

TERMS AND CONDITIONS OF SERVICE AGREEMENT

1. That all the Work performed by Service Provider will be done in all respects in conformity with the requirements and specifications described herein or as received from Company and attached hereto, as well as all regulations of Company, and the conditions of this Agreement (“Work”).
2. Service Provider will commence the Work and complete the Work as required by Company and will proceed to completion with all due diligence and speed. Service Provider shall be limited to working on-site per the hours approved by Company. Service Provider must abide by any applicable Conditional Use Permits for the sites.
3. Service Provider acknowledges that it is thoroughly familiar with the Work and has investigated and satisfied itself as to the site conditions, job requirements, availability of labor and materials, and all other conditions and requirements which could affect performance of this Agreement. Service Provider agrees any failure by Service Provider to acquaint itself with the available information will not relieve Service Provider from the responsibility of fully and faithfully performing this Agreement. Service Provider acknowledges that its acceptance of this Agreement is based solely on its knowledge and judgment and not on any representation by Company not expressly included herein. If a Service Provider’s proposal or quotation is incorporated into this Agreement, to the extent Service Provider’s proposal or quotation conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.
4. Service Provider must pay promptly all amounts due its employees, suppliers, or others performing under this Agreement and if requested by Company, must submit satisfactory evidence and sworn statements that such payments have been made. No such payments to Service Provider or parts thereof may be diverted or used by Service Provider for any other purpose until all obligations or claims resulting from performance delegated by Service Provider under this Agreement have been paid in full. Service Provider authorizes Company to deduct any amounts due or to become due Service Provider, any sums owed by Service Provider to Company. These amounts so deducted shall be considered back charges. In the event of any breach by Service Provider of this Agreement or in the event of the assertion by other parties of any claim against Company or Company’s surety bond, arising out of Service Provider’s performance or non-performance of this Agreement, Company will have in addition to any equitable right to seek an injunction against Service Provider, the right to retain out of the payments due or to become due to Service Provider amounts sufficient to fully protect Company from any and all liability, loss, damage or expense therefrom until the situation has been satisfactorily remedied or adjusted by Service Provider. In the event Company institutes legal proceedings or arbitration against Service Provider, Company shall be entitled to recover from Service Provider all costs and attorney fees related thereto.
5. In the event Service Provider fails to commence the Work as described above, or if Service Provider does not prosecute the Work vigorously, as determined by Company, Company will take over the Work and complete it, either by performing the Work itself or reletting all or any part of the Work. Should the cost of completing the Work be in excess of the price in this Agreement, Service Provider will be held responsible for all excess costs required to complete the Work, including legal fees and disbursements.
6. Service Provider will remove any equipment, litter and debris within two days of completion of Work. Service Provider must remain only in areas designated by Company and must perform the Work in a good and workmanlike manner so as to not unduly disturb site. Should Service Provider fail to do so, Company may deduct any remedial costs from moneys payable to Service Provider.
7. **WARRANTY/STANDARD OF CARE:**
Service Provider guarantees that all materials shall be new and of the best quality of their respective kinds, unless otherwise specified in writing and that the Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents and shall be satisfactory to Company for a period of one (1) year from Service Provider’s receipt of final payment or warranty set forth in the Prime Contract, whichever is longer. In the event that any part of the Work or any material is determined by Company, Owner or Architect to be improper or defective during the applicable warranty period, Service Provider shall, immediately upon being notified in writing by Company to do so, proceed to correct the same as its own cost and expense. If Service Provider shall fail so to do promptly and completely, Company, at its option, may correct the same or cause the same to be corrected. Service Provider shall promptly pay to Company the entire cost and expenses associated therewith and/or the same will be deducted from Service Provider’s payment.

Standard of Care for Professional Services: Service Provider shall exercise the same standard of care as ordinarily used by a member of the same profession, under similar circumstances in performing all Services under this Agreement.
8. **INSURANCE:** Service Provider shall comply with all insurance requirements and terms and conditions relating to Insurance Requirements set forth in Exhibit A attached hereto and incorporated herein by reference.

9. **INDEMNIFICATION:** To the fullest extent permitted by law, Service Provider shall defend (with counsel reasonably satisfactory to Company), indemnify and hold harmless Company, affiliated companies of Company, and the officers, directors, employees, agents, joint ventures, insurers, successors and assigns of each, from and against all actual or alleged claims, demands, causes of actions, suits, judgments, settlements (including but not limited to property damage, bodily injury, sickness or disease) liabilities, fines, penalties, damages, losses, and expenses, including but not limited to attorney, court, mediation or arbitration fees, (hereinafter the "Claim"), arising out of, relating to or connected in any way to the Work, provided such Claim is caused in whole or in part by the Service Provider, a subcontractor or supplier of Service Provider or anyone directly or indirectly employed by it or anyone for whose acts it may be liable. This Indemnity agreement shall not be limited by the amount or type of damages, compensation or other benefits payable under insurance policies, workers' compensation, disability benefit or other employee benefit acts. This Indemnity shall survive completion and/or termination of the Agreement.
10. **LIMITATION OF LIABILITY:** Notwithstanding anything in the Agreement, Service Provider cannot limit its liability by any type of limitation, including, but not limited to, the amount of damages, type of damages, compensation or amount of service provided.
11. Service Provider shall keep itself fully informed of all federal, state, and local laws, by-laws, ordinances, orders, decrees, and regulations of the governing bodies, courts and agencies having any jurisdiction or authority which, in any manner, affects those engaged or employed on the Work or which in any way affects the conduct of the Work or the execution of any documents in connection therewith. Service Provider shall at all times observe and comply with such laws, ordinances, regulations, orders, decrees and will indemnify and hold harmless Company, and their representatives against any claim (including legal fees) for liability arising from or based on the violation of any such laws, ordinances, regulations, orders, or decrees, whether by itself or its employees.
- Service Provider shall execute and file such documents, statements, and affidavits required under any applicable federal or state law or regulation affecting this Agreement or the prosecution of any Work thereunder. It shall permit the examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any federal or state agency charged with the enforcement of such law.
12. Service Provider shall take all reasonable safety precautions pertaining to the site and the Work and the conduct thereof. Service Provider acknowledges and agrees to comply with Company's **General Safety Rules** which are incorporated into and made part of this Agreement. Service Provider shall, at its expense, conform to the basic safety policies of Company and shall comply with all applicable federal, state and local rules, standards, regulations and record-keeping requirements. Service Provider agrees that the prevention of accidents to workmen engaged upon or in the vicinity of the Work is its responsibility, even if Company has established and implemented a safety program for the entire Project.
13. In the event that Service Provider by rental, loan or otherwise, makes use of any of Company's equipment, scaffolding or other appliances, whether the same is owned, rented, leased or otherwise, by Owner or Contractor Service Provider represents that the person(s) using such items is/are properly trained and, if necessary, licensed, to use such items and agrees to (i) accept such items in their "AS IS" condition, (ii) use such items at the sole risk of Service Provider, and (iii) defend, hold harmless and indemnify Company and its affiliates, subsidiaries, agents, officers, directors, employees, shareholders, insurers, successors, and assigns against all claims, fines, penalties, damages, losses and expenses, including attorney fees, of every nature of every kind arising from Service Provider's use thereof.
14. If and when applicable, Service Provider will comply with the provisions of written collective bargaining agreements with the appropriate trade unions as set forth in the local union agreements for the Work and such labor contracts. Service Provider agrees to indemnify and hold Company harmless for any loss, liability, cost or damage, including legal fees arising out of or from Service Provider's failure to observe and comply with the applicable provisions of such collective bargaining agreements.
15. Company, by written notice to Service Provider, has the right to terminate and cancel this Agreement without cause, in which case Service Provider must immediately stop the Work. In such event, Company must pay Service Provider for the actual quantity of the Work satisfactorily completed. Company will not be liable to Service Provider for any other amounts, including prospective profits on the Work not performed.
16. **PROJECTS WITH FEDERAL FUNDS:** If applicable, for all projects that include federal funds, Service Provider agrees to comply with FHWA 1273: Required Contract Provisions Federal-Aid Construction Contracts which is incorporated by reference into this Agreement. Further, Service Provider agrees it will incorporate by reference FHWA 1273: Required Contract Provisions Federal-Aid Construction Contracts in all lower-tier contracts and agreements entered into and shall require incorporation by reference of FHWA 1273: Required Contract Provisions Federal-Aid Construction Contracts into any further lower-tier contracts and agreements. Service Provider's failure to do so will be sufficient grounds for withholding payments and/or termination.
17. **IMPLEMENTATION OF CLEAN AIR ACT:** 1) Any facility to be used in the performance of this Agreement, unless exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), Executive Order 11738, and regulations in implementation thereof (40 C.F.R., Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to (40 C.F.R. 1.5.2.0.2) Company shall be promptly notified prior to approval of Agreement of the receipt by the proposed Service Provider of any communication from the Director, Office of Federal

Activities, E.P.A., indicating that a facility to be utilized in performance of this Agreement is under the consideration to be listed on the E.P.A. List of Violating Facilities.

18. **COMPLIANCE WITH OSHA and MSHA STANDARDS:** Service Provider warrants to Company, that all machinery, accessories, parts and/or other goods and materials used by Service Provider are designed, manufactured and/or constructed, and are capable of being operated effectively, so as to comply with (1) the Occupational Safety and Health Act of 1970, as amended, and with the standards and rules issued thereunder, (2) the Mining Safety and Health Act with the standards and rules issued thereunder including, but not limited to, MSHA's Part 46 Training Requirements and (3) other federal, state, local laws, ordinances, and regulations issued, with respect to occupational safety and health. Service Provider agrees to indemnify and hold Company harmless for, of, and from any loss Company may sustain by reason of Service Provider's failure to comply with all applicable safety laws, rules and regulations in connection with the design, manufacture and/or construction of machinery accessories, parts and/or other goods and materials on the above named Project. Service Provider further warrants that it will operate in compliance with all applicable federal, state and local law, ordinance, and regulations issued with respect to occupational health and safety. Service Provider agrees to indemnify and hold Company harmless for, of and from any loss Company may sustain by reason of Service Provider's failure to comply with any federal, state and local law, ordinance, and regulations issued, with respect to occupational health and safety.

Site Specific Hazard Awareness Training: It is Service Provider's responsibility to insure that all its employees and any subcontractors working for Service Provider at the site have received site specific hazard awareness training.

19. **NON-DISCRIMINATION/EEO REQUIREMENTS:** In accordance with the Nondiscrimination and Equal Employment Opportunity (EEO) requirements of federal, state and pertinent local law, Service Provider hereby acknowledges and agrees that it will not discriminate against any employee or applicant because of race, creed, color, religion, sex, age, national origin, disability, veteran status, marital status, sexual orientation, military status, arrest or conviction record or any other characteristic protected by state or federal law. This includes but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

A violation of this provision shall be sufficient cause to terminate the contract without liability for the uncompleted portion or for any materials or services for use in completing this Agreement.

20. For the purposes and to the extent set forth in this Agreement, Service Provider's relationship to Company shall, during the term of this Agreement, be that of an independent contractor. Nothing in this Agreement shall create, or be deemed to create an employee, agent, joint venturer or partner of Company. Both Parties acknowledge Service Provider is not an employee for state or federal tax purposes. Neither Service Provider nor anyone employed by or acting for or on behalf of Service Provider shall ever be construed as an employee of Company. As an independent Contractor, to the extent permitted by law, Service Provider or anyone claiming through Service Provider is not entitled to any compensation or benefits of Company. Service Provider shall be responsible for the work, materials, acts and omissions of its employees, agents, consultants, contractors and any other person or entity performing any portion of the Work on behalf of Service Provider or for whose acts Service Provider may be responsible. Service Provider shall not assign or sublet any portion of this Agreement without first obtaining the written consent of Company.
21. Service Provider shall not assign or sublet any portion of this Agreement without first obtaining the written consent of Company.
22. This Agreement and the documents designated herein constitute the entire agreement between Company and Service Provider with respect to the subject matter of this Agreement and cannot be amended, modified, or changed except in writing, executed by Company and Service Provider. This Agreement shall supersede any and all other agreements between Company and Service Provider, either written or verbal with respect to the subject matter hereof.
23. This Agreement shall be binding upon and inure to the benefit of each party and their respective heirs, successors and assigns. The partial or complete invalidity of one or more provisions or portions of this Agreement shall not affect the validity or continuing force and effect of any other provision or portion thereof. The failure of Company, in any one or more instances, to insist upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right granted herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right.
24. Unless a different time period is stated in the Schedule of the Service Agreement, this Service Agreement shall remain in effect until canceled by either party by giving the other party written notice thirty (30) days prior to the termination becoming effective, or a new Service Agreement is signed by both parties.

Exhibit A Insurance Requirements

Exhibit A, Insurance Requirements, is attached to, incorporated into and forms part of the Contract/Agreement.

Subcontractor/Service Provider/Entity (hereinafter referred to as “You” and/or “Your”) shall procure prior to the start of any Work and, at all times thereafter, maintain insurance to protect and defend You and Your employees, the entity with which You are contracting (hereinafter referred to as “Company”), the Project Owner and others required by the Prime Contract, against liability arising out of or resulting from alleged or actual injury or death of persons, damage to property, or other loss arising out of or resulting from Your Work, or the Work of subcontractors that You hire on Your behalf, in connection with the performance of Your Work in at least the following amounts:

Workers’ Compensation & Employer’s Liability Insurance

Workers’ Compensation insurance as required by the State in which Work takes place and Employer’s Liability insurance with limits of \$1,000,000 per accident/\$1,000,000 each employee disease/\$1,000,000 in the aggregate. Include the USL&H and Maritime/Jones Act endorsements as applicable and the Voluntary Compensation Endorsement.

Workers’ Compensation coverage is required for any individual working for You regardless of exemptions that may be available to certain classes of individuals (i.e. sole proprietors, owner/operators) under any State laws. For Illinois Work, You shall, by policy endorsement, waive the Kotecki Cap.

Commercial General Liability Insurance

Commercial General Liability insurance on ISO Form CG 0001 10/01 or equivalent (with no exclusion for XCU or action over claims) providing coverage for liability arising out of or resulting from premises, operations, blanket contractual including coverage for the indemnification clause in this document, independent contractors, products and completed operations (for a period equal to the applicable Statute of Repose) and personal injury and advertising injury. Aggregate limits shall apply on a per project basis utilizing ISO endorsement form CG2503 or equivalent.

On-site Service Providers, Material Suppliers and Truckers:

\$1,000,000 per occurrence, \$2,000,000 products and completed operations
\$2,000,000 annual general aggregate

Subcontractors (not otherwise classified):

\$2,000,000 per occurrence, \$2,000,000 products and completed operations
\$2,000,000 annual general aggregate

Demolition, Crane Operations & Rigging, Heavy Construction, Electrical, Crushing, Washing or Blasting:

\$3,000,000 per occurrence, \$3,000,000 products and completed operations
\$3,000,000 annual general aggregate.

Traffic Control Subcontractors:

\$5,000,000 per occurrence, \$5,000,000 products and completed operations
\$5,000,000 annual general aggregate

Automobile Liability Insurance

Automobile Liability insurance as specified by ISO form number CA 0001 Symbol 1 (any auto) with the following limits based on Your exposures and Work location:

Standard Passenger Vehicles:

\$1,000,000 Combined Single Limit per accident for bodily injury and property damage.

MN Subcontractors and MI Subcontractors & Truckers:

\$2,000,000 Combined Single Limit per accident for bodily injury and property damage.

Trucking Operations (including but not limited to transport of Asphalt, Aggregates, Ready-Mix, Liquid Asphalt, Fuel, and Heavy Equipment):

\$3,000,000 Combined Single Limit per accident for bodily injury and property damage. If You are hauling any potential pollutants You must certify \$1,000,000 per occurrence and annual aggregate utilizing the MCS 90 and CA 9948 or equivalent to cover risk of loss from any potential pollutant at any location during loading, unloading and in transit.

Motor Truck Cargo Insurance

When hauling Company owned or rented equipment, You must carry Motor Truck Cargo insurance with limits at least equal to the value of the equipment You are hauling.

Environmental/Pollution Liability Insurance

Where applicable to Work being provided, You shall procure insurance with limits of at least \$1,000,000 per occurrence and annual aggregate to cover claims of bodily injury, property damage and clean-up including any related defense costs due to environmental exposure including, but not limited to, on site, off site, loading, unloading, disposal or in transit.

Professional Liability Insurance

If You are providing professional services (including but not limited to design, engineering, surveying, or consulting), You shall provide and maintain for 5 years following completion of Work, an appropriate Professional Error & Omissions insurance policy with limits of at least \$1,000,000 per claim and annual aggregate.

Marine Liability Insurance

Where a marine liability exposure exists, Marine General Liability insurance and Protection & Indemnity Liability insurance is required for claims arising from all leased, owned, non-owned and hired watercraft, including coverage for injuries to crew and contractual liability with limits of \$2,000,000 per occurrence and annual aggregate.

Aircraft Liability Insurance

If you are hiring, using, operating or maintaining manned or unmanned aircraft (drones) in connection with the Work or at or adjacent to the site, you shall provide Aircraft Liability insurance for leased, owned, non-owned and hired aircraft with limits of \$2,000,000 per occurrence and annual aggregate. Coverage for third-party bodily injury, property damage and personal injury including breach of privacy shall be included.

Umbrella-Excess Liability Insurance

General Liability, Auto Liability and Employer Liability limits may be provided through a combination of the underlying policy and Umbrella-Excess insurance. Umbrella-Excess policies must be as broad as underlying policies and follow form on coverage and with respect to additional insured provisions. The Umbrella-Excess policy shall not require the exhaustion of the underlying limits on policies other than Your underlying policies.

Additional Insured Endorsements

Company, any Project Owner, and any others required by the Prime Contract, their subsidiaries, officials and employees, are to be covered as Additional Insureds on Your General, Auto, Environmental and Umbrella-Excess Liability policies using ISO forms CG 2010 (10/01) and CG 2037 (10/01) or equivalent, for any liability arising out of or resulting from Work performed by You or on Your behalf; Your products and Your completed operations; premises owned, occupied or used by You, or automobiles owned, leased, hired or borrowed by You (CA 2048 or equivalent). You will provide copies of the Additional Insured endorsements with Your Certificate of Insurance. Additional Insured coverage will apply to the fullest extent permitted by applicable law.

Primary & Non-Contributory Insurance

For any claims related to Your Work, Your insurance coverage, as required by Exhibit A, shall be primary insurance as respects Company, Project Owner, and any others required by the Prime Contract, their subsidiaries, officials and employees. Your Umbrella-Excess liability policies must clearly provide primary Additional Insured status for all Additional Insureds. Any insurance or self-insurance maintained by Company, its subsidiaries, officials and employees shall be excess of Your insurance policies and shall not contribute with Your insurance. Any subcontractors hired by You shall also afford the above insurance coverage to Company, Project Owner, and any others required by the Prime Contract.

Waivers of Subrogation

You shall provide by policy endorsement, a waiver of subrogation in favor of Company, Project Owner, and any others required by the Prime Contract on Your Workers' Compensation, General Liability, Environmental Liability, Auto Liability and Umbrella-Excess policies.

Policy Form, Certificates of Insurance and Licenses

All insurance policies required by Exhibit A shall be maintained with insurance companies licensed and admitted to do business in the state in which the project is located and have a rating of A-VII or higher in the current Best's Key Rating Guide. You agree to furnish to Company, Project Owner, and any others required by the Prime Contract, Certificates of Insurance showing compliance with Exhibit A. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance. You further agree to have all policies endorsed to notify Company, Project Owner, and any others required by the Prime Contract thirty (30) days in advance of any cancellation or change to the insurance coverages shown on the certificate.

Adequacy of Insurance Coverage

Neither Company nor Project Owner warrant the adequacy of the types of insurance or the limits required. The insurance requirements, including the limits required for Additional Insured coverage, do not limit Your legal responsibilities and liabilities. If the insurance requirements specified by Project Owner in the Prime Contract are greater than what is required in this Exhibit A, You are bound by those greater requirements and shall immediately obtain the required coverage and limits. Company has no duty to You or to any of Your insurers or their insurance agents to review any Certificates of Insurance or copies of other insurance documents furnished to Company to determine whether Your insurance complies with the insurance requirements of the Contract/Agreement. Failure of Company to detect that You have not submitted Certificates of Insurance or proper Certificates of Insurance, or are otherwise not in compliance with the insurance-related provisions of the Contract/Agreement shall not be considered a waiver or other impairment of any of Company's rights, and shall not in any way limit or relieve You of Your obligations to maintain the insurance required in the Contract/Agreement. You bear the sole responsibility for ensuring Your insurance meets the requirements of the Contract/Agreement.