations. Consultant will not be responsible for damage to any such utilities or underground facilities, the location of which were not accurately disclosed by client. Any such damage may, at Consultant's option, be repaired by consultant and billed at cost to client.
- d) Consultant shall backfill all borings or excavations on completion of his work. Settlement of the backfill may occur and Client shall fill holes as required.
- e) If the project is under construction or being graded, the owner or his representative shall be present on the job site to supervise and be responsible for the conduct of the work. The Consultant shall make known the results of the tests to the Client or his representative, in order that the Client or his representatives may direct the contractor's activities.

### 3. SAMPLES

Consultant will retain all soil and rock samples for 30 days after the issuance of the report or notification to terminate work. If Client desires extended storage, the Client shall notify Consultant prior to the expiration of this period. Extended storage or transfer will be at Client's expense.

### 4. SAFETY

Consultant will not be responsible for the general safety on the site or the work of contractors and their parties.

### 5. INVOICES

- a) Consultant will submit invoices to client semi-monthly and a final bill upon completion of services. Invoices will show charges for different personnel and expense classifications. A more detailed separation of charges and backup data will be provided upon Client's request.
- b) Payment is due upon presentation of invoice and is past due 30 days from invoice date. Client agrees to pay a finance charge of 1-1/2% per month, or a maximum rate allowed by Law, on past due accounts. The amount of the finance charge will be calculated on any unpaid balance commencing 30 days after the date of the original invoice. If Consultant files a suit to collect a past due account, actual attorney fees and legal costs shall be included in any judgement in favor of Consultant.

### 6. OWNERSHIP OF DOCUMENTS

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the Consultant, as instruments of service, shall remain in the property of the Consultant. The Consultant will retain all pertinent records relating to the services performed for a period of 5 years following submission of the report, during which period the records will be made available to the Client for the cost of reproduction.



7. **LIMITATION OF LIABILITY**

- a) The consultant's liability for damages due to professional negligence will be limited to an amount not to exceed \$50,000.00 or the fee, whichever is greater.
- b) Client further agrees to notify any contractor and subcontractor who may perform work in connection with any design, report, or study prepared by Consultant of such limitation of professional liability for design defects, errors, omissions, or professional negligence, and to require as a condition precedent to their performing their work, a like indemnity of liability on their part as against the Consultant.

8. **INSURANCE**

The Consultant represents and warrants that it and its agents, staff and consultants employed by it is and are protected by worker's compensation insurance and that Consultant has such coverage under public liability and property damage insurance policies. Certificates for all such policies of insurance shall be provided to client upon request in writing. The Consultant shall not be responsible for any loss, damage, or liability beyond the amounts, limits and conditions of such insurance. The Consultant shall not be responsible for any loss, damage, or liability arising from any negligent acts by Client, its contractors, agents, staff, and other consultants employed by it.

9. **TERMINATION OF AGREEMENT**

In the event that either party desires to terminate this Contract prior to completion of the project, written notification of such intention to terminate must be tendered to the other party. In the event that Client notifies Consultant of such intention to terminate Consultant's services prior to completion, Consultant reserves the right to complete such analysis and records as are necessary to place files in order, to dispose of samples, put equipment in order, and (where considered necessary to protect his professional reputation) to complete a report on the work performed to date. In the event that Consultant incurs cost in Client's termination of this Agreement, a termination charge to cover such cost shall be paid by client. In the absence of a notification of termination, this Agreement shall continue in full force and effect until such time as Consultant has completed his services.

10. **BANKRUPTCY**

If Client or Consultant should become bankrupt or make an assignment for the benefit of creditors, Consultant, or his trustee in bankruptcy, shall be paid the reasonable value of all work theretofore performed, and the obligations of all parties under this Contract shall thereupon terminate. In determining reasonable value under this paragraph, the contract price shall be deemed reasonable.

11. **DELAY**

Consultant will be excused for any delay in completion of the Contract caused by acts of God, acts of Client or Client's agent, inclement weather, labor trouble, acts of public utilities, public bodies or inspectors, extra work, failure of Client to make payments promptly, or other contingencies, unforeseen by Consultant and beyond the reasonable control of Consultant.

12. **ASSIGNMENTS**

Neither the Client nor the consultant may delegate, assign, sublet, or transfer his duties or interest in this Agreement without the written consent of the other party.

This standard agreement, proposal and schedule of fees, comprise the contract between the Client and Consultant.

**Hetherington Engineering, Inc.**  
Geotechnical Consultant

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By

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Title

\_\_\_\_\_  
Date

Project No.

\_\_\_\_\_  
Client

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By

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Title

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Date