



## Terms / Conditions Of Use Revised June. 15, 2006

### Structural Engineering

1. **PARTIES:** This Agreement ("Contract") is by and between Consultant, a C Corporation (Southern Consulting and Engineering, Inc. or SCE), and the person or entity entering into this Agreement (said person or entity being hereinafter referred to as "Client"). Client assumes the sole responsibility for determining whether the quantity and the nature of the work ordered by Client is sufficient for Client's intended purpose. Consultant has no obligation to any third party to this Agreement and no person or entity is intended by Client or Consultant to be a third party beneficiary of this Agreement.
2. **SCHEDULE:** It is understood that the project and scope, as described herein above, has a schedule for completion, as directed by the Client, commencing with the date of execution of this agreement. The Client understands that Consultant will make every effort to perform the specified services within the project schedule. The Client also agrees to release Consultant from any liability for damages that may be experienced by Client for the Consultants services not being completed within the specified period of time. Execution of this agreement may be by formal signing or by allowing/directing Consultant to begin work.
3. **RESPONSIBILITY:** Consultant's work shall not include determining, inspecting, approving, supervising or implementing the means, methods, techniques, sequences or procedures of construction or the design work of others involved in this project. Consultant shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. Consultant's work or failure to perform same shall not in any way excuse any contractor, subcontractor, architect, owner, construction manager or supplier from performance of its work in accordance with the project contract documents. The responsibility of coordination between designing diSCEplines shall not be that of the Consultant. If a Project Architect is involved in this project, the responsibility of coordination shall be the Architects. The Owner understands and agrees to inform, notify and contractually insure such responsibilities are in place. Where no Project Architect is involved, the responsibility of coordination between diSCEplines is the Clients.
4. **PAYMENT:** Client agrees to pay Consultant's cost of collection should any action be undertaken by Consultant to collect any amount due and unpaid after thirty (30) days, including court costs and reasonable attorney's fees. Failure to make any payment within 30 days of invoice shall constitute a release of Consultant from any and all claims which Client may have against Consultant, either in tort or contract, and whether known or unknown at the time.
5. **REIMBURSABLE EXPENSES:** Reimbursable expenses are in addition to Consultant's compensation and include all actual expenditures made by Consultant and Consultant's employees in the interest of the Project including long distance communications, reproductions, postage and handling of documents, data processing and photographic production techniques, fees paid for advertising bids and expense of transportation and per diem in connection with out-of-town travel when authorized by the Client.
6. **TERMINATION:** Either party, upon seven (7) days prior written notice, may terminate this Agreement. In the event of termination, Client shall compensate Consultant for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services and records as are necessary to place Consultant's files in order and/or protect its professional reputation. If Consultant terminates this Agreement, it shall return any unearned fees to Client. Any termination of this Agreement, whether by Consultant or Client, shall release Consultant from any responsibility or liability with respect to the work performed by Consultant prior to such termination.
7. **WARRANTY:** Consultant's services will be performed, its findings obtained, and its reports prepared in accordance with this Agreement, Client's acceptance thereof, these Terms / Conditions, and with generally accepted principles and practices. In performing its professional services, Consultant will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession. This warranty is in lieu of all other warranties or representations whether expressed or implied. Statements made in Consultant reports are opinions based upon professional judgment and are not to be construed as representations of fact.
8. **ADA RELATED ISSUES:** ADA, the Americans' with Disability act is legislation beyond the scope of services addressed under this agreement. Southern Consulting and Engineering, Inc. makes no representation that we have expertise in the areas of understanding or interpreting legislation. SCE, as a Structural Engineering Consultant is not charged with insuring conformance with any ADA related matter. Issues related to ADA are the responsibility of the owner, the owners project Architect and/or the owners Legal Counsel. (This section added Dec. 8, 2002)

9. **LIMITATION OF LIABILITY:** Client and Consultant agree that any legal action or means of recourse stemming directly or indirectly from the services of Consultant shall be between Client and Consultant exclusively. Client agrees that individual employees, regardless of their role, title or involvement shall not be individually or personally named as a party to any legal action stemming from work of Consultant. Consultant and Client mutually agree that the services provided as stated in this Agreement involve risks of liability which cannot be adequately compensated for by the payments the Client will make under this Agreement. Therefore, the total cumulative liability of the Consultant, its agents, employees and subcontractors whether in contract, tort, including negligence (whether sole or concurrent) and strict liability, or otherwise arising out of, connected with or resulting from the services provided pursuant to this Agreement shall not exceed the total fees paid by the Client or five thousand dollars, whichever is less. In the event a specific set of plans are used to construct numerous buildings, the above stated limit shall be a gross limit of liability for all buildings and locations. At additional cost, Client may obtain a higher limit of liability prior to commencement of services. The additional cost is compensation to Consultant for increasing the Consultant's limit of liability. The additional cost is not an insurance cost. Consultant's consideration to the Client for this limit of liability is specifically reflected in Consultant's fees for services under this Agreement as such fees are less than the Consultant would be paid for services under an Agreement without a limitation of liability. Client is cautioned that this is a Limited Liability Agreement, limiting the liability of Consultation; therefore, the Client is advised to carefully review Client's risk of liability related to this Agreement and address such risks through the Consultant.
10. **INDEMNITY:** Client agrees to indemnify, defend and save harmless Consultant, its agents, employees and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Consultant may incur, become responsible for or pay out as a result of bodily injuries (including death) to any person, damage to any property or both, to the extent caused by Client's negligence or willful misconduct.
11. **THIRD PARTY LIABILITY:** Client agrees and understands that this is a limited liability contract. It is the intent and purpose of this agreement to limit the liability, risk of loss of time or money and financial exposure of Consultant as reflected and described herein. Client agrees to indemnify, defend and save harmless Consultant against any and all third party suits or other legal actions that may arise directly or indirectly from Consultant's effort and involvement with the work for Client. Client agrees to indemnify, defend and save harmless Consultant against any loss of time or monetary expenses, fines or other, regardless of type, associated with any third party action against Consultant.
12. **LATENT OR SUBSURFACE CONDITIONS:** Consultant has no responsibility for locating subsurface or latent conditions, and the Client agrees to indemnify and save Consultant harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to Consultant's performance of its work and arising from subsurface or latent conditions or damage to subsurface or latent objects, structures, lines of conduits, where the actual presence and specific location thereof was not revealed to Consultant by the Client in writing prior to commencement of the work. For purposes of this Agreement, "Subsurface" means any condition which is hidden, in whole or in part, from view by any other existing material, equipment or condition. "Latent" means any condition not specifically revealed in the Plans for the project or any condition not reasonably observable to Consultant.
13. **INSURANCE:** Client agrees to maintain broad form liability insurance including completed operations, contractual, comprehensive, and builders risk insuring against any and all damage including but not limited to, property damage and bodily injury, caused by fire, theft, malicious mischief, negligence, and all acts and actions usually covered under such insurance. Said insurance will be in an amount not less than one million dollars per occurrence. Consultant will be named as a Named Additional Insured on said policy. Further, the Client agrees to require any contractor or subcontractor performing work on the project to name Consultant as an additional insured on their liability insurance policies.
14. **ELECTRONIC FILES:** On occasion, Consultant will provide electronic versions of their plans or drawings for use by the client, project Architect, Contractor or other party. It is understood that use of these electronic drawings for preparation of work by others, including but not limited to preparation of shop drawings, is at the sole risk of the user. Consultant does not warrant or in any way represent that the electronic files are an accurate graphic representation of the project. These electronic files shall be used at the sole risk of the recipient. Client has the sole and exclusive responsibility for notifying any and all impacted parties of this requirement and condition.
15. **ARBITRATION:** All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, may be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then standing unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by Consultant, the Client and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to be the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law. Notice of

the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the application statute of limitations. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16. PROVISIONS SEVERABLE: In the event any of the provisions of these Terms / Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.
17. OWNERSHIP: Any and all materials, specifically plans, specifications, bids forms, etc., shall remain the property of Consultant and the Client shall utilize them only for the work, purpose or project for which they were intended for the period or work scope specifically stated in this Agreement.
18. ENTIRE AGREEMENT: Acceptance of proposal or inference of such through allowing us to proceed with services constitutes acceptance of these terms of use or agreement. This Agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This Agreement may be modified only in writing, signed by each of the parties hereto.

**\*\* End of document (June 15, 2006) \*\***