

## T.H. HILL ASSOCIATES' CONSULTING TERMS & CONDITIONS

This Agreement is made and entered into by and between the client ("Client") and T.H. Hill Associates, hereinafter ("THHA").

These Terms and Conditions govern the services to be performed by THHA, as specified in the proposal prepared by THHA. Acceptance of the proposal by Client includes acceptance of these Terms and Conditions.

### AGREEMENT

1. **Initiation of Services:** All parties agree that any services performed by THHA are governed by these referenced terms and conditions. No subsequent amendment to this Agreement shall be binding on either THHA or Client unless reduced to writing and signed by an authorized Representative of THHA and Client. Any pre-printed forms including, but not limited to: purchase orders, shipping instructions, or sales acknowledgment forms of either party containing terms or conditions at variance with or in addition to those set forth herein shall not in any event be deemed to modify or vary the terms of this Consulting Agreement.
2. **Scope of Services:** THHA shall provide its services at the time, place, and in the manner specified in the proposal.
3. **Time of Performance:** The services of THHA are to commence upon execution of this Agreement and shall continue until all authorized work is completed. THHA shall use commercially reasonable best efforts in performing services under these Terms and Conditions, and the Companion Documents ("Agreement"). Companion Documents shall mean any documents accompanying THHA's Proposal, including but not limited to the Scope of Work, Fee Schedules or any other Exhibits specific to the project. THHA shall not be responsible for failure to perform its services if i) there is a failure or delay by Client or its contractors in providing THHA with the necessary access to properties, documentation, information, or materials; ii) Client or its contractors fail to approve or disapprove THHA's work; or iii) if Client causes delays in any way whatsoever. In any of these events, THHA's time for completion of its service shall be extended accordingly.
4. **Compensation:** Compensation to be paid to THHA shall be in accordance with the Schedule of Fees set forth in the proposal.
5. **Method of Payment:** THHA shall submit monthly billings to Client describing the work performed during the preceding month. Client shall pay THHA no later than thirty (30) days after receipt of the monthly invoice by Client's staff. If the invoice is not paid within such period, Client shall be liable to THHA for a late charge accruing from the date of such invoice to the date of payment at the lower of eighteen (18) percent per annum or the maximum rate allowed by law. Further, if the invoice is not paid within such period, THHA may, at any time, and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of services immediately following written notice from THHA to Client. Notwithstanding any such termination of services, Client shall pay THHA for all services rendered by THHA up to the date of termination of services plus all interest, termination costs and expenses incurred by THHA. Client shall reimburse THHA for all costs and expenses of collection, including reasonable attorney's fees.
6. **Cooperation and Project Understanding:** To the extent requested by THHA, Client will make available to THHA all information in its possession regarding existing and proposed conditions at the Project site and other information relevant to THHA's services. Client shall immediately transmit to THHA any new information concerning the Project and services which becomes available, and any change in plans or specifications concerning the Project to the extent such information may affect THHA's performance of the Services. Client agrees, upon 24 hours oral or written notice, to provide a representative at the job site to supervise and coordinate the Services. THHA shall not be liable for any inaccurate or incorrect advice, judgment or decision which is based on any inaccurate information furnished by Client. Client shall indemnify THHA against claims, demands, or liability arising out of, or contributed to, by such inaccurate information.
7. **Discovery of Unanticipated Hazardous Materials:** Client warrants that it has made reasonable efforts to inform Consultant of known or suspected hazardous materials on or near the Project site. The parties acknowledge that hazardous materials may exist at a site where there is no reason to believe they are present. Consultant and Client agree that the discovery of such unanticipated hazardous materials constitutes a changed condition which shall require either a re-negotiation of the scope of Consultant's Services or termination of such Services or this Agreement. Client recognizes that the discovery of hazardous materials may necessitate immediate protective measures to safeguard the public health and safety and agrees to compensate Consultant for measures that in Consultant's professional opinion are justified to preserve and protect the health and safety of site personnel and the public. Client also agrees to compensate Consultant for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. Consultant agrees to notify Client as soon as practicable should hazardous materials be encountered at the site that pose a threat to human health, safety and the environment. Client agrees that in the event of the discovery of hazardous materials at the site it will report such discovery to the proper authorities as required by Federal, State, and local regulations. Notwithstanding any other provision of the agreement, Client waives any claim against Consultant, and to the maximum extent permitted by law, agrees to defend, indemnify, and save Consultant harmless from any claim, liability and/or defense costs for injury or loss arising from the presence of hazardous materials on the project site, including any costs created by delay of the project and any costs associated with possible reduction of the property's value.
8. **Ownership of Documents:** All plans, studies, documents and other writings prepared by THHA, its officers, employees and agents and subcontractors in the course of implementing this Agreement shall remain the property of THHA. The Client acknowledges that all intellectual property rights related to the performance of the Agreement, including but not limited to the names, service marks, trademarks, inventions, logos and copyrights of THHA and its affiliates, (collectively, the "Rights") are and shall remain the sole property of THHA or its affiliates and shall not be used by the Client, except solely to the extent that the Client obtains the prior written approval of THHA and then only in the manner prescribed by THHA. If THHA terminates the Agreement in accordance with the termination provisions of this Agreement, any such license granted by THHA to the Client shall automatically terminate. Each party retains sole and exclusive ownership of any intellectual property already existing as of the effective date of the agreement and of any derivative works of such intellectual property created after the effective date; provided that such derivative work (a) does not arise from the Confidential Information of the other party; and/or (b) is not created specifically for Client by THHA.
9. **Use of Data or Services:** THHA shall not be responsible for any loss, liability, damage, expense or cost arising from any use of THHA's analyses, reports, certifications, advice or reliance upon THHA's services, which is contrary to, or inconsistent with, or beyond the provisions and purposes set forth therein or included in these Terms and Conditions, or in the Companion Documents. Client understands and agrees that THHA's analyses, reports, certifications and services shall be used solely by the Client, and only Client is allowed to rely on such work product.

If a third party relies on the services, analyses, reports or certifications without THHA's written permission, then Client agrees to defend and indemnify THHA from any claims or actions that are brought as a result of such reliance.

10. **Independent Contractor:** It is understood that THHA, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Client. THHA shall obtain no rights to retirement benefits or other benefits which accrue to Client's employees, and THHA hereby expressly waives any claim it may have to any such rights.

11. **Standard of Care:** THHA REPRESENTS THAT THE SERVICES, FINDINGS, RECOMMENDATIONS AND/OR ADVICE PROVIDED TO CLIENT WILL BE PREPARED, PERFORMED, AND RENDERED IN ACCORDANCE WITH PROCEDURES, PROTOCOLS AND PRACTICES ORDINARILY EXERCISED BY PROFESSIONALS IN THHA'S PROFESSION FOR USE IN SIMILAR ASSIGNMENTS, AND PREPARED UNDER SIMILAR CONDITIONS AT THE SAME TIME AND LOCALITY. CLIENT ACKNOWLEDGES AND AGREES THAT THHA HAS MADE NO OTHER IMPLIED OR EXPRESSED REPRESENTATION, WARRANTY OR CONDITION WITH RESPECT TO THE SERVICES, FINDINGS, RECOMMENDATIONS OR ADVICE TO BE PROVIDED BY THHA PURSUANT TO THIS AGREEMENT.

12. **Indemnity:** Subject to the Limitation of Liability included in this Agreement, THHA shall indemnify and hold harmless Client from and against losses, liabilities, and reasonable costs and expenses (for property damage and bodily injury, including reasonable attorney's fees), to the extent directly and proximately caused by THHA's negligent performance of services or material breach under this Agreement. THHA shall not be obligated to defend the Client until there is an actual finding of negligence or if the parties agree otherwise. Client shall defend, indemnify and hold harmless THHA, its employees, directors, officers, and agents, from and against claims, losses, liabilities, and reasonable costs and expenses (including reasonable attorney's fees) that are: i) related to, or caused by the negligence or willful misconduct of Client, its employees, or agents; ii) related to this Agreement or the work to be performed by THHA for which THHA is not expressly responsible; or iii) the expressed responsibility of the Client under this Agreement.

13. **Limitation of Liability:** To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the total aggregate liability of THHA, its affiliates, employees, officers, directors and agents (Collectively referred to in this paragraph as "THHA") for all claims for negligent professional acts, errors or omissions arising out of this Agreement is limited to \$50,000 or the amount of the total fees hereunder, whichever is greater.

14. **Insurance:** THHA, at THHA's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies with insurers possessing a Best's rating of no less than A:VII:

- a. **Workers' Compensation Coverage:** THHA shall maintain Workers' Compensation and Employer's Liability Insurance for its employees in accordance with the laws of the state where the services are being performed.
- b. **General Liability Coverage:** THHA shall maintain Commercial General Liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- c. **Automobile Liability Coverage:** THHA shall maintain Automobile Liability insurance covering bodily injury and property damage for activities of THHA employee arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- d. **Professional Liability Coverage:** THHA shall maintain Professional Errors and Omissions Liability for protection against claims alleging negligent acts, errors or omissions which may arise from THHA's services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis.

THHA shall name Client as additional insured and other parties that it deems appropriate to be additionally insured under THHA's Commercial General Liability policy and Automobile Liability policy. Any notice of cancellation or non-renewal of all policies will be sent to the Client in accordance with the policy provisions. The Client, on its own behalf and on the behalf of any others that are named as additionally insured at Client's request, agrees that providing such insurance or the additional insured endorsement shall in no way be construed as an assumption by THHA of any liability for the negligence or willful misconduct or any wrongful behavior on the part of Client or others that are named additionally insured.

15. **Consequential and Punitive Damages:** Neither THHA nor Client shall be liable under any circumstances for loss of profits, loss of product, consequential damages of any kind, indirect damages of any kind or special damages of any kind to the other party, or to any third party. No punitive or exemplary damages of any kind shall be recoverable against either party under any circumstances.

16. **Cause of Action:** Any cause of action brought against THHA shall be brought within one (1) year of the work or services performed under this Agreement.

17. **Compliance with Laws:** THHA shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinance and regulations in effect as of the date services are provided.

18. **Resolution of Disputes:** All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, except those disputes which arise out of or are related to collection matters or fees alone under this Agreement, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and THHA shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach

such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and THHA within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

Should either party to this Agreement commence any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.

19. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

20. **Releases:** All lien releases will be limited to payment issues; no additional terms and conditions may be added to a release of lien

21. **Waiver of Jury Trial:** Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

22. **Incidental Beneficiary:** It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and THHA. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and THHA that any such person or entity, other than Client or THHA, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

23. **Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party can be done by written email or in writing by mail or Federal Express. Any such notice, demand, etc., shall be addressed to the other party at the address set forth in the proposal, including any email address. Either party may change its address by notifying the other party of the change of address.

24. **Confidential Information:** Neither party shall disclose information identified as confidential to anyone except those individuals who need such information to perform the Services; nor should either party use such confidential information, except in connection with the Work, the performance of the Services or as authorized by the other party in writing. Regardless of the term of this Agreement, each party shall be bound by this obligation until such time as the confidential information shall become part of the public domain. Confidential information shall not include information which is either: (i) known to the public; (ii) was known to the receiving party prior to its disclosure; or (iii) received in good faith from a third party. If either party is required to produce information by valid subpoena or Court order, parties agree to first provide prompt notice to other party in order to allow the party to seek a protective order or other appropriate remedy. This shall not prevent either party from disclosing information to the extent reasonably necessary to substantiate a claim or defense in any adjudicatory proceeding. Client agrees that THHA shall be permitted to use Client's name and logos in THHA's marketing materials unless advised or prohibited against it by the Client in writing. The technical and pricing information contained in any proposal or other documents submitted to Client by THHA is to be considered confidential and proprietary and shall not be released or disclosed to a third party without THHA's written consent.

25. **Force Majeure:** THHA shall not be responsible for failure to perform if such failure is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure or interruption, or any other cause reasonably beyond THHA's control. In any of these events, THHA's time for completion of its services shall be extended accordingly.

26. **Non-Solicitation / Hiring of Employees:**

(a) To promote an optimum working relationship, the Client agrees in good faith that for the term of this Agreement and one year after the completion or termination of the Agreement not to directly or indirectly employ or otherwise engage any current employee of THHA or any former employee of THHA who left the employ of THHA within the six (6) months prior to and including the date of the execution of the Agreement. The loss of any such employee would involve considerable financial loss of an amount that could not be readily established by THHA. Therefore, in the event that Client should breach this provision and without limiting any other remedy that may be available to THHA, the Client shall pay to THHA a sum equal to the employee's current annual salary plus twelve (12) additional months of the employee's current annual salary for training of a new employee as liquidated damages.

(b) THHA's employees shall not be retained as expert witnesses except by separate written agreement. Client agrees to pay THHA's legal expenses, administrative costs and fees pursuant to THHA's then current fee schedule for THHA to respond to any subpoena.

27. **Waiver:** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

28. **Amendments:** This Agreement may be modified or amended only by a written document executed by both THHA and Client.

29. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of Agreement between the Client and THHA. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

30. **Termination:** This Agreement may be terminated immediately by either party upon fifteen (15) days written notice of termination. Upon termination, THHA shall be entitled to compensation for services performed up to the effective date of termination.

31. **Interpretation of Agreement:** This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.

32. **Severability of Agreement:** If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be effected and shall remain in full force and effect.