

TERMS & CONDITIONS

1. **General.** This Agreement (consisting of the Agreement for Engineering Services, any Addendum(s) thereof, these terms and conditions and any Proposal which these conditions accompany and of which they are part, collectively referred to herein as the "Agreement") shall be deemed cancelled/withdrawn within sixty (60) days of issuance if same are not fully executed by an authorized agent of Client and returned to Federal Engineering & Testing, Inc. ("F.E.T.") via fax/email to 954-784-7875 or sven@fed-eng.com. As used in this Agreement, the word "or" is not exclusive; "including" is always without limitation; "days" means calendar days; "Client" identifies that person/entity that signed this Agreement as the authorized agent thereof; and "Project" means the project/property to receive services by F.E.T.
2. **Fees.** In consideration of the services to be furnished by F.E.T. as described in this Agreement ("Services"), Client agrees to pay the fee described herein. If said fee does not include sales tax, Client shall pay applicable sales tax required by law. Payment is due upon receipt of any invoice. Client shall notify F.E.T. in writing within ten (10) days of the date of the invoice if Client objects to any portion of the invoice and shall promptly pay the undisputed portion. Failure to timely provide written notice shall constitute acceptance of the invoice in full. Client shall pay a finance fee of 1.5% per month or the maximum allowed by law for all unpaid balances thirty (30) days or older. Client agrees to pay all collection-related costs, including reasonable attorneys' fees, which F.E.T. may incur to obtain past-due payments from Client. F.E.T. may suspend Services for lack of timely payment. Payment of any invoice submitted to Client shall not be subject to, or contingent upon, F.E.T.'s completion of Services or upon Client's receipt of any other relating project, company and/or payment. A travel fee of \$85.00 shall be incurred if the Project is located more than thirty (30) miles from F.E.T.'s office unless otherwise noted above. An \$85.00 mobilization fee, equal to one (1) hour tech. time, shall be incurred if Services are cancelled while F.E.T. is in route to the Project. It is Client's responsibility to determine whether federal, state, or local prevailing wage requirements apply and to notify F.E.T. if same do apply. If it is later determined that prevailing wages apply, and F.E.T. was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to indemnify and hold harmless F.E.T. from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
3. **Acceptance/Termination.** Client agrees that the execution of F.E.T.'s Agreement is a material element of the consideration F.E.T. requires to provide Services. If Services are initiated by F.E.T. prior to the execution of the Agreement as an accommodation for Client at Client's request, both parties agree that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement, including those herein. In the event Client uses its own purchase order or other form to administer an agreement for Services, the use of such form shall be for convenience purposes only and any additional or conflicting terms contained therein shall be stricken. Either party may terminate this Agreement upon written notice to the other. In such case, F.E.T. shall be paid for costs incurred and fees earned up to the date of termination plus the reasonable costs of terminating the Services.
4. **Scope of Services.** The scope of F.E.T.'s Services is solely as described in this Agreement. F.E.T.'s Services do not include the investigation or detection of, nor do recommendations in F.E.T.'s reports address the presence or prevention of, biological pollutants (e.g. mold, fungi, bacteria, viruses, or their byproducts) unless specifically called for by this Agreement, nor other occupant safety issues, such as vulnerability to natural disasters, terrorism, or volcano. F.E.T.'s findings, opinions, and recommendations are based solely upon data and information obtained by or furnished to F.E.T. at the time of the Services. If, within the scope of this Agreement, F.E.T. is to rely upon information provided by Client, F.E.T. shall not be liable for any and all consequences resulting from the inaccuracy of the information provided.
5. **Access.** Client is responsible for ensuring suitable access for F.E.T. equipment and personnel to the Project. An \$85.00 mobilization fee shall be incurred for locked/closed gates, poor access, no access, or any like impediment, including excessive construction debris. Client shall designate a specific time for F.E.T. to be at the Project. If, upon F.E.T.'s arrival, Client or Client's sub/contractor is not ready or if there is a delay whereby F.E.T. must be on site for more than thirty (30) consecutive minutes without being able to perform Services, Client shall be billed the standard stand-by hourly rate of \$85.00 per hour. If same occurs on a weekend/legal holiday, Client shall be billed at a rate of time and one half the standard hourly stand-by rates. F.E.T.'s normal operating hours are from 8:00am to 5:00pm, Monday through Friday. Work to be performed outside of these hours or on weekends/holidays will be charged at time and one half F.E.T.'s normal rates plus technician time.
6. **Utilities.** Client shall provide the location of or arrange for the marking of private utilities and subterranean structures. While F.E.T. shall take reasonable precautions to avoid damage to subterranean structures or utilities, F.E.T. shall not be responsible for damage to same which are not called to F.E.T.'s attention, are incorrectly marked, or are incorrectly shown on the plans furnished to F.E.T.
7. **Testing and Observations.** Client understands that testing and observations are discrete sampling procedures, and that such procedures indicate conditions only of the depths, locations, and times the procedures were performed. F.E.T. will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce—not eliminate—project risk. Client agrees to the level or amount of testing performed and the associated risk. F.E.T. will take reasonable precautions to reduce damage to the Project when performing Services; however Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
8. **Existing Conditions.** Client recognizes that actual conditions may vary from those encountered at the locations where borings, observations or explorations are made by F.E.T. and that the data, interpretation, and recommendations of F.E.T. are based solely on the information available to it. F.E.T. shall have the right to rely on the accuracy and completeness of all information furnished to it by the Client.
9. **Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to F.E.T. all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit now, updated, or revised information as it becomes available. Client agrees that F.E.T. is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment; or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay F.E.T. the fair market value of this equipment and reasonable disposal costs. In no event shall F.E.T. be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. Client agrees that F.E.T. neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against F.E.T. and agrees to defend, indemnify and save F.E.T., its agents, employees, and related companies harmless from any claim, liability or defense costs, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of F.E.T.'s non-negligent performance of Services, or for any claims against F.E.T. as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.

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10. **Additional Services Requested by Client.** In the event Client desires F.E.T. to provide additional services not set forth in the Agreement, Client shall execute a written Addendum for the payment of additional services prior to F.E.T.'s commencement of same. Upon execution, the Addendum Change Order shall be incorporated into the original Agreement, become a part thereof and subject to the Agreement's terms and conditions, including those herein. F.E.T. reserves the right to request that payment be made in full prior to the commencement of work under the Agreement or any Addendum thereto.
11. **Ownership of Tests/Reports.** All test results/reports prepared by F.E.T. pursuant to the Agreement shall remain in F.E.T.'s possession until all monies due and owing by Client to F.E.T. are paid in full. Proprietary concepts, systems, and ideas developed during performance of Services are the sole property of F.E.T. Files shall be maintained pursuant to F.E.T.'s document retention policies and practices. All reports, notes, drawings, specifications, data, calculations, and other documents prepared by F.E.T. ("Documents") are instruments of F.E.T.'s Services that shall remain F.E.T.'s property. Client agrees not to use the Documents for future additions or alternations to this Project or for other projects without F.E.T.'s express written consent. Any unauthorized use of the documents will be at Client's sole risk and without liability to F.E.T. Accordingly, Client shall defend, indemnify, and hold harmless F.E.T. from and against any and all losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized use.
12. **Third Party Reliance.** This Agreement and the Services provided thereby are for F.E.T. and Client's sole benefit and exclusive use, with no third party beneficiaries intended. To the extent that any other person or entity, including but not limited to a contractor/subcontractor/other design professional, is benefited by the Services performed by F.E.T. pursuant to this Agreement, such benefit is purely incidental. F.E.T. shall have no liability to Client or any other party arising out of or related to the use of the information, data, or reports generated by F.E.T. during the performance of the Services by a third party for any reason whatsoever.
13. **Performance of Services by Third Parties.** Client acknowledges and understands that some Services offered by F.E.T. are performed by third parties. Client agrees that F.E.T. shall not be liable for the actions of, work performed by, or reports/information generated by said third parties.
14. **Warranties.** F.E.T. will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, F.E.T. MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO F.E.T.'S SERVICES AND F.E.T. DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
15. **WAIVER OF CONSEQUENTIAL DAMAGES.** Client hereby waives any and all claims against F.E.T. for consequential damages, special damages, and/or delay damages arising out of or related to this Agreement and/or the Services provided thereby. This waiver includes, but is not limited to, damages incurred by Client for the cost of substitute facilities, goods, or services; cost of capital; loss of use, opportunity, income, profit, revenue, financing, business, or reputation; loss of management or Client's extended general conditions; loss of good will; or for any special, consequential, indirect, punitive, or exemplary damages arising out of or relating to the Services provided by F.E.T. regardless of whether such claim or dispute is based upon an alleged breach of contract, willful misconduct or negligent act or omission of F.E.T. or its employees and/or agents, or other legal theory.
16. **Dispute Resolution/ Client Required to Serve a Notice of Claim.** Client shall make no claim (directly or in the form of a third-party claim) against F.E.T., unless Client has first provided F.E.T. with a written certificate, executed by an independent engineer, surveyor or geologist, as the case may be, or appropriate design professional in the state in which the Project is located, specifying and certifying each and every act or omission that Client contends constitutes a violation of the standard of care governing a geotechnical, civil or environmental engineer, surveyor or geologist, as the case may be, performing professional services under similar circumstances. Client shall provide this opinion to F.E.T. and the parties shall endeavor to resolve the dispute within thirty (30) days, after which Client may pursue its remedies at law. However, the parties agree that any and all disputes arising under this Agreement and/or the Services provided herein shall be subject to non-binding mediation as a prerequisite to further legal proceedings. In the event of a dispute, whether or not a lawsuit or other proceeding is filed, F.E.T. shall be entitled to recover its reasonable attorneys' fees and costs, including legal fees and costs incurred in any trial or appeal.
17. **Representation Fees.** In the event of future conflict between the owners of the Project and a third party, F.E.T.'s legal and/or company representation and preparation for representation fees shall be billed at an hourly rate.
18. **SITE ACCESS AND SAFETY.** Client shall obtain all site related approvals, permits, licenses, and consents necessary to commence and complete Services and shall execute any necessary site access agreement. F.E.T. shall be responsible for the supervision and site safety measures of its own employees, but shall not be responsible for same for any other person or entity, including but not limited to Client, Client's contractors, subcontractors, or any third party.
19. **FORCE MAJUERE.** F.E.T. shall not be held responsible for any damages caused by Acts of God, including, strikes, riots, hurricanes, inclement weather, shortages of labor or materials, war, riot, inability to obtain materials or services, delays caused by Client, Client's agents, or any governmental regulation or agency, or for any other causes that are beyond the reasonable control of F.E.T.
20. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO LIMIT F.E.T.'S LIABILITY TO THE CLIENT AND TO ANY AND ALL OF THE CLIENT'S PARENTS, SUBSIDIARIES, AFFILIATES, PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, CONSTRUCTION MANAGERS, CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, SUBCONSULTANTS AND INSURERS FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATING TO THE PERFORMANCE OF F.E.T.'S SERVICES UNDER THIS AGREEMENT, SUCH THAT F.E.T.'S AGGREGATE LIABILITY TO SAME WILL NOT EXCEED THE LESSOR OF (I) F.E.T.'S FEE FOR ITS SERVICES ON THE PROJECT OR (II) F.E.T.'S AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE AT THE TIME OF ANY SETTLEMENT OR JUDGMENT. IN THE EVENT THAT THIS LIMITATION OF LIABILITY PROVISION IS DEEMED VOID AS A MATTER OF LAW, THEN F.E.T.'S LIABILITY PURSUANT TO THIS PARAGRAPH SHALL BE LIMITED TO THE LOWEST AMOUNT ALLOWABLE AS A MATTER OF LAW. To the fullest extent permitted by law, Client further agrees that no shareholder, officer, director, partner, principal or employee of F.E.T. shall have personal liability for any act, omission, breach, tort, fault or wrong arising from or relating to F.E.T.'s Services on the Project.
21. **Indemnity.** To the fullest extent permitted by law, Client agrees to defend, indemnify, and hold harmless F.E.T. and F.E.T.'s parents, subsidiaries, affiliates, partners, officers, directors, shareholders, employees and agents harmless for any and all claims, damage obligations, liabilities, suits, demands and loss, including reasonable attorneys' fees and all other costs, expenses and disbursements, arising out of and/or resulting from the performance of the Services, provided that any such claim, damage, loss, or expense is caused in whole or in part by the negligent act or omission and/or strict liability of Client, anyone directly or indirectly employed by Client, including but not limited to a contractor, or anyone for whose acts any of them may be liable, with the exception of F.E.T. Client shall further indemnify and hold harmless F.E.T. and F.E.T.'s parents, subsidiaries, affiliates, partners, officers, directors, shareholders, employees and agents from and against any and all claims, damages, losses and expenses, including reasonable attorneys' fees, arising from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants during performance of the Services.

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22. To the fullest extent permitted by law, Client further agrees to defend, indemnify, and hold harmless F.E.T. and F.E.T.'s parents, subsidiaries, affiliates, partners, officers, directors, shareholders, employees and agents harmless for any and all claims, damage obligations, liabilities, suits, demands and loss, including reasonable attorneys' fees and all other costs, expenses and disbursements, to which F.E.T. may be subject, actually or allegedly arising from or relating to: (i) any unknown site condition or subterranean structures of which F.E.T. does not have actual knowledge; (ii) any errors, omissions or inconsistencies in any data, documents, records or information provided to F.E.T. by Client or third parties; (iii) any breach, tort, error, omission, wrong or fault of the Client or third party over whom F.E.T. has no control; (iv) any Act of God (such as but not limited to an earthquake, cyclone, flood, hurricane, tornado, windstorm and high winds), fire, explosion, civil disturbance, terrorist attack, embargoes, hazardous materials, or enjoining of F.E.T.'s services by a governmental body; (v) the transport, treatment, removal or disposal of all samples; and (vi) Client's unauthorized use of plans, reports, documents and related materials prepared by F.E.T. In the event any part of this indemnification is void as a matter of law, then only that portion that is deemed void as a matter of law shall be stricken and the balance of this indemnification shall remain in full force and effect.
23. F.E.T. shall not be responsible for the acts or omissions of the contractor, any subcontractor, or any of the contractor's or subcontractor's agents or employees or any other person performing any of the work under a construction contract, including failure to complete work according to a construction contract, engineering plans and/or architectural drawings.
24. F.E.T. shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and F.E.T.'s performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. F.E.T. will not supervise or direct the work performed by Client's sub/contractor and is not responsible for their means and methods unless said service is included in the Scope of Services.
25. **Insurance.** F.E.T. maintains workers' compensation, general liability, property, automobile and professional liability insurance. Certificates of insurance will be issued to Client upon written request. Client agrees that it will require the construction manager, general contractor or, if Client has not retained a construction manager or general contractor, the contractor(s) responsible for performing the work reflected by or relating to F.E.T.'s services on the Project, to name F.E.T. as an additional insured on its insurance coverage applicable to the Project.
26. **Successors and Assigns.** This Agreement shall not be assigned without prior written consent of all parties. This Agreement shall be binding upon the parties hereto and their respective legal representative successors and assigns.
27. **Notice.** Any notice required by this Agreement shall be delivered to F.E.T. at 3370 NE 5th Avenue, Oakland Park, Florida 33334, via Certified U.S. Mail.
28. **Governing Law and Venue.** This Agreement shall be construed by, and governed in accordance with, the laws of the State of Florida without regard to its conflicts of law rules. In any action between and among the parties hereto arising out of or relating to this Agreement, the parties agree to the exclusive jurisdiction and venue in the Federal and state courts located in Broward County, Florida.
29. **Section Headings.** Section headings are for convenience only and shall not affect the meaning or have any bearing on the interpretation of any provision of this Agreement.
30. **Entire Agreement.** Each party hereto agrees and represents that this Agreement constitutes the entire agreement and understandings between the parties affecting the Services, and no other agreement or understanding of any nature concerning the Services will be recognized, and that all negotiations made prior to the execution of the Agreement shall be deemed superseded by the Agreement.
31. **Amendments.** This Agreement may be amended, modified or supplemented only by a written instrument executed by the parties thereof. The conduct of the parties without such a written amendment shall in no event constitute a modification of the terms hereof. The failure of F.E.T. to enforce any terms and/or conditions of this Agreement, including those herein, at any time shall not constitute a waiver of that term/condition or of any other term/condition of this Agreement nor shall such action be deemed to be an act of ratification, amendment or consent.
32. **Severability.** If any term of this Agreement is to any extent illegal, invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

**PURSUANT TO SECTION 558.0035 OF FLORIDA
STATUTES, A DESIGN PROFESSIONAL WHO IS
EMPLOYED BY OR IS AN AGENT OF FEDERAL
ENGINEERING & TESTING, INC. MAY NOT BE HELD
INDIVIDUALLY LIABLE FOR DAMAGES RESULTING
FROM NEGLIGENCE.**