

Proposal Date:
CLIENT: "CLIENT"
Authorized CLIENT Representative:
CLIENT Address:
Proposal No: "Exhibit A"
Estimated Fees:
Project Description / Location: "SITE"

This agreement ("Agreement") is made by and between CLIENT and QC Laboratories, Inc. ("QCL"). In consideration of the mutual agreements contained in this Agreement and subject to the terms and conditions of this Agreement, the parties agree as follows:

1. **Application:** QCL shall perform services set forth in Exhibit A, which is incorporated into this Agreement by reference. The foregoing testing and inspection services in Exhibit A are collectively called the "SERVICES". Other services requested by CLIENT or specifically required by the SITE project specifications may also be provided under this Agreement. It is agreed that the CLIENT is the responsible financial party for all charges.
2. **Scope of Services:** QCL shall provide, or cause to be provided, the SERVICES outlined in Exhibit A of this Agreement. The SERVICES detailed in Exhibit A are an estimate of the scope of work that may be required. The actual SERVICES provided will be based on the project specifications and the actual SERVICES requested by the CLIENT or the CLIENT'S representative. QCL agrees that the CLIENT is the final decider of the actual scope of services and the CLIENT agrees that the work is provided on an "On Call" basis and QCL is not responsible for controlling when QCL is called to the SITE to perform the testing or inspections.
3. **Project Costs and Fees:** SERVICES under this Agreement will be invoiced on a unit price basis for the actual services provided. Any total fee estimate, cost estimate, budget or other phrase indicating a total project cost, which may be included in Exhibit A, should not be considered by the CLIENT to be a "Not to Exceed", "Lump Sum" or a "Maximum Cost". The estimated fee is only intended to assist the CLIENT with budgeting and to better understand the scope of services that will be provided by QCL. The CLIENT agrees and understands that the SERVICES provided are call out services and QCL has no control over the project scheduling or when services may be requested. Upon request, QCL will advise the CLIENT when a specific percentage of the estimated fee is completed, to assist the CLIENT with management of the testing and inspection budget.
 - 3.1. The proposed pricing in Exhibit A is valid for thirty- (30) days from the date of the proposal, unless the price validity is specifically extended in Exhibit A. If the proposal is accepted and received by QCL within thirty (30) of the proposal date, the unit pricing is fixed for the duration of the SITE work, except for transportation costs which may be escalated after acceptance or January 1, whichever comes later.
 - 3.2. Regular time is charged to the nearest ½ hour on a portal-to-portal basis from the QCL office. There is a minimum charge of 4 hours per day for all field services; however, there is no minimum charge for picking up cast concrete test specimens or sample material pickups.
 - 3.3. Overtime is charged at a rate of 1.5 times the regular time rate for all hours in excess of 8 hours per day or time outside of the normal QCL working hours of 7:00 a.m. to 6:00 p.m. Monday through Friday. Overtime is charged for all time on Saturday or Sunday. Work on holidays (New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day) is charged at 2.5 times the regular time rate.
 - 3.4. Standard QCL services requiring specialized equipment are charged based on the applicable personnel charge, equipment fee and applicable transportation charge. Equipment or subcontracts not included in Exhibit A and requested by the CLIENT will be charged at cost plus 20%.
 - 3.5. Project Management time is charged for all services to cover the technical review of the project specifications, report review, and technical / administrative management. A Project Management fee of one hour will be charged for each new SITE covered under this Agreement to setup the administrative requirements of each SITE, review specifications and to create the field project summary for the technicians.
 - 3.6. During the SERVICES, one hour of project management time will be charged for every 20 hours of technician time with a minimum of one hour per invoice period. Site visits by the QCL Project Manager, requested by the CLIENT, are charged at the actual time plus transportation.
 - 3.7. Concrete strength cylinders and beams are charged based on the actual number of specimens that are molded. Concrete specimens made on Friday and Saturday will be picked up the following day, as required by national testing standards, and an overtime rate will be billed.
 - 3.8. Individual laboratory tests that are require QCL to perform on a rush basis to meet SITE requirements are subject to a 50% surcharge.
 - 3.9. Building Code Department Special Inspection Letters must be arranged with QCL prior to the start of the SERVICES to ensure that all required inspections are performed. QCL shall be under no obligation to issue Special Inspection Letters where services were not prearranged.
4. **Confidentiality.** All data developed in the performance of SERVICES, or supplied to or obtained by QCL from CLIENT or generated by QCL or its subcontractors is confidential and will be afforded confidential treatment by QCL, its employees, agents, affiliates and subcontractors. Reports and data relating to the SERVICES will not be released without the permission of the CLIENT except as may be required by law or court order.
5. **Responsibilities:** Understanding the responsibilities in providing the SERVICES are in the best interest of the CLIENT and QCL.
 - 5.1. Unless otherwise agreed, CLIENT will furnish any required right-of-entry and obtain permits as required for QCL to access the SITE and perform the SERVICES. If the SITE owner or CLIENT has specialized training requirements to access the SITE that are not included in Exhibit A, those costs will be an additional charge to the CLIENT.
 - 5.2. QCL, its employees, agents, affiliates or subcontractors shall act solely as an independent contractor in performing the SERVICES and shall have no right or authority to act for CLIENT and will not enter into any contract or other agreement, or incur any debt, liability or obligation of any nature in the name of or on behalf of CLIENT.
 - 5.3. QCL, its agents, affiliates, and subcontractors shall pay all salaries, wages, expenses, social security taxes, federal and state unemployment taxes and any other similar payroll taxes relating to the SERVICES.
 - 5.4. QCL shall have no authority or responsibility to supervise, manage, control, administer or direct any contractor, subcontractor, material supplier, CLIENT representative or anyone that is not directly employed by QCL. This provision applies to all matters relating to design, construction and safety issues. CLIENT agrees that QCL or their representatives are not responsible for accepting or rejecting any aspect of the project construction and the SERVICES and test results are for use by the CLIENT in making decisions relating to acceptance.
 - 5.5. CLIENT understands that reliance upon the SERVICES is limited to CLIENT and CLIENT'S representatives. Any third party reliance that may be available is contingent upon agreement by QCL, authorization by CLIENT and upon the full execution by the third party of a letter of understanding provided by QCL.

6. **Data, Samples, and Records:** All test samples will be discarded 60 days after the submission of our report unless CLIENT advises QCL of alternative requirements. Upon request, QCL will deliver the samples in accordance with CLIENT'S instructions, or store the samples for an agreed charge. All pertinent records relating to services performed under this Agreement shall be retained for three years after completion of the work.
7. **Indemnification:** QCL shall defend, indemnify and hold harmless the CLIENT from all liabilities, which may arise during the SERVICES caused by the sole negligence of QCL. The CLIENT agrees to defend, indemnify and hold harmless QCL, its directors, officers, shareholders, employees, contractors, subcontractors, agents or affiliates from and against any and all suits, actions, legal or administrative proceedings, claims demands, actual damages, fines, punitive damages, losses, costs, liabilities, interest, and attorneys' fees (including any such fees and expenses incurred in enforcing this indemnity) which, irrespective of QCL negligence: (a) exceed the limitation of QCL liability provided for an Article 8 or (b) result from, arise out of, or are in any way connected with; (i) acts or omissions of CLIENT, CLIENT'S employees, agents and subcontractors, and their employees or agents; (ii) the release of any hazardous substance; or (iii) any other generation, treatment of transport of waste materials.
8. **Insurance and Liability:** QCL maintains General Liability Coverage of \$1,000,000, Professional Errors and Omission Coverage of \$1,000,000, Umbrella Coverage of \$5,000,000 and Workman's Compensation as required by law. Upon request, QCL will furnish insurance certificates, which describe the policy providers and coverage. To the fullest extent permitted by law, the total liability of QCL, its officers, members, directors, agents, Consultants, and employees, to CLIENT, and to anyone claiming by, through, or under CLIENT, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the SERVICES under this Agreement, from any cause or causes whatsoever, including but not limited to negligence, errors, omissions, strict liability, breach of contract, or breach of warranty, shall be limited to the amount of \$50,000 or our fee, less direct third-party costs, whichever is less. Upon written request of the CLIENT and acceptance by QCL prior to the start of the SERVICES QCL will waive this limitation, for an additional fee of ten percent of our total fees or \$1,500, whichever is greater. The waiver fee recognizes the increased unknown liabilities associated with the SERVICES and the SITE, and is not intended to increase insurance coverage.
9. **Consequential Damages:** CLIENT shall not be liable to QCL and QCL shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other regardless of: the nature of this fault; or whether it was committed by CLIENT or QCL, their employees, agents, or subcontractors; or whether such liability arises in breach of contract of warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, delays, loss of use and loss of profit.
10. **Payment for the Work:** Payment is due in US Dollars, without any deduction for retainage, in accordance with the fees outlined in Exhibit A. Services not included in Exhibit A, but requested at the SITE will be charged at the current QCL fee schedule rates. Payment is due within thirty (30) days of the date of the invoice. If not specified in the QCL quotation, invoices will be submitted at the completion of the work or for ongoing work, invoices will be submitted for services and tests actually completed during the invoice period. Payment of QCL invoices by the CLIENT may not be withheld pending payment to the CLIENT by a third party. If payment in full is not made when due, interest shall accrue on the unpaid balance at the lesser of (i) the rate of 1½% per month or (ii) the maximum interest rate permitted under applicable law. CLIENT agrees to pay reasonable attorneys' fees incurred by QCL in the collection of past due invoices and account balances. If the CLIENT disputes any portion of the invoice the undisputed portion of the invoice must be paid within thirty- (30) days of the date of the invoice. QCL must be advised in writing of the amount and reason for the disputed portion of any invoice within forty-five (45) days of the invoice date or the disputed portion of the invoice shall be considered as delinquent and treated as an undisputed past due amount.
11. **Force Majeure.** The parties hereto shall be excused from the duty to render timely performance of any obligation hereunder if such inability to perform is caused directly or indirectly by act of God, flood, war, riot, accident, explosion, strikes or labor trouble, act of government, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party's reasonable control; provided, however, that the obligation to make payments due under this agreement shall not be excused for any reason, including the foregoing.
12. **Waiver of Compliance:** Waiver by either party hereto of a breach by the other party of any of the provisions of these terms and conditions shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.
13. **Severability:** If any provision or remedy herein provided is found invalid under any applicable law, the remaining provisions hereof, including remaining default remedies, shall be given effect in accordance with the intent hereof.
14. **Governing Law and Arbitration:** This agreement shall be governed by and construed under the laws of the State of Texas. Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The location of any arbitration shall be Houston, Texas. Any demand for arbitration by either party hereunder must be delivered in writing to the other party.

Agreement Acceptance By:

Client: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____