

**O'BRIEN & GERE ENGINEERS, INC.**  
**STANDARD SERVICE TERMS AND CONDITIONS**

1. **Definitions.** As and when used in this Agreement, each of the following terms shall have the meaning set forth below:

a) **Agreement** shall mean this Proposal, including the following: Letters of Authorization or the job specific terms on the face of any Purchase or Change Order and the other Exhibits incorporated in this Proposal.

b) **Law** shall mean federal, state, and local, statutes, laws, ordinances, rules, regulations, and codes applicable to Services.

c) **Losses** shall mean monetary damages suffered or costs and expenses incurred, including interest and reasonable attorney's fees, as a result of any demand made, cause of action asserted, judgment or decree entered, or any fine or penalty imposed, or any settlement payment consented to by both parties in connection with this Agreement.

d) **O'Brien & Gere** shall mean only the O'Brien & Gere company issuing the Proposal.

e) **Project** shall mean the overall work to be performed, including Services to be performed by O'Brien & Gere or others on behalf of Client at or in connection with project site(s).

f) **Reimbursable Expenses** shall mean the expenses reasonably incurred by O'Brien & Gere, its agents and subcontractors in performing Services, including, but not limited to, materials, supplies, use of specialized equipment, travel and subsistence costs, including mileage, cellular and non-local telephone and other communication charges, express delivery, postage and freight charges, word processing, computer processing and reproduction and printing charges required in providing Services, and technical services by others, plus permit fees, taxes, charges and assessments on Services (unless specifically included in the Scope of Services).

g) **Services** shall mean the professional, technical and other consulting services, work or tasks to be performed by O'Brien & Gere and its subcontractors as described in the Proposal.

2. **Changes in Scope.** Client shall have the right within the general purpose and intent of the Project to change, add or delete items from Services in writing and subject only to the agreement of O'Brien & Gere with respect to the effect on cost and schedule.

3. **Payment.** Payment of O'Brien & Gere's monthly invoice shall be due upon receipt. Balances more than thirty (30) days past due shall accrue interest at the rate of 1% per month or part thereof until paid.

4. **Term.** Unless otherwise provided in this Agreement, the Term hereof shall be from the date this Agreement is signed by both Client and O'Brien & Gere until the obligations imposed hereunder are fully satisfied or this Agreement is otherwise terminated. All Services shall be deemed to have been performed during the Term hereof.

5. **Status.** Except as otherwise provided in this Agreement, O'Brien & Gere shall perform the Services as an independent contractor and shall have sole control over the employment, assignment, discharge and compensation of its employees. O'Brien & Gere shall be solely responsible for complying with all applicable, federal, state and local employment, wage, tax, and insurance laws and licensing requirements.

6. **Standard of Care.** O'Brien & Gere agrees to correct or re-perform, without additional cost to Client, any Service not performed in accordance with the professional standard of care prevailing at the

time and in the place where such Service is performed.

7. **Insurance.** Throughout the term of this Agreement, O'Brien & Gere shall maintain insurance in amounts not less than shown:

a) Worker's Compensation	Statutory amount where Services are performed
b) Automobile	\$1,000,000
c) General Liability	\$1,000,000
d) Professional Liability	\$1,000,000
e) Excess Umbrella	\$3,000,000 on "b" & "c"

Client agrees to require all third parties engaged by or through Client in connection with the Project to provide O'Brien & Gere with current Certificates of Insurance endorsed to include O'Brien & Gere as an additional insured on their "b," "c" and "e" policies of insurance and authorizes O'Brien & Gere to enforce this provision directly with all Project related third-parties.

8. **Compliance with Law.** O'Brien & Gere shall comply with all Law applicable to Services, including federal and state Equal Opportunity Laws, orders and regulations, and further, O'Brien & Gere shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, disability or national origin.

9. **Confidentiality.** Except when 1) authorized by Client in writing, 2) previously and independently known, 3) subsequently published through no fault of O'Brien & Gere or 4) lawfully obtained from a third party having independent knowledge, O'Brien & Gere shall treat as confidential all information obtained from Client. O'Brien & Gere shall provide Client with reasonable notice of and an opportunity to legally resist any effort by a third party to obtain disclosure of confidential information. O'Brien & Gere shall be permitted to comply with any judicial order. Client information marked confidential shall be returned to Client at the conclusion of Services.

10. **Patents.** Patentable ideas, products, equipment, materials or processes ("Ideas") developed, in whole or in part, with proprietary information or assistance of Client shall be the property of Client; provided, however, that O'Brien & Gere shall have an unlimited, royalty free, non exclusive, non transferable (other than to its successors), world-wide license for their use, reproduction, manufacture and sale. Ideas developed by O'Brien & Gere during or as part of its performance of the Services which do not depend on proprietary information or assistance provided by Client shall be the property of O'Brien & Gere; provided, however, that Client shall have an unlimited, royalty free, non exclusive, non transferable license for their use by and for Client.

11. **Client Responsibilities.** Client shall on a continuing basis throughout the term of this Agreement:

a) maintain a designated representative, who shall be reasonably available to meet with O'Brien & Gere on Client's behalf;

b) provide O'Brien & Gere with all relevant Project related data available to Client, and unless otherwise provided in the Scope of Services, Client shall provide O'Brien & Gere with accurate, current land surveys showing the location of on-site utilities and subsurface structures, test boring logs and other subsurface information necessary for performance of Services;

c) provide all negotiation for, and acquisition of, lands, rights-of-way and easements required for performance of Services.

d) arrange for access, entry and use of property of Client (including utilities thereon) and others, as and when reasonably required by

O'Brien & Gere for performance of Services.

12. **Additional Cost or Delay.** O'Brien & Gere shall not be responsible or liable for delay or additional Project cost resulting from:

a) the lack or insufficiency of performance by any person or entity not selected by, engaged by, and responsible to O'Brien & Gere,

b) changes, delays or additional Services not necessitated by the acts or omissions of O'Brien & Gere,

c) unreasonable or repeated delay in response to requests, applications or reviews by Client or third parties.

d) damage to underground utilities or structures not accurately located on plans, maps or figures furnished to O'Brien & Gere.

13. **Change in Law.** Client shall bear the cost of any material change in or addition to Services resulting from a change in Law or interpretation effective after the date of this Agreement.

14. **Force Majeure.** Neither party shall be liable for loss or damage suffered by the other as a result of any failure or delay in the performance of its obligations under the Agreement caused by a *Force Majeure* event or circumstance beyond its reasonable control. The party relying on this provision shall give prompt notice to the other party of the event or circumstance and shall take all reasonable steps to resume performance at the earliest possible date. In the event of a *Force Majeure*, the time for performance of Services shall be extended by the number of days from the date notice is given until performance is able to be resumed.

15. **Other Use of Results.** Client acknowledges that deliverable documents, drawings and data in whatever form ("Documents") produced directly or indirectly through the efforts of Engineer in performing Services and any analyses, recommendations, or conclusions ("Results") they contain are based upon the specific circumstances and conditions of the Project and are intended solely for use by Client in connection with the Project.

Any change or other than agreed upon use of Documents or Results shall be at the sole risk of Client. Regardless of when delivered, Documents and Results shall become the property of Client upon Engineer's receipt of payment. Client agrees to defend, indemnify and hold harmless Engineer from and against any and all Losses arising from Client's direct or indirect use of Documents or Results, other than in connection with Project.

16. **Suspension of Services.**

a) Client shall have the right to suspend all or part of the Services, provided, Client gives O'Brien & Gere at least seven (7) days' notice of the dates each suspension is to begin and end. In the event Client suspends Services for period(s) totaling more than ninety (90) days, Client agrees to pay reasonable costs incurred by O'Brien & Gere in (i) preserving and documenting Services performed or in progress, and (ii) demobilizing and remobilizing Services.

b) In the event Client does not make timely payment of the invoiced amounts as provided herein, O'Brien & Gere shall in addition to its other rights, have the right, upon seven (7) days' notice, to suspend performance of all or part of the Services until (i) all past due amounts are paid, and (ii) satisfactory assurance of prompt future payment is received.

17. **Indemnification.**

a) Subject to paragraph 19 of these Standard Service Terms & Conditions, O'Brien & Gere agrees to defend, indemnify and hold harmless Client, its directors, officers, employees, agents, successors and assigns from Losses to the extent and in the proportion caused by the willful misconduct or negligent acts, errors or omissions of O'Brien

& Gere, its directors, officers, employees, and its agents, subcontractors, successors and assigns.

b) To the extent and in the proportion not caused by the willful misconduct or negligent acts, errors or omissions of O'Brien & Gere, its directors, officers, employees or its agents, subcontractors, successors and assigns, Client agrees to defend, indemnify and hold said persons harmless from Losses arising in connection with Project.

18. **Limitation of Damages.** The parties waive any right they may have at law or in equity to demand or receive consequential or punitive damages.

19. **Liability.** The maximum liability of O'Brien & Gere, its directors, officers, employees and its agents, subcontractors, successors and assigns to Client pursuant to this Agreement, including paragraphs 6 and/or 17a of these Standard Service Terms & Conditions, shall be limited to Five (5) times the Agreement amount, but in no event more than \$1,000,000.

20. **Mediation of Disputes.** The parties agree to make a good faith effort to resolve any controversy, dispute or claim arising out of, or related to, this Agreement ("Dispute") by the use of alternative dispute resolution procedures provided herein, prior to, and as a condition of, commencing any action or proceeding at law or in equity. Specifically, each party agrees to provide the other prompt written notice of the specific subject(s) and/or circumstance(s) in Dispute. If the Dispute is not resolved to the mutual satisfaction of the parties within ten (10) days of receiving notice, either party may request mediation. Mediation shall be 1) by a qualified, experienced mediator agreeable to both parties as supplied by the American Arbitration Association, Endispute, Inc., or other mutually agreeable source, 2) at the earliest available date of the mediator, and 3) in the major city closest to the Project site where O'Brien & Gere's Services are performed or as otherwise agreed by the parties. The cost of mediation services shall be shared equally by the parties.

21. **Termination.** Either party shall have the right to terminate this Agreement without cause upon thirty (30) days' notice.

22. **Modification.** This Agreement shall not be modified or replaced, in whole or in part, except by written amendment signed by both parties.

23. **Notice.** All notices shall be given to the other party in writing by hand delivery, by express service providing proof of delivery, by facsimile transmission and/or by registered mail, postage paid, return receipt requested, at the address appearing on the first page of this Agreement or such other address as the parties shall from time to time give notice.

24. **Interpretation.** This Agreement shall be interpreted and enforced in accordance with the Laws of the State of New York except for its choice of law rules.

25. **Severability.** If any provision of this Agreement is determined or declared by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Agreement shall be unaffected and shall be interpreted so as to give the fullest practicable effect to the original intent of the parties.

26. **Waiver.** Unless otherwise agreed in writing, neither party's waiver of the other's breach of any term or condition contained in this Agreement shall be deemed a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

27. **Integration.** This Agreement shall constitute the entire agreement between the parties. There are no representations or other agreements, oral or written, between the parties other than as set forth in this Agreement.