

TERMS AND CONDITIONS

Edge Consulting Engineers, Inc.
Rev. January 1, 2024

1. Services to be Performed

The services to be performed by Edge Consulting Engineers, Inc. and its subconsultants (collectively, Consultant) are set forth in the attached Proposal. These services, together with these terms and conditions, constitute the entire Agreement.

Estimates

Unless the Proposal provides otherwise, the estimated costs constitute Consultant's estimate of the charges required to complete the Project. Estimates of cost made by Consultant are not guaranteed.

Additional Services

For additional services not included above, Consultant shall be compensated on a time and expense basis as outlined in the Proposal and/or current Fee Schedule.

2. Time for Performance

General

Consultant's services shall be performed according to the Schedule outlined in the Proposal.

Effect of Delay

If the services to be performed by Consultant are interrupted, suspended, or delayed for any reason beyond the control of Consultant, the schedule of work and date for completion shall be adjusted accordingly, and it is understood that additional compensation may be required to account for such delays.

3. Compensation and Payment

Method for Compensation

Payment for services rendered hereunder shall be on a time and material basis (or other basis if specified in the Proposal) in accordance with Consultant's Fee Schedule. Invoices will be submitted on a monthly basis and shall be due within thirty (30) calendar days of the date of the invoice. If Client objects to all or any portion of the invoice, Client shall deliver to Edge Consulting within thirty (30) calendar days of the date the invoice written notice which shall identify the grounds of objection and/or amount of the invoice in dispute. Client shall pay when due that portion of the invoice that is not in dispute. Client waives any objection for which a notice of objection is not timely delivered to Edge Consulting.

Client shall pay an additional charge of 1.5 percent per month (or the maximum legal rate) of the overdue amount for any payment received by Edge Consulting more than thirty (30) calendar days from the date of the invoice.

Witness Fees

Client agrees to make payment to Consultant in accordance with Consultant's then current Fee Schedule for any Consultant employee who appears, testifies, or performs any services in connection with any court, administrative, or other legal proceedings arising out of work related to the Agreement. This provision does not apply to court, administrative, or other legal proceedings involving a dispute between Consultant and Client.

4. Consultant Responsibilities

Standard of Care

Consultant will perform the services in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Consultant shall, without additional compensation, correct or revise any of its designs, drawings, reports, and other deliverables, not complying with the foregoing standard of care, which are made known to Consultant by Client within one year after submission to Client of the deliverable.

Consultant makes no warranty, expressed or implied, as to its professional services and deliverables rendered under this Agreement. Accordingly, Client should prepare and plan for clarifications and modifications, which may impact both the cost and schedule of the project.

5. Client Responsibilities

Information

Client shall provide all pertinent, available information regarding its requirements and criteria for the Project, including, but not limited to, surveys, studies, available descriptive information regarding historical use and/or existing environmental conditions, records concerning the subject matter of the Project, and communications with governmental regulatory agencies, its consultants and others relating to the Project.

Cooperation with Consultant

Client will cooperate with Consultant so that the Project can be completed in a timely, efficient, and cost-effective manner. Client shall designate an authorized representative familiar with the Project who shall be available to Consultant and who shall have the authority to make all necessary decisions.

Utilities

Unless otherwise required by law or set forth in the Agreement, Client shall be responsible for accurately locating and prominently marking any buried utilities, concealed pipes, tanks, cables, private utilities, irrigation systems, or other man-made obstructions which may affect or be affected by Consultant's services.

Access to Site

Unless otherwise stated, Consultant will have access to the site for activities necessary for the performance of the services. Consultant will take reasonable precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage and will not be responsible for such costs.

6. Confidentiality

Nondisclosure

Consultant and the Client shall maintain any information or documents obtained by, or provided to, either party and expressly designated in writing to be confidential as confidential, proprietary and protected business or trade secrets. For the purpose of this provision, information and documents shall include, but not be limited to, information related to activities at the Project site, business practices, investigative techniques and methodologies, remediation alternatives, schedules of charges, pricing and other compensation information, analyses, reports, and recommendations.

Public and Legal Responsibility

Consultant and Client understand and agree that, consistent with its professional responsibilities and applicable law, Consultant may be obligated to take action to protect public health, to protect the safety of the environment, or to disclose information to governmental regulatory agencies.

If feasible, Consultant shall provide notice to the Client before undertaking any action or making any disclosure except that Consultant shall not be required to provide prior notice to Client if the time necessary to provide such notice may result in or increase the risk of imminent harm to persons, property, or the environment, or may render Consultant criminally or civilly liable under applicable law.

7. Ownership of Documents and Materials

Documents

Original survey data, field notes, maps, computations, studies, reports, drawings, specifications, and other documents generated by Consultant are instruments of service and shall remain the property of Consultant. Consultant shall provide copies of those deliverables specified in the Proposal. During the term of this Agreement, and for a period of one (1) year thereafter, and upon prior written request, reproductions of other documents may be provided to Client, at Consultant's then current fee schedule for reproduction charges.

All opinions and conclusions of Consultant, whether written or oral, and any plans, specifications or other documents and services provided by Consultant are for the sole use and benefit of the Client and are not to be provided to any other person or entity without the prior written consent of Consultant.

Samples and other Materials

All materials at or removed from the Project site, including, but not limited to, samples, soil, drill cuttings, excavation spoils, and solid, liquid, or hazardous wastes, shall remain the property of the Client at all times.

8. Allocation of Risk

Client and Consultant acknowledge that, prior to the start of this Agreement, Consultant has not generated, handled, stored, treated, transported, disposed of, or in any way whatsoever taken responsibility for any toxic or hazardous substance or other material found, identified, or as yet unknown at the Project premises. Client and Consultant further acknowledge and understand that the evaluation, management, and other actions involving toxic or hazardous substances which may be undertaken as part of the services to be performed by Consultant, including subsurface excavation or sampling, entails uncertainty and risk of injury or damage. Client and Consultant further acknowledge and understand that Consultant has not been retained to serve as an insurer of the safety of the Project to the Client, third parties, or the public. In addition, the Client agrees, to the maximum extent permitted by law, to waive any claims against Consultant arising out of the performance of these services, except for the sole negligence or willful misconduct of Consultant.

The parties agree that the apportionment of the risk of loss and other limitations set forth in the Allocation of Risk provisions of this Agreement are essential terms of this Agreement and a condition of Consultant's willingness to perform the services.

Certifications, Guarantees and Warranties

Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. Client also agrees not to make resolution of any dispute with Consultant or payment of any amount due to Consultant in any way contingent upon Consultant's signing any such certification.

Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either Client or Consultant. Consultant's services under this Agreement are being performed solely for Client's benefit, and no other party or entity shall have any claim against Consultant because of this Agreement or the performance or nonperformance of services hereunder.

Indemnification

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities and costs, including reasonable attorneys' fees and defense costs, to the extent caused by Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Consultant is legally liable.

Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities and costs, including reasonable attorneys' fees and defense costs, to the extent caused by Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom Client is legally liable.

Neither Client nor Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

Insurance

Consultant shall carry statutory workers compensation insurance and public liability and property damage insurance policies in amounts and form which Consultant considers adequate. Consultant's Automobile and Comprehensive General Liability policies shall each have combined single limits of at least \$500,000. Consultant shall maintain a Consultant's Professional Liability and Pollution Liability Policy or other similar errors and omissions coverage with combined single limits of at least \$1,000,000. Certificates of Insurance will be provided to the Client upon request. The providing of insurance as set forth shall not be construed as Consultant's assumption of any liability arising out of any act or omission of Client. If the Client requires coverage or limits in addition to the above stated amounts, premiums for additional insurance shall be paid by the Client. Consultant's liability to Client for any indemnity commitments, reimbursement of legal fees, or for any damages arising in any way out of performance of the Agreement is limited to such insurance coverage and amounts.

Limitation of Liability

Consultant's total liability under this Agreement shall not exceed the lessor of twenty times Consultant's contracted fees or \$1,000,000. If the contract involves multiple projects, the total liability for any given individual project shall not exceed the lessor of twenty times Consultant's fees for the given project or \$1,000,000.

9. Termination

Termination for Cause

Either party to this Agreement may terminate this Agreement for (i) failure of the other party to substantially perform its responsibilities under this Agreement, (ii) substantial violation of any provision of this Agreement, or (iii) discovery of conditions which differ materially from those ordinarily found to exist in, or be generally recognized as inherent in the work contemplated to be performed under this Agreement. The terminating party shall provide (a) no less than ten (10) calendar days written notice of intent to terminate, specifying the reasons; (b) an opportunity for the other party to make reasonable progress to cure the alleged failure or violation within ten days; and (c) an opportunity to consult with the terminating party before the effective date of termination.

Termination for Convenience

Client may terminate this Agreement for its convenience upon twenty (20) days written notice of intent to terminate. Each party shall be subject to all provisions of this Agreement during the period after notice and prior to the effective date of termination, unless otherwise agreed upon in writing.

Procedures after Termination

Consultant shall submit a final invoice to Client as soon as practical after the effective date of termination. The final invoice will be based on all services rendered and charges incurred in connection with the Project up to the effective date of termination. Consultant shall also be reimbursed for reasonable costs associated with demobilization and reassignment of personnel and equipment due to termination prior to completion of the Project. Client shall pay the final invoice in accordance with the provisions of Paragraph 3.

10. Dispute Resolution

Any claims or disputes between the Client and Consultant arising out of the services to be provided by Consultant or out of this Agreement shall be submitted to non-binding mediation. The Client and Consultant agree to include a similar mediation agreement with all contractors, sub-consultants, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.

Severability

If any provision of the Agreement is determined to be void or unenforceable, all remaining provisions shall continue to be valid and enforceable. The parties shall reform or replace any void or unenforceable provision with a valid and enforceable provision that comes as close as possible to expressing the intention of the void or unenforceable provision.

Whole Agreement

This Agreement, as supplemented by any documented changes, constitutes the complete and final Agreement between Client and Consultant. Modifications to this Agreement shall not be binding unless made in writing and signed by an authorized representative of each party.

Purchase Orders

In the event the Client issues a purchase order or other instrument related to Consultant's services, it is understood and agreed that such document is for Client's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement. If the Client does issue a purchase order or other similar instrument, it is understood and agreed that Consultant shall indicate the purchase order number on the invoices sent to the Client.