



MASTER ENGINEERING AGREEMENT

Arizona License
ROC070961 A GEN ENG
ROC067542 B GEN ENG
ROC075851 B-01 GEN COM
ROC023057 B-04 GEN RES ENG

ENGINEER:
VENDOR CODE:
LICENSE TYPE:
LICENSE NUMBER:
AZ TPT NUMBER:
ADDRESS:

CONTRACTOR: HUNTER CONTRACTING CO
ADDRESS: 701 N COOPER ROAD
GILBERT, AZ 85233
TELEPHONE: (480) 892-0521
FAX: (480) 892-4932

TELEPHONE:
FAX:

DATE: 8/1/2018

THIS AGREEMENT, is made and executed by and between HUNTER CONTRACTING CO., a private corporation, with a place of business at 701 N. Cooper Road Gilbert, Arizona 85233 (hereinafter called "Contractor"), and ., with a place of business at , , (hereinafter called "Engineer"), collectively referred to herein as "Parties". The term "Owner" used herein refers to the "Project Owner" with respect to our Addendum A. This Agreement covers the professional services to be provided by the Engineer as detailed in the project specified in Addendum A.

ARTICLE 1
GENERAL OBLIGATIONS OF ENGINEER

- A. The particulars and clarifications concerning the scope of services (hereinafter "Services") to be provided by Engineer to Contractor for the Project are stated in Addendum A.
B. PROJECT REQUIREMENTS. The Engineer, in order to determine the requirements of the Project, shall review the Owner's program. The Engineer shall review its understanding of the Project requirements with the Contractor.
C. BASIC SERVICES - DESIGN PHASE.
1. The Engineer shall prepare for approval by the Contractor, Owner and governmental authorities, including revisions necessary to secure required approvals, construction documents setting forth in detail the requirements for construction of the Project, consisting of drawings and specifications that comply with codes, laws and regulations enacted at the time of their preparation (the "Construction Documents"). Engineer's Design Phase Services shall be in accordance with and include the "Designed Services" requirements of Contractor as set forth in the Prime Contract between Owner and Contractor.
2. The Engineer shall attend design review meetings with the Owner and Contractor as reasonably requested by the Contractor.
3. The Engineer shall provide assistance to the Contractor in its efforts to obtain permits necessary for construction of the Project. Engineer and Contractor shall agree on which entity will take "lead responsibility" for each permit to be obtained.
4. Approval by the Contractor or Owner of the Construction Documents shall not be deemed to be an assumption of responsibility by the Contractor or Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by the Engineer, its employees, subcontractors, agents or consultants, who shall be responsible for any error, inconsistency or omission.
5. The Design Phase Services will conclude upon the issuance of Issued For Construction (IFC) Construction Documents. The Engineer shall place the proper endorsement on all plans, estimates or any other engineering data furnished by it.
D. BASIC SERVICES - CONSTRUCTION PHASE.
1. All of the Engineer's Construction Phase Services ("Construction Phase Services") as described in this Article 1, Section D Shall be performed on an "as requested" basis. The Contractor shall determine the level of effort required for such Services and pay for same on time and expense basis, as described in Addendum A.
2. The Engineer shall timely review and approve or otherwise respond to the Contractor's submittals, including shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given by Engineer and the design concept expressed in the Construction Documents. Where requested by Contractor, Engineer shall review submittals for specific details but without any liability to Engineer arising from such review. Any detailed review shall not relieve Contractor of responsibility to construct the Project in accordance with the Issued for Construction Documents. The Engineer's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences or procedures.
3. The Engineer shall furnish interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda or otherwise, as are necessary for the proper execution and progress of the Project. All such interpretations and

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clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

- 4. The Engineer shall communicate with the Owner and the Contractor's subcontractors and suppliers only through the Contractor.
- 5. The Engineer shall have reasonable access to the Project site as necessary to perform the Construction Phase Services that are requested of it.
- 6. The Engineer shall visit the Project site as requested by Contractor or pursuant to such schedule as the Parties may establish, to become generally familiar with the quality of the construction. After each Project site visit, the Engineer shall promptly provide the Contractor with copies of all notes and field reports. Although the Engineer has no responsibility to discover defects or deficiencies in the construction, if the Engineer becomes aware of any such defects or deficiencies, it shall give prompt written notice to the Contractor. The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, or for ensuring that the Contractor's Work is in accordance with the Construction Documents.
- 7. The Engineer is not responsible for and has no involvement with the Contractor's safety precautions and programs except as listed here:
 - 1. The engineer is required to maintain a safety policy, which includes applicable safety requirements as required by OSHA for the scope of work they are performing.
 - 2. The engineer is to maintain documentation of training provided to its employees for tasks they will be required to perform. This documentation will be made available to Contractor upon request.
 - 3. The engineer must have and enforce a pre-employment and post incident drug testing policy.
 - 4. All employees of the engineer or second tier contractors must participate in the job site safety orientation conducted by a member of the Contractor's staff.
 - 5. All incidents; injuries or illness, auto accidents, property damage, utility damage, thefts, vandalism or equipment damage, must be reported to the Contractor as soon as possible and within 24 hours a copy of the incident report submitted.

If the Engineer becomes aware of safety violations, the Engineer shall give prompt written notice to the Contractor.

- 8. The Engineer shall assist the Contractor and Owner in filing required documents with governmental authorities having jurisdiction over the Project.
- 9. The Engineer shall not be responsible for the acts or omissions of the Contractor or any of its subcontractors, or their agents or employees, or any other persons performing work on the Project who are not employed by Engineer or its subconsultant.
- 10. The Engineer shall attend meetings with the Owner and Contractor upon request of the Contractor.
- 11. All of the services to be provided by the Engineer shall be rendered promptly so as not to delay the Contractor, provided that the Contractor makes its need for the services known to the Engineer in advance.

E. **ADDITIONAL SERVICES.** The following services shall be provided by the Engineer and paid for as Additional Services if they are authorized in advance by the Contractor in writing and are not included in Basic Services set forth in Article 1, Sections C and D:

- 1. Development of the Owner's program, Project budgeting, general business planning and other information and documentation as may be required to establish the feasibility of the Project.
- 2. Consultations, negotiations and documentation supporting the procurement of Project financing.
- 3. Property surveys, site evaluations (beyond that normally required to prepare the detailed design), legal descriptions and aerial photographs.
- 4. Appraisals of existing equipment, existing properties, new equipment and developed properties.
- 5. Soils, subsurface and environmental studies, reports and investigations required for submissions to governmental authorities or others having jurisdiction over the Project. Geotechnical exploration required to support the detailed design is included in the Basic Services.
- 6. Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.
- 7. Investigation or making measured drawings for the verification of Owner-provided drawings and information.
- 8. Artistic renderings, models and mock-ups of the Project or any part of the Project.
- 9. Making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by the Owner and Contractor, and which are due to causes beyond the control of the Engineer.
- 10. Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

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11. Serving or preparing to serve as a fact witness or an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.
12. Special inspections requested by Contractor to determine whether work performed is in accordance with the intent of Engineer's design services and within sound engineering principles. Engineer shall be responsible for discovering any defects or deficiencies in the construction relating to any special inspections.
13. Any other services, not included in the descriptions of Basic Services in Article 1, Sections C and D, which may be authorized in advance by Contractor in writing.

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ARTICLE 2 CHANGES IN SCOPE OF SERVICES

Contractor may, at any time, make changes in the scope of Services for the Project or authorize Engineer to perform Additional Services. In the event Contractor notifies Engineer of its desire to make a change in the scope of Services for the Project or of its desire for Additional Services, Engineer shall, within five (5) working days after receiving such notice, give Contractor notification of any potential change in price for the Project or give Contractor an estimate, where Additional Services are to be performed on a time and expense basis. Equitable adjustments to price and time of performance resulting from scope of Services changes and Additional Services will be negotiated and upon mutual agreement by Contractor and Engineer, this Agreement will be modified by a written instrument, signed by both parties, to reflect the changes in scope of Services, price and schedule.

ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES

A. INFORMATION AND SERVICES PROVIDED BY CONTRACTOR.

1. To the extent Contractor has obtained the information and services identified below from the Owner, the Contractor shall provide them to the Engineer. The Engineer shall be entitled to rely on such information and services to the same extent as the Contractor.
 - a. All available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations. If such information supplied by the Owner is inadequate for the performance of Engineer's Basic Services, the further development of such information shall be performed as Additional Services if authorized by Contractor in writing in accordance with Article 1, Section E.
 - b. Inspection and testing services during construction as required by law or as mutually agreed.
 - c. Necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.
2. The Contractor shall be responsible for the preparation of budgets, cost estimates and schedules.
3. The Contractor shall be responsible for the timely review of 30% and 60% drawings, particularly with respect to constructability issues. The Contractor shall promptly report to the Engineer errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this Paragraph shall relieve the Engineer of responsibility for its own errors, inconsistencies and omissions.
4. The Contractor shall provide the Engineer with a list of all consultants and subcontractors retained by the Contractor to perform services for the Project, if requested.
5. Any construction inspection and testing services which may be required but not supplied by the Owner shall be performed by a separate consultant retained by Contractor.

B. **CONTRACTOR'S REPRESENTATIVE.** The Contractor's Representative is the Project Manager for the project specified in the Addendum A.

ARTICLE 4 COMPENSATION AND PAYMENT

- A. Engineer will be compensated for Services as set forth in the Addendum A.
- B. The billing period for invoices shall be a calendar month. Invoices shall be supported by documentation reasonably necessary to substantiate the amounts, based on the compensation terms in the Addendum A. Engineer's invoices shall be paid in full by Contractor within seven (7) days of payment from Owner.
- C. All invoices shall be submitted to: Hunter Contracting Co. Attention: Accounting Department

ARTICLE 5 SCHEDULE

- A. The Engineer shall provide the Services required by this Agreement in accordance with the milestone schedule set forth in the Addendum A. In addition, Engineer shall endeavor to comply with any more detailed schedules which may be developed through the coordination of Contractor and Engineer as the Services progress. Subject to Article 5, Sections B and D, neither Contractor nor Engineer shall be liable to each other or their respective subcontractors for any loss or damage caused by a delay in

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performance of their respective obligations (excluding the obligation to pay money), whether such loss or damage is asserted on the basis of contract, tort (including negligence), strict liability or otherwise.

- B. If Engineer fails to complete its Basic Services - Design Phase within the times required by the milestone schedule and the Owner assesses liquidated damages against Contractor pursuant to the contract between Contractor and the Owner, Engineer shall be liable for such liquidated damages to the extent that the delay on the part of the Engineer directly impacts the critical path of the CPM schedule that Contractor and Engineer have mutually agreed upon and that the Owner uses to judge Contractor's progress and assess damages.
- C. Any delays in or failure of performance by Engineer shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Engineer, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of Engineer. In the event that any event of force majeure as herein defined occurs, Engineer shall be entitled to a reasonable extension of time for performance of its Services under this Agreement.
- D. If any portion of Engineer's Services are priced on the basis of a fixed fee or lump sum and such Services are delayed by any act, omission or interference caused by the Owner, the Contractor, or other persons or entities for whom the Contractor is responsible, such fixed fee or lump sum amount shall be equitably adjusted for the additional costs incurred by Engineer as a result of such delay.

**ARTICLE 6
ENGINEER'S STANDARD OF CARE**

- A. As used herein, Engineer's "Pre-Tender Services" refers to the preliminary engineering it performs to a level of approximately thirty percent (30%) complete, from which the Contractor prepares its estimates and its bid to the Owner for the Project. Contractor acknowledges that the Pre-Tender Services reflect a very preliminary design effort which is purposefully limited. Therefore, it is understood that Engineer shall not be liable for any costs or expenses incurred by Contractor as a result of its reliance upon the Pre-Tender Services. Engineer shall not bear any responsibility or liability for design documents issued prior to the Issued For Construction (IFC) version of such documents. The Engineer's liability arising from the IFC documents is addressed in the balance of this Article.
- B. In the performance of its Services, the Engineer will use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Engineer will use due care in performing in a design capacity and will have due regard for acceptable standards of design principles. If the Services provided hereunder do not conform to the foregoing requirements and the same is reported to Engineer by Contractor in writing promptly after recognition thereof, Engineer shall, at no cost to Contractor, re-perform the Services as necessary to eliminate the nonconformity as soon as reasonably possible after receipt of such report from Contractor. Engineer shall be responsible for additional costs related to the repair, replacement, addition or deletion of materials, equipment or facilities, or construction rework including loss of use as a direct result of nonconformities in the Services. Notwithstanding anything to the contrary, Engineer shall be liable for such nonconformities to the same extent and for the same time period as Contractor is liable to the Owner under the general contract for the Project stated in Addendum A.
- C. Engineer shall not be responsible for any deficiency which arises due to ordinary wear and tear, corrosion or erosion, operating conditions more severe than those contemplated in the original design, or a defect in a process, design or equipment furnished or specified by Contractor or others.
- D. All representations, warranties and guarantees made by Engineer in connection with its Services are limited to those set forth in this Article 6. **IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.**

**ARTICLE 7
INDEMNIFICATION**

- A. The Engineer shall assume the defense of, indemnify and hold harmless Contractor, Owner and Contractor's surety, as well as their officers, agents and employees, from all claims, liabilities, damages, injuries, causes of action, losses and costs, including, but not limited to, reasonable attorney's fees, arising out of bodily injury, including death, and damage to tangible property to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Engineer and persons employed or utilized by the

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Engineer, arising out of or in connection with Engineer’s operations, performance, or failure to perform under this Agreement. If the claims, liabilities, damages, injuries, causes of action, losses and costs, including but not limited to, reasonable attorney’s fees, are caused by or the result from the concurrent negligence of (a) the Engineer, its agents or employees and (b) the Contractor, its agents or employees or (c) any other person or entity indemnified hereunder, this indemnity provision shall remain valid and enforceable but only to the extent of the Engineer’s or its agents’ or employees’ negligence, recklessness or intentional wrongful conduct.

B. The Engineer shall not assert as against the Owner any defense of lack of privities of contract with the Owner, the same being specifically waived hereby for the benefit of the Owner.

**ARTICLE 8
INSURANCE**

- A. During the term of this Agreement, Engineer shall, at its sole expense, secure and maintain in force policies of insurance of the following types:
 - 1. Workers’ compensation coverage, with a minimum of \$500,000, in accordance with the statutory requirements of the U.S. jurisdictions in which services are to be performed.
 - 2. Commercial General Liability Insurance, subject to a limit for bodily injury and property damage combined of at least \$2,000,000 per occurrence and annual aggregate. Contractor and Owner, its agents, representatives, officers, directors, officials and employees shall be named as additional insureds under this policy using ISO endorsements form CG 20 10 07/04 or it’s equivalent on a primary and non-contributory basis.
 - 3. Automobile liability insurance subject to a limit for bodily injury and property damage combined, of at least \$1,000,000 per occurrence.
 - 4. Engineers to provide Professional Liability Insurance for a minimum of \$2,000,000.
- B. Engineer shall furnish Contractor certificates of insurance evidencing the insurance coverage required in Section 8.A. The certificates shall stipulate that should any of the above insurance policies be cancelled before the termination of this Agreement, the issuing company will mail thirty (30) days’ written notice to Contractor. Engineer shall also furnish Contractor with a copy of the additional insured endorsements as required in Section A, Paragraph 2.

**ARTICLE 9
RELATIONSHIP OF ENGINEER TO CONTRACTOR**

The Engineer shall be and shall operate as an independent contractor with respect to the Services performed under this Agreement and shall not be nor operate as an agent or employee of Contractor. This Agreement is not intended to be one of hiring under the provisions of a Workers’ Compensation statute or other law and shall not be so construed.

**ARTICLE 10
PERSONNEL**

Engineer agrees that during Engineer’s performance of Services hereunder, adequate provision shall be made to staff and retain the services of such competent personnel as may be appropriate or necessary for the performance of such Services. Contractor shall have the right to review the personnel assigned by Engineer, and Engineer shall remove any personnel not acceptable to Contractor. Engineer may remove personnel assigned to the Project without Contractor’s prior approval, provided the progress of the Project shall not be unreasonably impaired.

**ARTICLE 11
OWNERSHIP OF INSTRUMENTS OF SERVICE AND DATA**

- A. The Owner and Contractor shall have unlimited rights to copy and use in connection with the Project only, all Design Materials, including the right to use same on the Project at no additional cost to the Owner or Contractor, regardless of degree of completion, provided that said Services performed have been fully paid for by Owner and Contractor as required by the terms of this Agreement exclusive of amounts disputed by Owner or Contractor in good faith. The Engineer agrees to and does hereby grant to the Owner and Contractor and any assignee or successor of the Owner or Contractor a royalty-free license to any Design Materials as to which the Engineer may assert any rights under the patent or copyright laws. The Engineer hereby assigns outright and exclusively to the Owner all copyrights in the design appearance of the project. The Engineer, as part of its agreements with any subcontractor or consultant, will secure such

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assigns harmless from any claims for such claims by such entities for copyright or patent infringement, but shall not be responsible for such defense or loss when a particular design, process, or product is required by a Change Directive that causes or results in a copyright or patent infringement.

- B. The Owner and Contractor shall indemnify and hold harmless the Engineer, its subcontractors, consultants, and their respective agents and employees from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "Claims") arising from any use by the Owner or Contractor, their successors or assigns of such Design Materials if reuse, modifications or amendments of any such materials are made without the prior consent and involvement of the Engineer.

**ARTICLE 12
GOVERNING LAW**

The rights and obligations of the Parties under this Agreement shall be interpreted and governed in all respects by the laws of the State of Arizona.

**ARTICLE 13
DISPUTES**

Each Party will make a best effort to resolve all disputes through negotiations. In the event that a dispute(s) cannot be resolved between the Parties, any controversy or claim arising from or related to this Agreement or the breach thereof or the coverage of this arbitration provision shall be settled by arbitration which shall be conducted in Phoenix, AZ in accordance with the Commercial Arbitration rules of the American Arbitration Association, as such rules shall be in effect on the date of delivery of demand for arbitration. The arbitration of such issues, including the determination of the amount of any damages suffered by either Party hereto by reason of the acts or omissions of the other Party, shall be to the exclusion of any court of law except for enforcement of an arbitral award. The decision of the arbitrators or a majority of them shall be final and binding on both Parties and their respective successors and assigns. Each Party shall pay the fees of its own attorneys and the expenses of its witnesses and all other expenses connected with the presentation of its case. The cost of the arbitration, including the cost of the record or transcripts thereof, if any, administrative fees, fees of the arbitrators, and all other fees and costs shall be borne as determined by the arbitrators.

**ARTICLE 14
NOTICES AND/OR COMMUNICATIONS**

All notices and/or communications to be given under this Agreement shall be in writing and shall be addressed as follows:

ENGINEER

CONTRACTOR

HUNTER CONTRACTING CO.
701 N. COOPER ROAD
GILBERT, AZ 85233

**ARTICLE 15
MISCELLANEOUS**

- A. **WAIVER.** Waiver by either party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way effect, limit, or waive such party's rights thereafter to enforce and compel strict compliance with all the terms and conditions of this Agreement.
- B. **SEVERABILITY.** Any provision of this Agreement prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.
- C. **TITLES.** The titles given to the Articles and Sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.
- D. **JOINT DRAFTING.** The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this

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Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

- E. **RIGHTS AND REMEDIES.** The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.
- F. **AFFILIATES.** All releases, limitations on liability, restrictions, exclusions, and indemnities running in favor of Engineer in this Agreement shall also apply for the benefit of (without duplication of limitations) Engineer's parent, affiliated and subsidiary companies, and its and their officers, directors, employees, agents and representatives.
- G. **ENTIRETY OF AGREEMENT.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations and prior drafts. Both Parties agree that this Agreement cannot be changed or modified in any manner unless such changes or modifications are agreed to in writing and signed by an Officer or Division Manager of Hunter Contracting Co.

IN WITNESS WHEREOF, the parties hereto have executed this Master Engineering Agreement by their proper officers duly authorized herein.

HUNTER CONTRACTING CO.

Signature

Chuck English

Print Name

Vice President

Title

Date

Signature

Print Name

Title

Date

License Number and Type