

The following Agreement for Professional Surveying Services (“Agreement”) has been prepared at the request of NC Society of Surveyors for the benefit of its members by its legal counsel, Jon P. Carr, Jordan Price Wall Gray Jones & Carlton, with the assistance of comments provided by Justin R. Klein, Klein Agency, LLC. The Agreement is a form that is designed to be modified before any particular use. Before using this form, members should thoroughly read the Agreement and modify it for particular use with the assistance and advice of their own attorneys and counselors. The Agreement is not intended to be legal advice and use of the Agreement by any persons is at their own risk. Use of this form by Society members is entirely voluntary; members may use some or all of the provisions or none at all, all at the individual determination of each member acting independently. Members will note that many of the terms are purposely left blank for members to independently complete if those provisions are desired. It is a violation of anti-trust law for one or more persons to agree to use or not to use the Agreement, or to agree to use or to not use certain terms, provisions, rates, charges, and other terms and conditions in any agreement.

## **AGREEMENT FOR PROFESSIONAL SURVEYING SERVICES**

NC License # \_\_\_\_\_

THIS AGREEMENT FOR PROFESSIONAL SURVEYING SERVICES (“Agreement”), made this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_ a \_\_\_\_\_ (*Insert State of Organization and Type of Entity*) having its principal business located at \_\_\_\_\_ (“Surveyor”), and \_\_\_\_\_, a \_\_\_\_\_ (*Insert State of Organization and Type of Entity*) having its principal place of business located at \_\_\_\_\_ (“Client”). Surveyor and Client may be collectively referred to herein as the “Parties”. For and in consideration of the following terms, conditions, covenants, and agreements set forth herein, the Parties hereto agree as follows:

**1.0 SERVICES TO BE RENDERED.** Surveyor shall perform the following services (“Services”) at certain real property located at \_\_\_\_\_ (*Insert Address of Property at which Services will be Rendered and/or Parcel Identification Number*) (“Project Location”):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The aforesaid Services at the above-described location shall be referred to as the “Project”. Should additional space be needed for a more complete description of Services to be provided in connection with the Project and pursuant to the terms of this Agreement, it shall be attached as **Exhibit A**, the terms of which are incorporated by reference as though fully stated herein. Surveyor shall not be obligated to Client for the provision of any services of any nature whatsoever not specifically set forth in Section 1.0 and **Exhibit A**, if attached.

## **2.0 OWNER AND PERTINENT NON-PARTIES.**

**2.1.** Client represents that the name and address of the owner of the Project Location is \_\_\_\_\_ (*Insert Name of Project Property Owner*), a/an \_\_\_\_\_ (*Insert Type of Entity or “Individual”*) (“Property Owner”). If Client is not the owner of the Project Location, but is obligated to the owner or to some other party dealing with the owner for the services which are the subject of this Agreement, Client identifies, as follows, the names and principal business addresses, respectively, of such other contracting entities and specifies the nature of the contractual relationship of each of the contracting entities to each other:

Owner: \_\_\_\_\_  
General Contractor: \_\_\_\_\_  
First-Tier Subcontractor: \_\_\_\_\_  
Second-Tier Subcontractor: \_\_\_\_\_

**2.2.** Should Client retain the services of a contractor(s), subcontractor(s), or consultant(s) (“Other Parties”) other than Surveyor for the Project, Surveyor is not responsible in any way whatsoever for the supervision or direction of the work of Other Parties, their employees or agents. Surveyor does not have a right or a duty to stop the work of Other Parties performing services at the Project Location nor shall the presence of Surveyor’s field personnel relieve Other Parties of their responsibility to perform their respective obligations.

**3.0** **DATE OF COMPLETION.** Surveyor shall use its best efforts to complete the Project and any and all Services provided in connection with the Project by or before (*Insert Estimated Date of Completion of Project*) (“Estimated Completion Date”). Client acknowledges that Surveyor may not be able to complete the Project by the Estimated Completion Date for various reasons including, without limitation, unforeseen conditions or occurrences, or force majeure, as further set forth in this Agreement.

**4.0** **STANDARD OF CARE.** Surveyor’s Services shall be conducted with the same level and degree of skill ordinarily exercised by members of its profession operating in a similar locality, at a similar time and under similar conditions and circumstances. Except as provided in this Section, no other warranties, express or implied, are offered or intended by the Surveyor.

**5.0** **PRICE AND PAYMENT TERMS.**

**5.1.** For and in consideration of the Services to be rendered in connection with the Project, Client shall pay Surveyor the base contract sum of \$\_\_\_\_\_.00. If within the scope of Services, Client shall additionally pay Surveyor for the costs of any inspection fees, zoning and annexation application fees, assessment fees, engineering fees, soil testing fees, photogrammetry fees, permit fees, bond premiums, blueprints and reproductions thereof, and any and all other similar fees and charges. In addition, Client shall pay Surveyor for the following itemized expense items:\_\_\_\_\_.

**5.2.** Surveyor will submit progress invoices to Client on a monthly basis and provide a final invoice upon completion of the Project. Payment is due within \_\_\_\_ calendar days of the date of invoice. Invoices are considered past due \_\_\_\_ calendar days after the date of invoice at which point past due amounts shall accrue interest at the rate of \_\_\_\_ percent per annum, or the highest amount allowed by applicable law, whichever is greater. Client’s obligation to pay Surveyor is not contingent upon Client’s receipt of funds from third parties. Client agrees to pay Surveyor for a reasonable attorney’s fee (15% of the outstanding amount due and owing) if any attorney is required to collect any past due amount due under this Agreement.

**5.3.** Surveyor shall also be paid in full for any different or additional Services requested and authorized by Client in excess of those stated in this Agreement. If Client disputes any or all portions of any invoice, Client shall notify Surveyor in writing, stating the reasons for such dispute or objection, within \_\_\_\_ calendar days from the date of invoice, and Client shall pay that portion of the invoice, if any, that is not subject to Client’s dispute. If Client does not object in writing

to all or a portion of the invoice within \_\_\_\_ calendar days from the date of invoice, the full amount of the invoice is due and payable and Client waives all objections to the amount invoiced. Without incurring any liability to Client, Surveyor may suspend or terminate this Agreement, and in either case withhold any and all deliverables or Documents if Client fails to pay any undisputed invoiced amounts within \_\_\_\_ calendar days of the date of invoice, or if Client states its intention not to pay forthcoming invoices. Such suspension or termination will not waive any other claim Surveyor may have against Client for nonpayment.

**6.0 APPROVALS.** Client agrees and acknowledges that the approval process necessary to maintain a project timeline is both unpredictable and outside of the Surveyor's control. Consequently, Surveyor makes no representations as to its ability to timely achieve or obtain, or to obtain, said permits or approvals from any governing authority or outside agency.

**7.0 RIGHT OF ENTRY.** Client, at its sole cost and expense, shall furnish Surveyor, its agents, employees, and subcontractors a right-of-entry and any other authorizations or licenses needed for Surveyor to enter the Project Location to perform the Services contemplated by this Agreement. Client agrees and acknowledges that the services provided by Surveyor commonly require certain activities that may disrupt the use of the Property Location and may disturb, alter, or damage the terrain and vegetation thereabout and that Surveyor will not restore the property to its original state.

**8.0 REPORTS AND DOCUMENTS.**

**8.1.** In connection with the Services provided by Surveyor, Surveyor may deliver one or more printed, non-electronic and/or electronic surveys, reports, blueprints, or other documents (collectively "Documents") reflective of the Services provided and the results thereof. Any Documents provided to Client by Surveyor in connection with the Project are intended for the sole and exclusive use of Client and its agents and employees, for the Project at the Project Location.

**8.2.** Surveyor may provide draft documents to Client from time to time for its information. However, Client shall only rely upon Documents provided in printed, non-electronic format, which are duly marked with the original seal of the Surveyor. In the event that a discrepancy exists between Documents provided in electronic format and Documents provided in printed, non-electronic format, the latter shall govern and control. Documents provided to Client in electronic format are only for the convenience of the parties hereto, and any conclusion or information obtained or derived from such electronic Documents will be at Client's or other user's sole risk.

**8.3.** Subject to the authorized use of Client and its agents and employees, all Documents originated by Surveyor in the course of its performance of the Services set forth in this Agreement are and shall remain the sole and exclusive property of Surveyor. Such documents are specific to Client, the Project, and the Project Location, and Client shall, to the fullest extent permitted by law, indemnify and hold harmless Surveyor from and against any action, claim, damage (including defense costs), or loss arising out of or in connection with Client's assignment to a third party, re-use, modification, or misuse of Surveyor's Documents without Surveyor's prior written consent.

**9.0 EXCLUSIONS FROM SERVICES.** Unless specifically and expressly required by Section 1.0 and **Exhibit A**, if attached, Surveyor shall not be obligated to Client or to any third parties for any of the following activities or services: construction means and methods, including monitoring or inspections of any nature whatsoever; jobsite safety compliance or OSHA compliance of other contractors; compliance with the Americans With Disability Act; project scheduling; project

budgeting, quantity opinions, or cost estimates; construction management; permitting of any nature whatsoever; geotechnical engineering or any other analysis or testing of subsurface conditions, including soils and the location of any utilities or structures not visible from ground surface; environmental site assessments; identification or advice pertaining to any environmentally sensitive areas or hazardous conditions including, without limitation, asbestos, petroleum, radioactive materials, hazardous wastes or other regulated substances or the delineation of wetlands.

## **10.0 TERMINATION.**

**10.1. FOR CONVENIENCE.** Upon \_\_\_ days prior written notice, Client or Surveyor may terminate the performance of any further Services set forth in this Agreement for convenience. Upon the effective date of such termination notice, Surveyor shall cease work on all Services set forth in this Agreement. Within \_\_\_\_ days of such termination, Client shall pay Surveyor in full for all Services (and reimbursable expenses) performed prior to termination at which time Surveyor shall deliver any completed Documents to Client.

**10.2. FOR CAUSE.** In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement upon \_\_\_\_ days written notice to the breaching party, which notice must identify the material breach. Upon receipt of such termination notice for cause, the breaching party shall have \_\_\_\_ days in which to cure the breach (the "Cure Period"). Should the breaching party timely cure its material breach of this Agreement, this Agreement may not be terminated for cause. Should the breaching party fail to timely cure its material breach, this Agreement shall be terminated, effective at the end of the Cure Period. Upon the effective date of such termination for cause, Surveyor shall cease work on all Services set forth in this Agreement. Within \_\_\_\_ days of termination, Client shall pay Surveyor in full for all Services (and reimbursable expenses) performed prior to termination at which time Surveyor shall deliver any completed Documents to Client.

**10.3. UNFORESEEN CONDITIONS OR OCCURRENCES.** If, during the course of performance of Services pursuant to this Agreement, any unforeseen hazardous substance, material, object, element, or other unforeseen conditions or occurrences are encountered which, in Surveyor's judgment, materially affects or may affect the Services to be provided hereunder, the risk involved in providing the Services, or the scope of the Services, Surveyor will notify Client. Subsequent to that notification, Surveyor may: (a) if practicable, in Surveyor's judgment and with Client's approval, complete the original scope of Services in accordance with this Agreement; (b) agree with Client to modify the scope of Services and the estimate of costs to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the Parties and incorporated herein; or (c) terminate the Services effective on the date of notification for convenience.

**11.0 FORCE MAJEURE.** Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of an obligation, other than the payment of money, results from any causes beyond its reasonable control and without its fault or negligence. For this purpose, such acts or events shall include, without limitation, storms, floods, unusually severe weather, acts of God, epidemics, protest demonstrations, war, terrorism or terrorist acts, riot, strikes, lockouts or other industrial disturbances or unanticipated site conditions. In the event that such acts or events do occur, both Parties shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit and schedule of the Services set forth in this Agreement. The time for performance of Services and the Estimated Completion Date set forth in Section 3.0 shall be extended for a period equal to the delay thereof caused by any such act or event that comes within this Subsection.

**12.0 INSURANCE.** Surveyor shall maintain at its own expense the following insurance:

- (1) Worker's Compensation Insurance, in the form and amounts required by statute or other applicable law;
  - (2) Employer's Liability Insurance with a limit of \$\_\_\_\_\_;
  - (3) Commercial Automobile Liability Insurance with a combined single limit of \$\_\_\_\_\_
  - (4) Commercial General Liability Insurance with limits of \$\_\_\_\_\_ per occurrence; and
  - (5) Professional Liability Insurance with limits of \$\_\_\_\_\_.
- Certificates of insurance shall be issued by Surveyor upon Client's written request.

**13.0 LIMITATION OF LIABILITY.** SURVEYOR AND CLIENT MUTUALLY AGREE THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT INVOLVE RISKS OF LIABILITY WHICH CANNOT BE ADEQUATELY COMPENSATED FOR SOLELY BY THE PAYMENTS CLIENT WILL MAKE PURSUANT TO THE TERMS OF THIS AGREEMENT. THUS, THE TOTAL CUMULATIVE PROFESSIONAL LIABILITY OF SURVEYOR, ITS AGENTS, EMPLOYEES, AND SUBCONTRACTORS, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE SERVICES PROVIDED PURSUANT TO THE TERMS OF THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF THE TOTAL FEES PAID BY CLIENT UNDER THIS AGREEMENT OR \$50,000. CLIENT AGREES THAT PAYMENT OF THE LIMIT OF LIABILITY AMOUNT IS THE SOLE REMEDY TO THE EXCLUSION OF ALL OTHER REMEDIES AVAILABLE FOR THE TOTAL CUMULATIVE LIABILITY OF SURVEYOR, ITS AGENTS, EMPLOYEES, AND SUBCONTRACTORS ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE SERVICES PROVIDED PURSUANT TO THE TERMS OF THIS AGREEMENT. SURVEYOR'S CONSIDERATION TO CLIENT FOR THIS LIMITATION OF LIABILITY IS SPECIFICALLY REFLECTED IN SURVEYOR'S FEES FOR SERVICES UNDER THIS AGREEMENT AS SUCH FEES ARE LESS THAN SURVEYOR WOULD BE PAID FOR SERVICES UNDER THIS AGREEMENT WITHOUT A LIMITATION OF LIABILITY. CLIENT ACKNOWLEDGES THAT SURVEYOR HAS OFFERED TO AMEND THIS LIMITATION OF LIABILITY TO INCREASE THE LIMITATION, PROVIDED THE CLIENT AGREES TO PAY AN ADDITIONAL CONSIDERATION FOR THIS AMENDMENT AND SUBMITS ITS REQUEST IN WRITING TO SURVEYOR PRIOR TO THE COMMENCEMENT OF SERVICES UNDER THIS AGREEMENT.

**14.0 INDEMNIFICATION.**

To the fullest extent permitted by applicable law and, subject to the Limitation of Liability in Section 13.0, the parties shall indemnify and hold harmless each other, and their respective agents, employees, and subcontractors from and against any and all losses, liabilities, costs, and expenses of any kind, including reasonable attorneys' fees, which one party, its agents, employees, and subcontractors may incur, become legally responsible for, or pay out as a result of bodily injury, including death, to any person, damage to any property, or both, to the extent caused by the other party's negligence or willful misconduct. Surveyor and Client shall not be liable to the other for any special, indirect, incidental or consequential loss or damages including, without limitation, lost profits and loss of use arising from or related to the Services provided by Surveyor pursuant to this Agreement.

**15.0 NOTICES.** All notices required to be given under this Agreement shall be personally delivered or be sent to the address of the Party included below:

**Surveyor's Address**

**Client's Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**16.0** Client designates below, a "Client Contact", who is the person authorized to represent the Client in dealings with Surveyor in respect to all matters involving this Agreement and the Project. The Surveyor shall take exclusive direction from the Client Contact, unless otherwise notified in writing by Client: Client Contact: \_\_\_\_\_:  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_.

**17.0 MISCELLANEOUS.** The paragraph captions and headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, modify, or add to the interpretation, construction, or meaning of any provisions of or scope or intent of this Agreement. Should any part, provision, term or condition of this Agreement be declared, decreed or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable as part of a final, non-appealable ruling, the legality, validity or enforceability of the remaining parts, provisions, terms or conditions shall not be affected thereby and the remainder of the Agreement shall be given full force and effect. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Surveyor may subcontract for the services of others without obtaining Client's consent if Surveyor deems it necessary or desirable to have others perform services necessary to the successful completion of the Project. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. No action or failure to act by Surveyor or Client shall constitute a waiver of any of its rights or remedies that arise out this Agreement, nor shall such action or failure to act constitute approval, acquiescence, or ratification of a breach hereunder, except as may be specifically agreed to in writing or as otherwise provided in this Agreement. Unless otherwise provided in this Agreement, all of the terms, provisions, representations and warranties, and all remedies available to any party, shall survive the expiration or sooner termination of this Agreement. All provisions in this agreement constituting representations, making or limiting warranties, limiting liability, allocating risk, or for indemnification specifically survive this Agreement. This Agreement constitutes the entire agreement and understanding between the Parties relating to the Services and supersedes any and all prior negotiations, discussions, and agreements, whether written or oral, between the Parties regarding same. This Agreement may not be modified or amended in any manner except in writing and signed by the Parties. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which the Project is located.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the first date written above.

**CLIENT**

**SURVEYOR**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

*(Additional Description of Services to be Rendered, if necessary)*

SAMPLE