



AGREEMENT FOR PROFESSIONAL SERVICES
On the Basis of Lump Sum Fee for Projects with No Known Hazardous Substances

1. **PROFESSIONAL SERVICES**

This Agreement is between HDL Engineering Consultants, LLC (HDL) and Rotary Club of Susitna (Client) sometimes collectively referred to as "the parties." Our fee for services will be as follows:

See proposal letter attached as Exhibit A, dated: _____ October 29, 2019 _____

2. **USE OF SUBCONSULTANTS AND SUBCONTRACTORS**

When considered necessary, subconsultants and/or subcontractors will be utilized.

3. **RIGHT OF ENTRY**

Unless otherwise agreed, Client will furnish HDL with applicable permits and right-of-entry on the land, and will be responsible for the propriety of the time, place, and manner of HDL's entry to the site where work is to occur. HDL will take reasonable precautions to reduce damage to the site from use of equipment, will restore the site to its approximate former condition (i.e., if compaction of backfill, pavement patching, restoration of lawns, vegetation, etc., will be required), and will accomplish this by contract services that will be paid for by Client.

4. **BURIED STRUCTURES AND UTILITIES**

If there are any buried structures and/or utilities such as sewer, electric, etc., on land where work is to take place, Client will provide HDL with a plan showing their existing locations. HDL and its subcontractors will use reasonable care and diligence to avoid contact with buried structures and/or utilities as shown. Client will defend, hold harmless, and indemnify HDL, its officers, agents, servants or employees, subconsultants and subcontractors, from any loss resulting from inaccuracy of the plans, or lack of plans, relating to the location of buried structures and/or utilities.

5. **WORKERS' COMPENSATION INSURANCE**

HDL shall provide workers' compensation insurance (and/or employers' liability insurance) for its employees as required by applicable state statute.

6. **GENERAL LIABILITY: LIMITATION**

HDL agrees to indemnify and hold Client harmless on account of that liability due to bodily injury or property damage arising directly out of its negligent operational acts, but its liability under these indemnity and hold harmless obligations, including any applicable costs and attorneys' fees, will be limited to the coverages available under its comprehensive general liability insurance and not otherwise. HDL carries comprehensive general liability insurance, which, subject to its limits, terms, and conditions, provides protection against liability arising out of bodily injury and property damage that is the direct result of operational negligence. At Client's request, HDL will provide certificates evidencing such coverage. At Client's request, HDL will also purchase those additional limits of liability insurance that Client may require as a separate cost item to be borne by Client.

7. **PROFESSIONAL LIABILITY: LIMITATION**

HDL's liability arising in connection with this Agreement, including for breach of contract, consequential, or incidental damages, for all its negligent acts, errors, or omissions in the performance of professional services hereunder, or liability claimed under any other legal theory, shall not exceed our total invoice amount, for injuries or loss to Client or for which Client becomes legally liable, including any claims for costs of defense, attorneys' fees, or other incurred costs.

8. **INDEMNIFICATION**

All work performed by Client shall be at the risk of Client exclusively. Subject to the limitations in paragraph 6 and paragraph 7, HDL and Client shall indemnify and hold each other harmless from and against all claims, damages, losses, and

expenses, including but not limited to reasonable attorneys' fees, but only to the extent caused by any error or omission of the indemnifying party or anyone for whose acts such party may be liable. Where both HDL and Client may be liable for claims, damages, losses, or expenses, each party shall provide its own defense, and the damages, losses, expenses, and defense costs shall be apportioned between the parties according to their respective fault in the action at the termination of any proceeding brought to hold a party liable. This indemnity obligation shall survive termination of this Agreement for one year.

If there is a dispute between HDL and Client concerning the performance of any provision of this Agreement, the losing party shall pay the prevailing party all reasonable costs incurred in connection with the dispute, including staff time, court costs, attorneys' fees, and other dispute related expenses. The limitations of liability and indemnity obligations set forth in this Agreement are exclusive, and neither HDL nor Client shall have any common law indemnity rights against each other.

9. **WARRANTY OF SITE CONDITIONS - DISCOVERY OF HAZARDOUS SUBSTANCES**

Client hereby guarantees that it does not know or have reason to know of the presence of hazardous, toxic, or radioactive substances, including waste or other contaminants on or under the project site or sites, or on or in property that must be crossed by HDL to conduct its work. It shall be Client's duty to advise HDL immediately of any discovery of hazardous, toxic, or radioactive substances, including waste or other contaminants, or threatened release of same, on or near the site or sites upon which work is to be performed by HDL, its employees, subconsultants, or subcontractors. If hazardous, toxic, or radioactive substances, including waste or other contaminants are discovered during the course of or in connection with HDL's work, it is hereby agreed that the scope of services, schedule, and the estimated project cost will be reconsidered, and that this Agreement shall immediately become subject to renegotiation or, in the sole discretion of HDL, subject to suspension or termination.

If HDL terminates this Agreement because hazardous, toxic, or radioactive substances, including waste or other contaminants, are discovered, it is agreed that HDL shall be paid for its total charges for labor performed to the termination notice date, plus reimbursable charges, plus termination expenses. The parties agree that any such damages for termination would be difficult to determine, and therefore agree to a liquidated amount of fifteen percent (15%) of the unpaid charges for labor and reimbursables accumulated up to the time of termination, plus labor and reimbursable charges related to: (1) complying with federal, state, or local laws regarding hazardous, toxic, or radioactive substances, including waste, or other contaminants; and (2) decontamination or replacement of contaminated equipment or consumables.

10. **DISPOSITION OF SAMPLES AND EQUIPMENT - NOT APPLICABLE**

11. **CONFIDENTIAL AND PROPRIETARY INFORMATION**

All drawings, specifications, ideas, designs, copyrights, patent rights, and other proprietary information and work products of HDL used in or arising out of this particular project shall become and remain the exclusive property of HDL. Client's rights to use such proprietary information and work product(s) shall be limited to this particular project alone. The further use, reproduction, or disclosure of any such proprietary information or work product(s) by anyone without the express prior written consent of HDL is prohibited.

12. **PAYMENTS TO CONSULTANT**

Invoices will be submitted on a monthly basis or more frequently for prior services. Final reports will be stamped by a Professional Engineer after Client has paid ninety percent (90%) of the design cost. Payment will be due upon receipt of invoice. An account will become delinquent thirty (30) days after date of billing. It is agreed that a late charge will be added to delinquent accounts at the maximum statutory rate allowed by Alaska law for each thirty (30) days from the date of billing. If Client fails to make payments to us within thirty (30) days of receipt, HDL may, after giving seven (7) days written notice to Client, suspend services.

13. **ON-SITE JOB RESPONSIBILITY**

It is understood and agreed that HDL will not be responsible for any contractors' means, methods, sequences, and/or procedures of construction, nor has it been retained to provide, nor will it be compensated for providing professional services relating to the personal safety of anyone on site other than HDL employees and its authorized agents, and that HDL will not be assuming any responsibility for providing such services.

14. **STANDARD OF CARE/ABSENCE OF WARRANTIES**

HDL agrees that it will perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions, and in accordance with sound and generally accepted principles consistent with normal consulting practice. HDL provides professional services, however, and nothing in this Agreement shall be construed to constitute an express or implied warranty, including (but not limited to) any warranty or merchantability or fitness for a particular use.

15. **BENEFIT OF THIS AGREEMENT**

It is agreed that this Agreement is entered into by the parties for the sole benefit of the parties to the Agreement, and that nothing in the Agreement shall be construed to create a right or benefit for any third party.

16. **ASSIGNMENT**

The Client and Consultant each binds himself/itself, and their respective partners, successors, legal representatives, and assigns to the other party to this Agreement, and to the partners, successors, legal representatives, and assigns of such other party in respect to the Agreement. Neither the Client nor HDL shall assign or otherwise transfer his or its interest in this Agreement without the written consent of the other party to this Agreement.

17. **TIME LIMITATIONS FOR BRINGING A CLAIM**

It is agreed that no action may be commenced by you against HDL on any claim arising out of HDL's services under this Agreement, whether based upon negligence, breach of contract, or any other theory of legal liability, more than one year after HDL has performed its services under this Agreement.

18. **WAIVER**

Any waiver by HDL of its rights under this Agreement at any one time shall not be considered a waiver of any future right to enforce any provision of this Agreement. Client may terminate this Agreement at any time by giving HDL written notice thereof. In which case, HDL shall be paid in full for all services performed to the date of termination.

19. **FORCE MAJEURE**

Neither party shall hold the other responsible for damages or delay in performance caused by weather and other acts of nature, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

20. **SEVERABILITY**

This Agreement shall be construed pursuant to the laws of the state in which our office submitting the proposal (confirming letter) is located. If any provision of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the remaining portions of this Agreement shall remain in effect and shall be enforceable. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

21. **DISPUTE RESOLUTION**

The parties agree that all disputes arising out of this Agreement that cannot otherwise be settled by the parties shall be submitted to binding arbitration in Anchorage, Alaska.

22. **THIRD PARTY ACTIONS**

If any dispute arises out of this Agreement other than between HDL and Client, and HDL provides expert or fact witness testimony arising out of the performance of any provision in this Agreement, whether at Client's request or that of any other party, Client will be responsible to pay all of HDL's reasonably related costs, including staff preparation and testimony time, at the standard rates.

23. **NOTICES**

All notices and work product, or transmittal of other information or materials required under this Agreement, shall be in writing and (1) delivered by personal delivery, or (2) by U.S. Mail and fax, or (3) by U.S. Mail and E-Mail. Transmittals shall be given to the other party at the addresses set forth on the signature page of this Agreement. Notice of all changes of address shall be provided in writing to all parties within a reasonable time after such change occurs.

24. **COST OPINIONS**

Opinions of probable construction cost prepared by HDL are made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional generally familiar with the industry. However, since HDL has no control over the cost of labor, materials, equipment, or services furnished by others, or over a contractor's methods of determining prices, or over competitive bidding or market conditions, it cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by it. If Client wishes greater assurance as to probable construction cost, it may employ an independent cost estimator.

25. **TERMINATION**

This Agreement may be terminated by either party upon seven (7) days' written notice. If this Agreement is terminated, it is agreed that HDL shall be paid for its total charges for labor performed through the termination notice date, plus reimbursable charges, plus reasonable termination expenses to account for its costs for rescheduling, adjustments, reassignment of

personnel, and related costs incurred due to termination. Termination because hazardous substances are discovered is covered under paragraph 9.

26. TOTAL AGREEMENT

HDL's Agreement with Client, consisting of this Agreement for Professional Services and its Exhibits, constitute the entire Agreement between the parties, and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented, modified, or canceled only by a written instrument duly executed by all parties.

27. SEVERABILITY

If any section, paragraph, clause, or provision of this Agreement shall be finally adjudicated by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be unaffected by such adjudication and all the remaining provisions of the Agreement shall remain in full force and effect as if such section, paragraph, clause, or provision or any part thereof so adjudicated to be invalid had not been included herein.

28. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the earlier of either the date on which HDL and Client have signed this Agreement or, if the Agreement is signed after commencement of work on the project, the date on which HDL actually begins work on the project covered by this Agreement.

DATED: 1/15/10

HDL Engineering Consultants, LLC

BY: [Signature]
Signature

TITLE: Principal

ADDRESS: 3335 Arctic Boulevard, Suite 100
Anchorage, Alaska 99503
Telephone: (907) 564-2120
Facsimile: (907) 564-2122
E-Mail: _____

DATED: 1/14/2020

BY: [Signature]
Signature

TITLE: President

ADDRESS: 961 E. McAloo Way
Wasilla AK 99654