

# PROFESSIONAL SERVICES TERMS AND CONDITIONS

**AGREEMENT.** It is mutually understood and agreed that the Client's acceptance of the agreement to which these terms and conditions are attached constitutes an incorporation of these terms and conditions which, together with any attached supporting documentation, embody and constitute the entire understanding between the parties with respect to the transaction contemplated hereby and constitute a binding legal agreement ("Agreement"). Each Party represents and warrants to the other that it has the requisite authority to accept, deliver and perform this Agreement. If Wendel is authorized by the Client to provide services set forth in this Agreement or a Change Order, either orally or in writing, prior to formal acceptance of either, such authorization shall be deemed an acceptance of this Agreement effective as of the date Wendel commences providing the services, and such services shall be provided and compensated for in accordance with the terms and conditions contained in this Agreement.

**STANDARD OF CARE/PERFORMANCE.** Wendel shall perform its services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances and shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the work. No warranty, guarantee or fiduciary relationship, either express or implied, is made or intended by this Agreement.

**OBLIGATIONS OF WENDEL.** Wendel will prepare the work and deliverables in a timely manner but it is agreed between the parties that Wendel cannot be responsible for delays by factors which could not reasonably have been foreseen at the time this Agreement was entered into. Wendel commits to provide adequate and qualified resources to meet the schedule, and will work with Proposal Recipient's management in a manner that enables management to make informed decisions.

**OBLIGATIONS OF PROPOSAL RECIPIENT.** Client will work in a diligent and timely manner with Wendel to facilitate the contractual services required herein. To ensure a cooperative and successful effort, Client will commit to open disclosure of information required for the performance of services, will properly position Wendel with its staff, and will make available subject matter knowledgeable staff in a timely manner to address questions, unforeseen circumstances or other unexpected conditions that may arise.

**PAYMENT.** Progress payments shall be made in proportion to services performed and shall be due and payable within thirty (30) days of invoice submittal, without retainage. Overdue invoices shall bear an interest rate of 1-1/2% per month calculated from the 31st day after submittal. Wendel reserves the right to suspend services if payment of any undisputed invoice amounts are sixty (60) days overdue.

**CHANGE ORDERS.** During the term hereof the scope of services and compensation therefor may be adjusted by mutually agreed upon written Change Orders hereto.

**HAZARDOUS MATERIALS.** To the fullest extent permitted by law, Client shall defend, indemnify and hold harmless Wendel, its affiliates, subconsultants and subcontractors, and their respective officers, directors, partners, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or relating to the presence, discharge, release, or escape of asbestos, PCBs, petroleum products, radioactive materials, or any other hazardous materials at, on, under, or from the work site.

**OWNERSHIP OF DOCUMENTS.** All the documents, reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, drawings, specifications and other documents, data or information prepared by Wendel in any form, including machine readable format, (collectively "Documents") will become the sole property of Client upon payment in full for services rendered.

**LIMITATIONS ON USE OF DOCUMENTS.** The Documents are prepared for use for the purpose and at the site identified in the Agreement or Change Order only and are not appropriate for use for any other purpose or site, except by the authorization and agreement in writing with the appropriate compensation to Wendel. Client agrees to release Wendel and its affiliates from any liability associated with any unauthorized changes made to the Documents and their use thereof.

**MACHINE READABLE MEDIA.** Where Wendel agrees to supply some or all of the Documents in machine readable format (hereinafter "machine readable media"), the parties understand and agree that any Documents supplied in such machine readable format are so supplied as a convenience to the recipient. Such Documents are not intended to replace the printed forms of such Documents. The content of the Documents supplied by Wendel in printed form shall govern over the contents of Documents supplied in machine readable format. The recipient shall be solely responsible for comparing the output of the machine readable media with the printed Documents designated by Wendel as the contract documents and determining the accuracy of such output. Recipient shall only use the output of machine readable media for the limited purpose agreed to by Wendel and shall not alter, mediate or change the contents of such machine readable media in any way, or transfer to others, without the express written approval of Wendel.

**Confidentiality.** Wendel shall not disclose or permit the disclosure of any confidential information except to its employees of Wendel and its affiliates, and other consultants who need such confidential information in order to meet contractual obligations under this Agreement.

**PUBLICATION.** Wendel has the right to photograph the work and to use the photos in the promotion of its professional practice through advertising, public relations, brochure or other marketing materials. Client agrees that Wendel has the authority to utilize

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its name as a client and general description of the work or service performed as references. Wendel will be given proper credit and acknowledgements for all services rendered including, but not limited to, planning, design and implementation. Proper credit shall be defined as being named by the Client (or their agent/owner) in project identification boards, published articles, promotional brochures and similar communications.

**DISPUTE RESOLUTION.** In an effort to resolve any conflicts that arise during the design or construction of the work or following the completion of the work, the Client and Wendel agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. In the event resolution of any conflict cannot be settled as a result of non-binding mediation, it will be addressed in an appropriate court of proper jurisdiction.

**LIABILITIES.** THE CLIENT AND WENDEL HAVE DISCUSSED THEIR RISKS, REWARDS AND BENEFITS OF THE WORK TO BE PERFORMED, WENDEL'S TOTAL FEE FOR SERVICES AND HAVE ALLOCATED THE RISKS SUCH THAT, UNLESS STATED OTHERWISE ELSEWHERE IN THIS AGREEMENT, THE CLIENT AGREES THAT TO THE FULLEST EXTENT PERMITTED BY LAW, WENDEL'S TOTAL LIABILITY TO THE PROPOSAL RECIPIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, DAMAGES, OR CLAIM EXPENSES ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING, BUT NOT LIMITED TO, WENDEL'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT EXCEED THE PROCEEDS OF THE AVAILABLE INSURANCE COVERAGE REQUIRED UNDER THIS AGREEMENT.

**CLIENT INDEMNITY.** Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of Client or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against Client, (a) Client or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) Client's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify Client in writing of any such claims, demands, liabilities, damages, costs and expenses within ten business days of discovery; (ii) Client shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to Client except as required by law. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

**WENDEL INDEMNITY.** Wendel agrees to indemnify client for liability for losses, damages, or expenses (including reasonable costs and attorney's fees) to the extent caused by Wendel's negligent acts, errors, or omissions relating to this Agreement, subject to any limitations of liability set forth elsewhere herein.

**CONSEQUENTIAL DAMAGES.** NEITHER PARTY WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

**BUDGET/CONTINGENCY.** The Client agrees to establish a realistic budget for the cost of the work; the budget will include a contingency fund which will be used solely for the purpose of paying for contractor change orders, addressing omissions from the construction documents, and Client approved Change Orders for Wendel's services.

**OPINIONS OF CONSTRUCTION COST.** Any opinion of construction cost prepared by Wendel represents its judgement as a design professional and is supplied for the general guidance of the Client. Since Wendel has no control over the cost of labor and material, or over competitive bidding or market conditions, Wendel does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the Client.

**INSURANCE.** Unless otherwise specified in this Agreement, Wendel shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. Worker's Compensation and Employers Liability Insurance. Wendel shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Wendel shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one million dollars (\$1,000,000.00) per each accident, one million dollars (\$1,000,000.00) per each employee and one million dollars (\$1,000,000.00) total policy limit.

b. Commercial General Liability and Automobile Liability Insurance. Wendel shall provide and maintain the following commercial general liability and automobile liability insurance:

i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).

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2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
- ii. Wendel shall maintain limits no less than the following:
1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$4,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
  2. Automobile Liability. One million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.
  3. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.
- c. Professional Liability Insurance. When Wendel renders professional services to Client under the Agreement, Wendel shall provide and maintain five million dollars (\$5,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals thereof during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Wendel's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the Client.
- d. Required Provisions. The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- i. Client, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Wendel; products and completed operations of Wendel; premises occupied or used by Wendel; and vehicles owned, leased, hired or borrowed by Wendel. The coverage shall contain no special limitations on the scope of protection afforded to Client, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of Client.
  - ii. For any claims related to this Agreement, Wendel's insurance shall be primary insurance with respect to Client, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by Client, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
  - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Client, its elected and appointed officers, employees or authorized representatives or volunteers.
  - iv. Wendel's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. In addition, the policy shall be endorsed to provide that the aggregate limits apply separately to each designated project using ISO form CG 25 03 or its equivalent.
  - v. Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the Wendel, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to Client.
  - vi. Such liability insurance shall indemnify Client, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Wendel for damages on account of such bodily injury, (including death), property damage personal injury, completed operations.
  - vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
  - viii. All of the insurance shall be provided on policy forms and through companies satisfactory to Client, and shall have a minimum AM Best's rating of A- VIII.
- e. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by Client. At the option of Client, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- f. Evidences of Insurance. Prior to execution of the Agreement, Wendel shall file with Client a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

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g. Sub-Contractor. In the event that Wendel employs other contractors (sub-contractors) as part of this Agreement, it shall be the Wendel's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

h. Amendments. Client may amend its requirements for insurance upon sixty (60) days written notice. Wendel shall procure updated insurance to comply with the new requirements of Client. Wendel may appeal any requirement to amend the insurance coverage to Client's City Council who may, in its sole discretion, mutually agree to waive such changes.

### CONSTRUCTION PHASE SERVICES

**SITE VISITS.** Wendel shall make visits to the site at intervals appropriate to the various phases of construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the drawings and the specifications. Wendel shall not be required to make exhaustive or continuous on-site observations to check the quality of the construction work. Wendel does not guarantee the performance of any contractors. On the basis of on-site observations as a design professional, Wendel shall keep the Client reasonably informed about the progress and quality of the portion of the work completed, and promptly report to the Client (1) known deviations from the contract documents, (2) known deviations from the most recent construction schedule submitted by the contractor, and (3) defects and deficiencies observed in the work.

**CONSTRUCTION MEANS AND METHODS.** Wendel is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. Wendel is not responsible for the contractor's failure to execute the work in accordance with the construction contract.

**SHOP DRAWING REVIEW.** If shop drawing review is included in the services, Wendel shall review shop drawings, samples, and other submissions of the contractor only for general conformance to design concept.

### OTHER CLAUSES

**PUBLIC RECORDS.** Wendel understands and acknowledges that Client is subject to the Public Records Law of the State of Wisconsin. As such, Wendel agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Wendel agrees to assist Client in complying with any public records request that Client receives pertaining to this Agreement. Additionally, Wendel agrees to indemnify and hold harmless Client, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Wendel's actions or omissions which contribute to Client's inability to comply with the Public Records Law. In the event that Wendel decides not to retain its records for a period of seven (7) years, then it shall provide written notice to Client whereupon Client shall take custody of said records assuming such records are not already maintained by Client. This provision shall survive the termination of this Agreement.

**FORCE MAJEURE.** Neither Party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other or the other's employees and agents.

**PURCHASE ORDERS.** Client acknowledges and agrees that any purchase order issued by Client in accordance with this Agreement is intended only to establish payment authority for Client's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement.

**WAIVER.** No waiver by either Party hereto or any failure or refusal by the other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to so comply.

**GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the work or Project is located, without regard to principles of conflict of laws.

**THIRD PARTY BENEFICIARIES.** This Agreement is made solely for the benefit of the Client and Wendel, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement.