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Billing & Payments

ALL PAYMENTS FOR SERVICES SHALL BE DUE AND PAYABLE UPON RECEIPT OF INVOICE PRIOR TO RECEIPT OF FINAL WORK UNLESS AGREED OTHERWISE IN WRITING. INVOICES ARE GENERATED IF EITHER OF THE FOLLOWING CRITERIA ARE MET:

- SUBSTANTIAL COMPLETION OF THE WORK AGREED UPON ("SUBSTANTIAL COMPLETION" INCLUDES OFFICE DRAFTS WITH FUNDAMENTAL DESIGN WORK SHOWN, AND/OR COMPLETION OF BASIC SCOPE OF WORK INDICATED IN QUOTATION AS DETERMINED BY THIS OFFICE).

OR

- IF THE CLIENT DOES NOT RESPOND TO E-MAIL COMMUNICATION SENT BY THIS OFFICE REGARDING THE PROJECT IN PROGRESS WITHIN 10 WORKING DAYS.

- **Engineering Express® ("The Company") will perform the services defined in this proposal ("The Agreement") and shall invoice the contracted party ("The Client") in accordance with the compensation section of this Agreement. Any estimate of cost to the Client as stated in this Agreement or any of the accompanying schedules shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in the contract Agreement). By executing this proposal, Client agrees to be invoiced for any additional services at this company's standard rates (or as mutually agreed upon), including but not limited to, re-reviews, re-inspections, re-tests, stand-by time, scope changes, services outside normal business hours or any services provided beyond the estimated project duration including Client requested revisions. By executing this Agreement the Client automatically also approves additional compensation to the Company for unforeseen project labor which shall be the greater of 10% above the Agreement or a minimum of $100, without notification.**

- **This company may provide additional services under this Agreement as requested by the Client in writing subject to acceptance by the Company, and the Client will be invoiced for these additional services at this company's standard rates found online at www.engexp.com/terms.pdf or as mutually agreed upon, including but not limited to, re-reviews, re-inspections, scope changes, services outside normal business hours or services provided beyond the estimated project duration.**
- **Deliverables including photocopying, blueprinting, postage, and other reimbursable expenses are IN ADDITION TO the estimated project fee, billed at the rates in our fee schedule referenced above, with the exception of deliverables included with the proposal.**
- **Unless otherwise specified, 'days to complete' as specified in all proposals for work are business working days.**
- **To the extent these General Terms and Conditions are part of a proposal for services, the proposal shall be valid for fourteen (14) calendar days unless otherwise stated. Once a proposal is accepted, these General Terms and Conditions shall apply to all services performed and shall survive any termination of the Agreement or completion of services. Execution of the proposal for work constitutes authorization to proceed with work.**
- **Client will be invoiced immediately following a performed service or unless agreed otherwise in writing. Payment is due upon completion, or if a credit application for the Client is on file with our office, within thirty (30) calendar days after the receipt of invoice. Interest charges will start to accrue forty-five (45) calendar days from the invoice date. Client agrees to pay an interest charge equal to the lesser of one and one-half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. Any attorney's fees, collection fees or other costs incurred in collecting any delinquent amount shall be paid by Client. The Client agrees to pay the Company for its services in accordance with the above Agreement, regardless of whether or not he has been paid by his Client.**

Termination

- **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 of the Agreement. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In all events of termination, the Company shall be paid for services performed up to and through the date of termination. In the event of termination, or suspension for more than two (2) weeks, prior to completion of all reports contemplated by this Agreement, this company may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of this company in completing such analyses, records, and reports and shall be due and payable by Client promptly upon our invoice.**
- **Payment is not contingent upon receipt of permit or any related approvals.**
- **Client acknowledges that in entering into this Agreement, Engineering Express® has relied on the full performance by the Client and the receipt of full contract price. The Client shall be the responsible party to ensure all required data is submitted to this office in a timely manner.**

Terms of Agreement:

- **Initial coordination will begin upon receipt of this signed Agreement and any retainer amount noted herein. *Our engineering evaluation and other related services will begin upon our receipt of all necessary supporting documentation in a succinct format provided by the Client. NO time is allotted for FTP site research, download, or similar inquiry of full project plans unless specified herein; only the scope of work for which we are hired will be reviewed or additional fees will apply.* Engineering Express® reserves the right to request additional compensation resulting from unforeseen project conditions and inaccurately supplied data which alter any engineering work we provide based on originally quoted work. Engineering Express® will submit a change order and description of required project revisions to the Client for approval prior to commencing any work which exceeds the original contract more than the greater of 10% above the agreed fee or $100.**

- **During the course of a project, any missing information that impedes the design process and cannot be expeditiously obtained from the Client will put a temporary hold on the project. Once the Client provides this information, the Client will receive notification if the additional data provides enough**

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information to continue. If not, the Client shall investigate further until satisfaction by this office. If the data is sufficient, Engineering Express® will notify the Client and simultaneously place the project onto the current office work schedule and the estimated business days to complete shall reset from that day forward. Once the Client takes possession of the work product, the receipt of these items shall constitute acceptance of our scope of work if not contested within 24 hours. This includes but is not limited to site layouts, design pressures, building products, building materials, existing conditions, construction methods etc. A PDF can be provided upon request, and is recommended, as all submittals are final upon delivery. NO REVISIONS WILL BE MADE WITHOUT AN ADDITIONAL AGREEMENT WHICH MAY RESULT IN ADDITIONAL FESS.

Work Product

- All work product (including AutoCAD, Excel, and/or other electronic files) created for this project remain the property of Engineering Express®, and are not offered to anyone for use unless approved by this company, or otherwise specified under separate Agreement. Limited hardcopies of all submitted documents (approval drawings, design calculations, required certification letters, etc.) will be provided to Client upon request as reasonable to obtain permit unless otherwise agreed.
- Our work product will be designed for the design Codes in effect at the moment of substantial completion unless otherwise noted. We reserve the right to require modifications to engineering approvals should new Code requirements, interpretations, or project information develop. Any modifications required due to Code changes beyond agreed or as stated herein are not included in the proposed fee and shall be at additional cost to the Client unless otherwise specified.
- Engineering Express® shall not be held responsible for construction means, methods, techniques, sequences, procedures, or for the safety precaution and programs in connection with the project, unless specifically hired to do so.
- Client agrees that work product provided by Engineering Express® may be provided in similar form to other Clients, without notification, unless otherwise specified in writing under the terms of our Agreement. Additionally, we reserve the right to submit the work product to other parties if deemed necessary by this office.
- Although The Company will make its best efforts to meet the anticipated or proposed design of a project, preliminary results are not guaranteed for permitting nor a material term of this contract and are provided as a guide only based upon work of a similar nature. Engineering Express will make its best effort to inform the Client of any revisions to the design based upon the progress of the work involved. The actual final design may vary from the proposed design which may be affected by a number of variables.

Warranty of Work

- Service performed by this company under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the location where the services are to be performed. No other warranty, expressed or implied, is made, including without limitation, any warranty of fitness for a particular purpose. In no event, will this company be responsible for delays in the work which is beyond our reasonable control or caused by Client or its agents, consultants, contractors or subcontractors. Stand-by or non-productive time for delays in our work caused by Client or its agents, consultants, contractors or subcontractors may be charged to the Client unless provided for as a separate item in the Agreement or otherwise as mutually agreed upon.
- Client warrants and represents that the product, system or design provided for engineering does not violate or otherwise infringe upon any patent, trademark, copyright, or ownership or control by another engineer, whether under federal or state statutory or common law principals. Notwithstanding such, the parties acknowledge that the duties of Engineering Express® under this contract do not include the Client's making, using or selling of the product, design, or system pursuant to those interpretations under applicable patent, trademark and copyright law.
- The Company will not be held liable for problems that may occur if the Company's recommendations are not followed.

Certificate of Merit

- The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against any employee of this company unless the Client has first provided this company with a written certification executed by an independent consultant currently practicing in the same discipline as the work performed and licensed in the state which work was performed. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for the engineer performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to this office not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.

Limitation of Liability Agreement

- In recognition of the relative risks, rewards, and benefits of the work performed by Frank L. Bennardo, P.E., Inc. DBA 'Engineering Express®' (ENGEXP) for the Client, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, ENGEXP's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement from any cause or causes, shall not exceed the lesser of $10,000 or ENGEXP's fee for the project in question. Such causes include, but are not limited to, ENGEXP's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.
- The Client shall, to the fullest extent permitted by law, indemnify and hold harmless ENGEXP, his or her officers, directors, employees, agents, and sub consultants from and against all damage, liability and cost, including reasonable attorney's fees, defense costs, and appellate fees, arising out of or in any way connected with the performance by any of the parties involved with the use of our engineering services and under this Agreement, excepting only those damages, liabilities, or costs attributable to the sole negligence or willful misconduct of ENGEXP.
- ENGEXP shall not be required to execute any document that would result in its certifying, guaranteeing, or warranting the existence of conditions whose existence ENGEXP cannot ascertain. In the event of a potential dispute, the Client agrees to produce a certificate of merit demonstrating by certification from another engineer licensed and experienced in the type of work in question whether a case against ENGEXP has legal merit and if there exists a reasonable probability that ENGEXP has deviated from the applicable standard of care and caused harm to the Client. If no certificate of merit is produced, ENGEXP shall be granted a motion for summary judgment.
- In the event that ENGEXP initiates legal proceedings in order to enforce the collection of any unpaid sums due under this contract or any other breach by Client, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs, which shall include all attorney fees and costs

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incurred pursuant to any appeal or bankruptcy proceeding. The venue and jurisdiction for any such legal action under this contract shall be exclusively Palm Beach County, Florida. This contract shall be interpreted under the laws of the State of Florida. THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL FOR ANY DISPUTES ARISING FROM THIS AGREEMENT.

- **This Agreement expresses the complete and final understanding between the parties with respect to the subject matter hereof and is applicable, by reference, to all Agreements executed as of the date noted above until amended or superseded at a later date. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. Any notices pursuant to this Agreement shall be sent to the addresses as set forth at the beginning of this Agreement and shall be solely in writing, sent certified mail, return receipt requested and shall be effective whether such return receipt is accepted or rejected by receiver.**
- **Nothing contained in this Agreement shall create contractual or legal relationship with, right in favor of, or a cause of action in favor of any third party against this office or the Engineer. All services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any rights or a claim against this office or the Engineer because of this Agreement or the performance of nonperformance of services hereunder. This provision may be waived only by express written consent of this office or the Engineer.**