

GENERAL TERMS AND CONDITIONS

The following **General Terms and Conditions** are applicable to Agreements between Nelson, Pope & Voorhis, LLC, “**NP&V**” and the **Client**, when attached to and made part of such Agreement or Proposals.

1.0 INVOICES, REIMBURSABLE EXPENSES, ESCALATION OF FEES

1.1 Invoices

NP&V will submit invoices to **Client** on **NP&V**'s standard invoice form, terms net thirty (30) days. Partially completed items of work for which a fee has been specified will be billed based upon percentage of completion as estimated by **NP&V** ~~otherwise invoices will be based upon **NP&V**'s Schedule of Standard Hourly Rates in effect at the time the work is performed.~~ Balances that are greater than sixty (60) days past due are subject to interest of 1.0 percent per month, or the maximum permitted under state law, whichever is less. **NP&V**, after giving seven (7) days written notice, may suspend services under any Agreement until all past due accounts, including applicable interest, have been paid. In the event that the invoice is not paid voluntarily and promptly, and must be liened and/or referred to an attorney or agency for collection, the **Client** agrees to pay to **NP&V**, **NP&V**'s reasonable collection and attorney's fee equal to twenty-five percent (25%) of the total amount due at that time.

The minimum time segment for charging of work is one-quarter hour.

1.2 Reimbursable Expenses

Reimbursable expenses are charged to the **Client** at cost plus five percent (5%) to cover interest and administrative costs.

1.2.1 Reproduction of plans, specifications and other documents, including documents necessary for submission to regulatory agencies and for coordination with **Client** and any other **Client** consultant. Reproduction charges for documents reproduced by **NP&V** in-house are: blackline (\$0.45/sf); translucent bond (\$0.70/sf); mylar (\$6.75/sf); presentation paper (\$3.35/sf); B&W- 8 ½×11 (\$0.10/ea), 8 ½×14 (\$0.15/ea), 11×17(\$0.30/ea); Color 8 ½×11 (\$0.65/ea), 8 ½×14 (\$1.25/ea), 11×17(\$2.00/ea), other size (\$2.00/sf); report binding (\$10.00/ea creation of portable document format (PDF) and emailing of documents (Time Rates). In-house document reproduction not subject to reimbursable markup. The cost of outside services for document reproduction will be billed as reimbursable expense.

1.2.2 Permit, Application and Filing fees advanced by **NP&V**. In general, all processing fees including but not limited to permits and applications shall be the responsibility of the **Client**.

1.2.3 The cost of equipment rental including where applicable equipment operators, and subcontracted services, such as authorized photogrammetry, testing services, geotechnical services, laboratory services, archeological services, and other specialized services by consultants, excluding those services which are explicitly included in the **NP&V** proposal.

1.2.4 Expenses for the specific benefit of the **Client** consisting of travel, incidental expenses, and expendable materials and supplies purchased specifically for the project.

1.2.5 If the services covered by this Agreement are subject to local or state taxes or fees (except state income taxes), such additional costs will be charged to the project and are subject to reimbursement as provided herein.

1.2.6 Cost of delivery of documents to Client, regulatory agencies, or to others designated by the Client will be billed at either Time Rates, if performed by **NP&V** staff, or as a reimbursable expense, if an outside service is used.

1.3 Escalation of Fees

1.3.1 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by the **Client**'s failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure, such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of the public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional cost (reflecting a change in scope) beyond that outlined in this proposal;

~~1.3.2 **NP&V** shall have the right to increase its compensation payable by the **Client** to **NP&V** in the event that **NP&V** must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided that **NP&V** give the **Client** thirty (30) days prior notice as to the cause for escalation and the additional amounts involved.~~

~~1.3.3 **NP&V** may make an annual adjustment to its Standard Hourly Rates and document reproduction fees. Services performed on an hourly cost basis will be invoiced in accordance with the Rate Schedule in effect at the time such services are performed.~~

1.3.4 **NP&V** reserves the right to make adjustments to fees after 1 year from submittal of proposal.

2.0 INSURANCE

NP&V represents and warrants that it now has in full effect and will maintain the following insurances for the duration of this project:

NP&V will furnish to the **Client** certificates of insurance upon request. Premiums for insurance coverage in excess of these coverage's, when requested by the **Client**, will be charged to the project and are subject to reimbursement.

2.1 Commercial General Liability Insurance covering as insured **NP&V** and as an additional insured **Client** with the following limits of liability:

Personal Adv. Injury -	\$1,000,000 for each occurrence
General Aggregate	\$2,000,000 in the aggregate
Excess Liability-Umbrella	\$5,000,000 for each occurrence
and	\$5,000,000 in the aggregate

2.2 Worker's Compensation Insurance securing compensation for the benefit of **NP&V**'s employees as required by the Worker's Compensation Law. Premiums for additional insurance coverage required for work on or near the waterfront will be charged to the project and are subject to reimbursement.

2.3 Comprehensive Automobile Liability Insurance covering owned, non-owned, and hired vehicles will be provided upon request.

2.4 Professional Liability Insurance insuring against negligent acts, errors and omissions, by **NP&V**, in an amount of \$2,000,000 per claim with a \$4,000,000 aggregate.

3.0 CLIENT'S RESPONSIBILITIES

3.1 The **Client** shall provide all criteria and full information as to **Client**'s requirements for the Project; designate a person to act with authority on **Client**'s behalf in respect to all aspects of the Project; examine and respond promptly to **NP&V**'s submissions; and give prompt written notice to **NP&V** whenever he observes or otherwise becomes aware of any defect in the work.

3.2 The **Client** shall provide right of entry for **NP&V** personnel and equipment necessary to complete the work.

3.3 While **NP&V** will take all reasonable precautions to minimize any damage to the property, it is understood by **Client** that in the normal course of work some damage may occur, the correction of which is not part of this agreement.

3.4 The **Client** shall be responsible for payment of all fees in connection with the Project. Payment of fees by **Client** is NOT contingent upon achieving desired outcomes or receipt of Agency Approvals. Payment for all services is due from the **Client** irrespective of whether a third party is funding or reimbursing **Client**'s costs in connection with **NP&V** services, whether directly or through escrow account.

4.0 COMMENCEMENT AND COMPLETION OF WORK

4.1 **NP&V** shall commence work on this project after receipt of a signed Proposal which establishes our Agreement for Professional Services at a schedule agreed upon by **NP&V** and **Client**.

~~4.2 Proposals that have been submitted but not signed will be considered as being accepted if the client verbally instructs **NP&V** to proceed;~~

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4.3 Should the performance or completion of the work by NP&V hereunder be delayed by flood, earthquake, fires, strikes, governmental orders or any other similar or dissimilar causes beyond the control of NP&V or due to changes, delays, acts or omissions, by Client, contractors or their agents and representatives, then the time for performance or completion by NP&V hereunder shall be extended for the period of such delays.

5.0 CHANGED CONDITIONS

Certain conditions may arise during the performance of our services which may differ significantly from those assumed to exist when the Scope of Services was prepared.

If, in the opinion of NP&V, the Agreement is no longer adequate in light of occurrences or discoveries that were not originally contemplated by or known to us, we have right to renegotiate the Agreement by first identifying the Changed Condition and informing the Client.

The Client and NP&V shall promptly and in good faith enter into renegotiation of the Agreement to help us to meet the Client's needs. If renegotiated terms cannot be agreed to, the Client agrees that NP&V has an absolute right to terminate this Agreement.

6.0 COMPLIANCE WITH CODES AND STANDARDS

NP&V's services shall be consistent with sound planning practice and shall incorporate those publicly announced federal, state and local laws, rules, regulations, codes and standards that are applicable at the time NP&V rendered their services. In the event of change in a law, rule, regulation, code, standard or similar document NP&V shall assess its impact. If, in NP&V's professional opinion, the impact is such to significantly affect NP&V's fees, costs or anticipated completion date, a Changed Condition shall be deemed to exist and shall be dealt with pursuant to Section 5. In any event, the Client waives any claim against NP&V, and agrees to defend, indemnify and hold NP&V harmless for any claim or liability for injury or loss allegedly arising from NP&V's failure to abide by federal, state and local laws, rules, regulations, codes and standards that were not in effect or publicly announced at the time when NP&V otherwise would have incorporated their intent into the work. The Client further agrees to compensate NP&V for any time spent or expenses incurred by NP&V in defense of any such claim, in accordance with NP&V's prevailing fee schedule and expense reimbursement policy and the statements for legal services rendered to NP&V.

7.0 MAINTENANCE OF PROFESSIONAL STANDARDS AND ETHICS

7.1 The Client recognizes that NP&V's services in all cases must be rendered in accordance with prevailing professional standards and ethics, as well as certain laws or regulations that apply specifically to NP&V or to the planning profession. Services performed by NP&V under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE. If a situation emerges that causes NP&V to believe compliance with the Client's wishes could result in NP&V violating an applicable provision or aspect of professional standards or ethics, laws or regulations, NP&V shall so advise the Client. The Client and NP&V shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing achievement of a solution, either party may terminate this Agreement in accordance with termination provisions stated herein.

~~7.2 The Consultant makes no representation or warranties that the Project will achieve any LEED certification level or accreditation, or impact the future performance or operating costs associated with the Project.~~

7.3 NP&V shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

8.0 OWNERSHIP OF DOCUMENTS

8.1 All reports, studies, plans and specifications, logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by NP&V as instruments of service, shall remain the property of NP&V.

8.2 Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used for any purpose whatsoever.

8.3 NP&V will retain all pertinent records relating to the services performed for the period of six (6) years following submission of the report, study, plans and specifications, during which period the records will be made available to the Client for inspection at NP&V's office, at reasonable times, provided, however, that all NP&V invoices rendered in connection with the services performed have been paid.

9.0 DEFECTS IN SERVICES

The Client and the Client's personnel, contractors and subcontractors shall promptly report to NP&V any defects or suspected defects in NP&V's work or services, in order that NP&V may take prompt, effective measures which in NP&V's opinion will minimize the consequences of a defect in service.

10.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

10.1 NP&V, subject to the limitation in 10.3 herein, agrees to hold the Client harmless from and against all claims arising out of the negligent professional acts, errors and omissions of NP&V in connection with the performance of the work described in this Agreement.

10.2 NP&V shall not be responsible for the acts or omissions of the Client, contractor or any third parties in connection with or arising out of the project. The Client hereby holds harmless and indemnifies NP&V against all claims, damages, costs, suits, expenses, and attorney's fees which may be incurred by NP&V which arise out of the foregoing. Expenses shall include, but not be limited to time charges by NP&V's partners and employees at NP&V's then standard hourly fees.

10.3 The Client agrees that NP&V's aggregate liability to the Client and to all construction contractors and subcontractors on the project, due to NP&V's professional negligent acts, errors, omissions and/or alleged breach of contract shall not exceed NP&V's total fee for services rendered on the project.

10.4 The Client shall make no claim for professional negligent acts, errors, omissions and/or alleged breach of contract either directly or in a third-party claim, against NP&V unless the Client has first provided NP&V with a written certification executed by an independent professional currently practicing in the same discipline as NP&V and practicing in the state in which the project for which NP&V's services were rendered is located. This certification shall: a) identify the name and credentials of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to NP&V not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

~~10.4.1 The Client shall make no claim for breach of contract, misrepresentation, or fraud arising out of any statement, representation or omission by NP&V in any certification or report required under the Martin Act (General Business Law §§ 352,353), or the regulations enacted thereunder, in connection with any project for which the plans and specifications were approved by Client and/or the municipality with jurisdiction over said plans or specifications prior to the issuance of said report or certification, arising out of any design element, error or omission known to or disclosed to Client and/or said municipality prior to the time of said approval, and Client shall indemnify, defend and hold NP&V harmless from and against any such claim made by any homeowners association or unit owner claiming to have relied upon any such certification or report.~~

10.5 The Client recognizes that topographical mapping prepared from aerial photography is subject to an inherent margin of error. Client agrees that NP&V shall not be liable for any site work changes due to differences between actual site conditions and conditions depicted on topographic mapping used for the Project.

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~~10.6 NP&V has no control over, charge of, or responsibility for construction. Client (owner) shall retain a qualified contractor(s), licensed in the jurisdiction of the project ("Contractor"), to implement the construction of the project ("Work"). The Contractor shall coordinate, supervise and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, safety, and security. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Client, NP&V, NP&V's subconsultants, and agents and employees or any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work. Contractor shall provide insurance and name the Client, NP&V, NP&V's subconsultants as additional insured on Contractor's Commercial General Liability insurance policies.~~

13.0 GOVERNING LAW

The laws of the state in which the office of NP&V, performing the work under this Agreement, is domiciled will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement.

14.0 ASSIGNS

The Client may not delegate, assign, sublet or transfer his duties, obligations or interest in this Agreement without the written consent of NP&V

11.0 DISPUTES

11.1 In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, and should that dispute result in litigation in which NP&V or the Client prevails, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred as a result of the claim, including staff time, court costs, attorney's fees and other claim-related expenses.

11.2 Notwithstanding the foregoing, NP&V shall have the right to submit any controversy or claim arising out of or relating to this contract, or the breach thereof, to binding arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

11.3 The Client recognizes NP&V's right not to release documents until the Client has made the account receivables current, excluding only any billed fees in dispute, providing the Client has notified NP&V in writing within thirty (30) days of the invoice date identifying the portion of the fees in dispute and the reason for the dispute. All undisputed fees on the disputed invoice shall be paid in accordance with these terms.

12.0 TERMINATION

12.1 This Agreement may be terminated by either party upon ten (10) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, NP&V shall be paid for services performed to the termination notice date plus reasonable termination expenses.

12.2 This Agreement may be terminated by NP&V, pursuant to Section 5 and 7 hereof, upon ten (10) calendar days written notice.

12.3 In the event of termination, a final invoice will be calculated on the first or fifteenth of the month (whichever comes first) following the end of the cancellation period (the effective date of cancellation) for any unbilled time.