

USAquatics, Inc.
Owner/Consultant Agreement
General Conditions

From time to time Client intends to engage USAquatics, Inc. (hereafter "Consultant") to provide professional services. These General Conditions set forth the terms and conditions which shall govern the relationships and performance of Client and Consultant, if and only if one or more Task Orders (which may be made in the form of a Proposal for Services) are agreed to. Each engagement will be documented by a Task Order and/or detailed proposal. For ease of reference "Task Order" is used to define Proposal, detailed proposal or other document that sets forth the agreed upon Scope of Services and fees.

ARTICLE 1 - SERVICES OF CONSULTANT

1.1 General

A The services to be provided by Consultant and/or any subconsultant retained by Consultant (hereafter collectively referred to as "Consultant") will include such of the Basic and Additional Services set forth in one or more Task Orders as authorized by Client. Services for each Specific Project will be detailed in a duly executed Task Order. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided.

B Consultant shall not be obligated to perform any prospective Task Order unless and until Client and Consultant agree as to the particulars of the Specific Project, Consultant's services, Consultant's compensation, and all other appropriate matters.

ARTICLE 2 - CLIENT'S RESPONSIBILITIES

2.1 General

A Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Client, prior to their incorporation into the Work for a Specific Project with appropriate professional interpretation thereof.

B Provide Consultant with the findings and reports relating to the project.

C Provide Consultant with accurate data with which the Consultant may reliably perform the work agreed to including, but not limited to, site survey information, environmental conditions, utility locations and other pertinent information.

ARTICLE 3 - TERM; TIMES FOR RENDERING SERVICES; SUSPENSION

3.1 Term

A This Agreement shall be effective and applicable to Task Orders issued hereunder.

B This Agreement may be extended or renewed, with or without changes, by written amendment establishing a new term.

3.2 Times for Rendering Services

A The time for a party's performance will be extended to the extent performance was delayed by causes beyond the control and without the fault of the party seeking the extension. That party shall promptly notify the other party in writing when it is being delayed.

3.3 Suspension

A If Client fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase under a Task Order, or if Consultant's services are delayed through no fault of Consultant, Consultant may, after giving seven days written notice to Client, suspend services under the Task Order. Consultant shall not be responsible or liable for any costs or expenses or resulting damages from suspension of services.

ARTICLE 4 - PAYMENTS TO CONSULTANT

4.1 Payment for Services and Reimbursable Expenses of Consultant.

A Client shall pay Consultant as set forth herein and in each Task Order.

4.2 Other Payment Provisions.

A *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Client fails to make any payment due Consultant for services and expenses within 30 days after receipt of Consultant's invoice, the amounts due Consultant will be increased at the rate of 1.5 percent per month (or the maximum rate of interest permitted by law, if less) from said 30th day. In addition, Consultant may, after giving seven days written notice to Client, suspend services under any Task Order issued under this Agreement until Consultant has been paid in full all amounts due for services, expenses, and other related charges. Consultant shall not be responsible or liable for any costs or expenses or resulting damages from suspension of services.

B *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

C *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for

Consultant's services shall be continued based on the Standard Hourly Rates Method of Payment.

ARTICLE 5 - OPINIONS OF COST

5.1 Opinions of Probable Construction Cost

A Consultant's opinions of probable Construction Cost (if any) are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over a Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Consultant. Consultant assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.1 Standards and Parameters of Performance

A The standard of care for all professional Consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

B Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain within its services for that Specific Project.

C If Consultant provides services during the Construction Phase of a Specific Project, Consultant shall not supervise, direct, or have control over a Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by a Contractor, for safety precautions and programs incident to a Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the Work.

6.2 Design without Construction Phase Services

A It is understood and agreed that if Consultant's Basic Services under a Task Order do not include project observation, or review of a Contractor's performance, or any other Construction Phase services, and that such services will be provided by Client or others, then Client assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any

claims against the Consultant that may be in any way connected thereto. In such a case, Consultant's Basic Services under the applicable Task Order will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase.

6.3 Use of Documents

A All Documents are instruments of service. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of Consultant) whether or not a Specific Project is completed.

B Client may make and retain copies of Documents for information and reference in connection with use on a Specific Project by Client. Such Documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Specific Project for which they were prepared or on any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Consultant. Client shall indemnify and hold harmless Consultant and Consultant's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

6.4 Termination

A The obligation to provide further services under this Agreement or any Task Order may be terminated:

1 For cause,

a By either party upon 15 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order hereunder through no fault of the terminating party.

(1) Consultant shall have no liability to Client on account of such termination.

b Notwithstanding the foregoing, neither this Agreement nor any Task Order will terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof.

2 For convenience,

a By Client effective upon the receipt of notice by Consultant.

(1) Consultant shall be entitled to full payment for all services rendered up to, and including, the date of notification.

6.5 Controlling Law

A This Agreement is to be governed by the law of the state in which the principal office of the Client is located, unless the law of the state where the Work is

being performed requires that the law of that state be applied.

6.6 Successors, Assigns, and Beneficiaries

A Client and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B Neither Client nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

6.7 Dispute Resolution

A Client and Consultant agree to negotiate all disputes between them in good faith for a period not to exceed 30 days from the date of notice prior to exercising their rights according to this Agreement, or under law.

B Client and Consultant agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof to binding arbitration.

6.8 Allocation of Risks

A Indemnification

1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from and against any and all costs, losses, and damages, but only to the extent caused by the negligent acts or omissions of Consultant or Consultant's officers, directors, partners, employees, and Consultant's Consultants in the performance and furnishing of Consultant's services under this Agreement.

2 To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant, Consultant's officers, directors, partners, employees, and Consultant's Consultants from and against any and all costs, losses, and damages, but only to the extent caused by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, and Client's consultants with respect to this Agreement.

6.9 Consultant's Liability Limit

A To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and

Consultant's officers, directors, partners, employees, agents and Consultant's Consultants, and any of them, to Client and anyone claiming by, through, or under Client for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project from any cause or causes shall not exceed the total compensation received by Consultant for the Task Order or the limits of Consultant's insurance, whichever is greater. Consultant will provide proof of insurance upon request.

B Consultant will maintain and keep in force for the duration of this agreement and the warranty period set forth herein a professional liability insurance policy with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate. The proof of insurance will be provided to the City and a copy of the certificate of insurance will be provided to the City each time it is renewed. In the event the policy is not maintained as agreed, the limitations of liability set forth in paragraph 6.9.A will not apply. Consultant will also give the City a minimum of thirty (30) days notice prior to cancelling or altering any liability insurance policy providing coverage on this project.

C *Agreement Not to Claim for Cost of Certain Change Orders.* Client recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Consultant or in the other professional services performed or furnished by Consultant under this Agreement. Accordingly, Client agrees not to sue and otherwise to make no claim directly or indirectly against Consultant on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Change Orders, especially where first-time-costs or unjust enrichment may apply. Client agrees to hold Consultant harmless from and against any suit or claim made by the Contractor relating to any such Change Order.

6.10 Other liability limitations

A *Shop Drawing Review.* Consultant may review and approve or take other appropriate action on the contractor's submittals or shop drawings for the limited purpose of checking for general conformance with information given and design concept expressed in the Contract Documents. Review and/or approval of submittals is not conducted for the purpose of determining accuracy and completeness of other details or for substantiating instructions for installation or performance of equipment or systems, all of which remain the exclusive responsibility of the contractor. Consultant's review and/or approval shall not constitute approval of safety precautions, or any construction means, methods, techniques, sequences or procedures.

The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Consultant's review and/or approval shall not relieve contractor for any deviations from the requirements of the contract documents nor from the responsibility for errors or omissions on items such as sizes, dimensions, quantities, colors, or locations.

B Pay application Review. Any review or certification of any pay applications, or certificates of completion shall be based upon Consultant's observation of the Work and on the data comprising the contractor's application for payment, and shall indicate that to the best of Consultant's knowledge, information and belief, the quantity and quality of the Work is in general conformance with the Contract Documents. The issuance of a certificate for payment or substantial completion is not a representation that Consultant has made exhaustive or continuous inspections, reviewed construction means and methods, verified any back-up data provided by the contractor, or ascertained how or for what purpose the contractor has used money previously paid by Client.

6.11 Applicability of Master Agreement to Task Orders

A The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in

the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written amendment. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

6.12 Survival

A All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.13 Severability

Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Consultant, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement; Effective Date of which is as signed.

<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consultant:	USAquatics, Inc.	Client:	
By:		By:	
Title:		Title:	
Date Signed:		Date Signed:	
Address for giving notices:		Address for giving notices:	
PO Box 86; 124 Bridge Ave E			
Delano, MN 55328			
Designated Representative:		Designated Representative:	
Name:		Name:	
Title:		Title:	
Phone Number:	763-972-5897	Phone Number:	
Facsimile Number:	763-972-5864	Facsimile Number:	
E-Mail Address:		E-Mail Address:	

Please fill all yellow boxes completely