

# Proposal and Authorization for Professional Services

We thank you for this opportunity to offer our services to you on your project. The purpose of this form is to obtain your authorization for the services you have orally requested and confirm the terms and conditions under which these services are provided as shown on this document.

Compensation for services rendered will be based on the attached schedule of fees or as included herein, and are a part of this agreement for services.

Known Project Information	
Project Name:	Project Location:
Description:	

For Payment of Charges	
Client:	
Address:	
City, State, Zip:	
Telephone:	
Services Authorized By	
Signature: (Authorized Agents Only)	
Print Name:	
Title:	
Date:	

Scope of Services		
Item	Description of Scope of Services	Estimated Fee
1.	Principal Engineer for Observation, Review and Consultation, Per Hour	\$225.00
2.	Senior Engineer for Observation, Review and Consultation, Per Hour	175.00
3.	Project or Staff Engineer for Field Testing or Observation, Per Hour	\$125.00
4.	Vehicle Mileage, per mile	\$0.60
5.	Expenses or expendable items will be charged at cost plus 10%	
	The total fee for our services will depend upon the actual hours expended at the appropriate personnel unit rate, plus mileage and expenses.	

## Terms and Conditions

- Services To Be Provided.** XYZ Engineering, Inc.(XYZ) through and by its officers, employees and subcontractors is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in this proposal. No third party beneficiaries are intended by this Agreement.
- Payment Terms.** Client agrees to pay XYZ's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of XYZ's invoice, Client agrees to pay a service charge on the past due amount at the greater of 1.5 % per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from XYZ's invoice for retainage or liquidated damages unless expressly included in the Agreement. Upon reasonable notice to Client, XYZ may suspend services until paid on any project where payment of invoiced amounts is not received by XYZ within 60 days of Client's receipt of XYZ's invoice. Client receipt of invoice will be presumed to be not more than 5 days after mailing by XYZ, with adequate postage attached. Time is of the essence on this provision.

Either party may terminate this Agreement without cause upon 30 days prior written notice. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay XYZ for all reasonable charges incurred to date and associated with termination of the work.

- Standard of Care.** XYZ will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of XYZ's profession practicing in the same or similar locale at the time of service. NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE OR INTENDED BY THIS PROPOSAL, BY ORAL STATEMENTS MADE BY XYZ REPRESENTATIVES, BY THE PERFORMANCE OF SERVICES, OR BY WRITTEN REPORTS.
- Insurance.** XYZ maintains insurance coverage as follows:
  - Worker's Compensation Insurance - statutory.

- b. Professional Liability Insurance - \$1,000,000.
- c. Commercial General Liability Insurance - \$1,000,000.
- d. Automobile Liability Insurance - \$1,000,000.

5. **Limitation of Liability.** In recognition of the relative risks and benefits of the project to both the Client and XYZ, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of XYZ and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of XYZ and his or its subconsultants to all those named shall not exceed XYZ's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, or breach of contract.

Client agrees to indemnify XYZ, its directors, officers, employees, agents and subcontractors, from any claims, suits or losses, including related reasonable attorneys fees.

6. **Site Operations.** Client will arrange for right-of-entry to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary right-of-entry authority, permits, and licenses required for its activities at the site.

XYZ's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. XYZ's field personnel will avoid hazards or utilities which are visible to them at the site. If XYZ is advised in writing of the presence or potential presence of underground or overground obstructions, such as utilities, we will give special instructions to our field personnel. XYZ is not responsible for any damage or loss due to unknown surface or subsurface conditions owned by Client or third parties, except to the extent that such damage or loss is a result of XYZ's negligence. Client agrees for the additional consideration of \$1.00 to indemnify XYZ, its directors, officers, employees, agents and subcontractors, from any such claims, suits or losses, including related reasonable attorneys fees.

XYZ will take reasonable precautions to prevent undue damage to the property caused by our operations. Unless otherwise stated in XYZ's proposal, our charges do not include cost of restoration due to any related damage which may result. If Client requests XYZ to repair such damage, we will do so at an appropriate additional cost.

Field tests or sampling locations described in XYZ's report or shown on sketches are based on specific information furnished by others or estimates made in the field by our personnel. Such dimensions, depths or elevations should be considered approximations unless otherwise stated in our proposal or report.

7. **Field Representative.** The presence of XYZ's or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a contractor(s) not retained by XYZ be involved in the project, Client will advise such contractor(s) that XYZ's services do not include supervision or direction of the means, methods or actual work of the contractor(s), his employees or agents. Client will also inform contractor that the presence of XYZ's field representative for project administration, assessment, observation or testing will not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.

If a contractor (not a subcontractor of XYZ) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site, including security and safety of all persons and property during performance of the work and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that XYZ will not be responsible for job or site safety or security on the project, other than for XYZ's employees and subcontractors, and that XYZ does not have the duty or right to stop the work of the contractor.

8. **Unforeseen Conditions or Occurrences.** It is possible that unforeseen conditions or occurrences may be encountered at the site, which could substantially alter the necessary services, or the risks involved in completing XYZ's services. If this occurs, XYZ will promptly notify and consult with Client, but will act based on XYZ's sole judgment where risk to XYZ personnel is involved. Possible actions could include:
- a. Complete the original Scope of Services in accordance with the procedures originally intended in our Proposal, if practicable in XYZ's judgment;
  - b. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences with such revision agreed to in writing;
  - c. Terminate the services effective on the date specified by XYZ in writing.

9. **Sample Disposal.** Test specimens or samples generally are consumed or substantially altered during testing and any remnants are disposed of immediately upon completion of tests. Remaining specimens are disposed of 30 days after submission of XYZ's report.
- a. Non-Hazardous Samples. At Client's written request, XYZ will retain preservable test specimens or the residue therefrom for 30 days after submission of its report free of storage charges. After the initial 30 days and upon Client's written request, XYZ will use its best efforts to retain test specimens or samples but only for a mutually acceptable storage charge and period of time. Client agrees that XYZ is not responsible or liable for any loss of test specimens or samples retained in storage.
  - b. Hazardous or Potentially Hazardous Samples. In the event that test samples contain toxic or hazardous constituents as defined by applicable law upon completion of any testing by XYZ and per Client's written preference, XYZ will 1) return such samples to Client for proper disposal; 2) using a manifest signed by Client as generator and at additional cost, have such samples transported to a location selected by Client for proper final disposal; or 3) at an additional charge per sample, dispose of such samples at a properly licensed disposal facility. Client agrees to pay all costs associated with the storage, transport, and disposal of such samples. Client recognizes and agrees that XYZ at no time assumes title to said materials.

10. **Client Disclosure.** Client agrees to advise XYZ upon execution of this Agreement of any hazardous substance or any condition, known or that reasonably should be known by Client, existing in, on, or near the site that presents a potential danger to human health, the environment, or XYZ's equipment. Client agrees to provide XYZ continuing related information as it becomes available to the Client. By virtue of entering into this Agreement or providing services hereunder, XYZ does not assume control of or responsibility as an operator or otherwise for the site or the person(s) in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Client agrees under advice of its counsel to notify the appropriate federal, state or local public agencies as required by law; or otherwise to disclose, in a timely manner, any information that may be necessary to prevent damage to human health, safety, or the environment.

11. **Environmental Indemnity\*.** In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by law, for separate and valuable consideration of \$1.00 Client agrees to defend, hold harmless and indemnify XYZ from and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by XYZ's negligence or willful misconduct, resulting from:
- a. Client's violation of any federal, state, or local statute, regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;
  - b. Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified on the site;
  - c. Toxic or hazardous substances or constituents introduced at the site by Client or third persons before, during or after the completion of XYZ's services;
  - d. Allegations that XYZ is a handler, generator, operator, treater, storer, transporter, or disposer unless expressly retained by Client for such services under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state or local regulation or law due to the XYZ's

services; or

- e. Any third party suit or claim for damages against XYZ alleging strict liability, personal injury (including death) or property damage from exposure to or release of toxic or hazardous substances or constituents at or from the project site before, during or after completion of XYZ's services under this Agreement.

12. **Equipment Contamination.** XYZ will endeavor to clean its laboratory and field equipment which may become contaminated in the conduct of our services. Occasionally, such equipment cannot be completely decontaminated because of the type of hazards encountered. If this occurs, it will be necessary to dispose of the equipment in a manner similar to that indicated for hazardous samples or waste and to charge Client for the loss. Client agrees to pay the fair market value of any such equipment and reasonable disposal costs.

13. **Documents.** XYZ will furnish Client the agreed upon number of written reports and supporting documents. These instruments of service are furnished for Client's exclusive internal use and reliance, but not for advertising or other type of distribution, and are subject to the following:

- a. All documents generated by XYZ under this Agreement shall remain the sole property of XYZ. Any unauthorized use or distribution of XYZ's work shall be at Client's and recipient's sole risk and without liability to XYZ. XYZ may retain a confidential file copy of its work product and related documents.
- b. If Client desires to release, or for XYZ to provide, report(s) to a third party not described herein for that party's reliance, XYZ will agree to such release provided written acceptance is received from such third party to be bound by acceptable terms and conditions similar to this Agreement (e.g. Secondary Client Agreement). Reports provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that XYZ's report(s) reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for XYZ and by this request Client waives any such claim if XYZ complies with the request.
- c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by XYZ pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without XYZ's prior written approval.
- d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by XYZ for proper performance of its services. XYZ may rely upon Client-provided documents in performing the services required under this Agreement; however, XYZ assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of the Client, but XYZ may retain one confidential file copy as needed to support its report.
- e. Upon Client's request, XYZ's work product may be provided on electronic or digital media. By such request, Client agrees that the written copy retained by XYZ in its files, with at least one conformed written copy provided to Client, shall be the official base document. XYZ makes no warranty or representation to Client that the electronic or digital copy is accurate or complete, but will correct in good faith any omissions or errors brought to XYZ's attention by Client. Any modifications of such electronic or digital copy by Client shall be at Client's risk and without liability to XYZ. Such electronic or digital copy is subject to all other conditions of this Agreement.

15. **Claims.** The parties agree to attempt to resolve any dispute any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.

16. **Opinions of Cost.** If requested, XYZ will use its experience on similar projects to provide opinions of costs for remediation or construction as appropriate based on reasonably available data, XYZ's designs, or XYZ's recommendations. Such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise, in writing with XYZ. Client understands actual costs of such work depend heavily on regional economies, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond XYZ's control.

17. **Testimony.** Should XYZ or any XYZ employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing or trial, in relation to services provided under this Agreement, and XYZ is not a party in the dispute, then XYZ shall be compensated by Client for the associated reasonable expenses and labor for XYZ's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides XYZ such compensation, Client will receive a credit or refund on any related double payments to XYZ.

18. **Confidentiality.** XYZ will maintain as confidential, any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction.

19. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Florida.

20. **Priority Over Form Agreement/Purchase Orders.** The Parties agree that the provisions of these terms and conditions shall control over and govern as to any form writings signed by the Parties, such as Client Purchase Orders, Work Orders, or other agreement forms and that such forms may be issued by Client to XYZ as a matter of convenience of the Parties without altering any of the terms or provisions hereof.

21. **Survival.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and XYZ shall survive the completion of the services and the termination of this Agreement.

22. **Severability.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.

23. **Assignment.** This Agreement may not be assigned by either party without the prior permission of the other.

24. **Consideration.** The parties agree that the charges for XYZ's services are sufficiently adjusted to include any specific consideration payable to Client under these terms and conditions.

25. **Integration.** This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

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**For XYZ Engineering, Inc.**

**Date: \_\_\_\_\_ XYZ Proposal:**