

## ENGINEERING SERVICES TERMS AND CONDITIONS

for which the Engineer has not otherwise been compensated, plus an amount for the Engineer's anticipated profit on the value of the services not yet performed by the Engineer.

**B. Termination by Owner for Cause.**

1. Upon seven (7) days written notice to Engineer (the "Notice Period"), the Owner may terminate this Agreement for any of the following reasons: (a) Engineer fails to properly perform its obligations hereunder or otherwise materially breaches the terms of this Agreement.
2. The existence of any of the conditions listed in paragraph 1 above shall constitute a default by Engineer of its obligations under this Agreement.
3. If during the Notice Period, the Engineer eliminates the default, the previous existence of such default shall not be grounds for termination hereunder, and this Agreement shall continue in full force and effect.
4. Upon termination of this Agreement for any of the reasons enumerated above, the Engineer shall be entitled to no payment only to the extent that the balance payable for the performance of the basic services exceeds the sum of all costs incurred by Owner as a result of Engineer's default, including all reasonable costs, expenses, and damages incurred in completing the services up to the limits stipulated in 7.01 G.

**C. Termination by Owner for Convenience.**

1. Owner may, at any time and upon ten days' written notice, terminate this Agreement for Owner's convenience and without cause.
2. In the event of termination for convenience by Owner, Engineer shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed.

### **5.01 Controlling Law**

- A. This Agreement is to be governed by the law of the state in which the Project is located.

### **6.01 Successors, Assigns, and Beneficiaries**

- A. Owner/Owner's Representative and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner/Owner's Representative and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner/Owner's Representative and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner/Owner's Representative nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### **7.01 General Considerations**

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractors work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractors work.