

TAPS
TENNESSEE ASSOCIATION OF
PROFESSIONAL SURVEYORS

AGREEMENT

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Project No. _____

Agreement entered into at _____

on this date of _____, by and between:

Client: _____

Land Surveyor: _____

Name _____

Name _____

Address _____

Address _____

Phone _____

Phone _____

FAX _____

FAX _____

Email _____

Email _____

Client and Land Surveyor agree as follows:

A. Client hires Land Surveyor to perform the following services:

hereinafter called "the Project."

B. Client agrees to compensate Land Surveyor as follows:

C. Client agrees to a schedule for performance of Land Surveyor's services as follows:

D. This agreement is made subject to the provisions contained in paragraphs 1 through 31 herein, and the provisions of the exhibits attached hereto and made a part hereof. (List exhibits below)

Client and Land Surveyor agree as follows:

1. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Land Surveyor.
2. This agreement contains the entire agreement between the parties relating to the project. Any prior agreements not expressly set out in this agreement are void. Subsequent modifications to this agreement shall be in writing and signed by both parties.
3. Waiver of any term, condition or covenant set out herein shall not constitute a waiver of any other term, condition or covenant.
4. If any part of this agreement is held by a court of competent jurisdiction to be invalid, the remaining provisions of this agreement shall be valid and binding.
5. This agreement shall be governed by the laws of the State of Tennessee.
6. If the Land Surveyor's scope of services includes services related to applying for or seeking approval of governmental permits (e.g., zoning, planning, subsurface sewage disposal), such services shall not constitute a representation or warranty that such permits will be approved.
7. Client shall deliver, upon Land Surveyor's request, any additional information, documents or funds to pay governmental fees and charges that are necessary for Land Surveyor to perform its services under this agreement.
8. All plats, drawings, reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Land Surveyor are instruments of service, and shall remain the property of Land Surveyor and may be used by Land Surveyor without the consent of Client. Upon request and payment of all costs, Client will be furnished a signed and sealed copy of all final plats and other documents required by provisions of the agreement to be prepared by Land Surveyor.
9. Land Surveyor is not responsible for any determination or location of any underground conditions not visible and obvious by inspection of the premises, including, but not limited to, soils, geological conditions, physical devices and facilities, pipelines or buried cables unless specifically included in writing in this agreement, and shall not be responsible for any liability that may arise out of the making of or failure to make such determination or location of any subsurface condition.
10. Land Surveyor has the right to complete all services requested pursuant to this agreement. In the event this agreement is terminated before the completion of all services, unless Land Surveyor is responsible for such termination, Client agrees to release Land Surveyor from all liability for services performed. In the event all or any portion of the services by Land Surveyor are suspended, abandoned, or otherwise terminated, Client shall pay Land Surveyor all fees and charges for services provided prior to termination. If Land Surveyor's services are suspended and restarted, Land Surveyor will be entitled to additional compensation for extra services pursuant to the provisions of paragraph 15 of this agreement. If Land Surveyor's services are terminated for the convenience of Client, Land Surveyor is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to paragraph 15.
11. Land Surveyor shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations

pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order or judgment issued by the Bankruptcy Court. If the suspension of performance of Land Surveyor's obligations pursuant to this agreement continues for a period exceeding ninety (90) days, Land Surveyor shall have the right to terminate all services pursuant to this agreement.

12. This agreement shall not be construed to alter, affect or waive any land surveyor's lien, mechanic's or materialman's lien to which Land Surveyor may be entitled for the performance of services pursuant to this agreement. Client agrees to provide Land Surveyor the name and address of the record owner of the property that is the subject of the project.

13. All fees and other charges due Land Surveyor will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Land Surveyor within thirty (30) days after invoices are rendered, Land Surveyor shall have the right in its absolute discretion to consider such default in payment a material breach of this agreement, and Land Surveyor's duties under this agreement may be suspended or terminated. In such event, Client shall pay Land Surveyor for all outstanding fees and charges due Land Surveyor at the time of suspension or termination. If Land Surveyor elects to suspend or terminate its services pursuant to the provisions of this paragraph, Land Surveyor is entitled to reasonable suspension or termination costs or expenses.

14. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one-half percent (1 - 1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing.

15. Client agrees that if it requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Land Surveyor's usual and customary billing rates.

16. If any staking or monuments are damaged, removed or destroyed by anyone other than Land Surveyor, the entire cost of new staking or monumentation shall be paid for by Client as extra services in accordance with paragraph 15.

17. Client acknowledges that the services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change at any time, and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. Such clarifications, adjustments, modifications and other changes shall be paid for by Client as extra services in accordance with paragraph 15.

18. Client shall pay the costs of all inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical

engineering fees, soils or geotechnical testing fees, aerial topography fees, and all other fees and charges not specifically covered by the provisions of this agreement.

19. Any area or volume computations or estimates will be performed pursuant to generally accepted standards of professional practice in effect at the time of performance and shall not be considered as irrefutable or unconditional.

20. Land Surveyor makes no warranty, either express or implied, as to its findings, recommendations, opinions, or professional advice except that its services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.

21. In the event Client agrees to, authorizes, or permits changes in the instruments of service prepared by Land Surveyor, which changes are not consented to in writing by Land Surveyor, or Client does not accept opinions or recommendations of Land Surveyor pursuant to this agreement, Client acknowledges that the unauthorized changes and their effects and the failure of the Client to accept the Land Surveyor's opinions or recommendations are not the responsibility of Land Surveyor.

22. Client agrees not to use or permit any other person to use instruments of service prepared by Land Surveyor which are not final and which are not signed and sealed by Land Surveyor. Client shall be responsible for any such use of non-final instruments of service or other documents not signed and sealed by Land Surveyor. Client hereby waives any claim for liability against Land Surveyor for such use. Client further agrees that final plats, specifications, drawings, reports or other documents are for the exclusive use of Client and may be used by Client only for the project described in this agreement. Such final plats, specifications, drawings, reports or other documents may not be changed or used on a different project without written consent of Land Surveyor.

23. In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by Land Surveyor, Client agrees that all such electronic files are instruments of service of Land Surveyor, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. Client agrees not to reuse these electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this agreement.

In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Land Surveyor, its officers, directors, employees, agents and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than Land Surveyor or from any reuse of the electronic files without the prior written consent of Land Surveyor.

24. If Land Surveyor produces plats, specifications, or other documents and/or performs field services, and such plats, specifications, or other documents and/or field services are required by any governmental agency, and such governmental agency changes its ordinances, codes, policies, procedures or requirements after the date of this agreement, any additional services thereby required shall be paid for by Client as extra

services in accordance with paragraph 15.

25. Land Surveyor is not responsible for delay caused by activities or factors beyond Land Surveyor's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, inclement weather, acts of God, failure of Client to furnish timely information or approve or disapprove of Land Surveyor's services or instruments of service promptly, faulty performances by Client or other contractors or governmental agencies. When such delays beyond Land Surveyor's reasonable control occur, Land Surveyor shall not be responsible for damages nor shall Land Surveyor be deemed to be in default of this agreement. Further, when such delays occur, Client agrees that, to the extent such delays cause Land Surveyor to perform extra services, such services shall be paid for by Client as extra services in accordance with paragraph 15.

26. Land Surveyor is not responsible for the performance of work by third parties.

27. Client agrees to limit the liability of Land Surveyor, its principals, employees and subconsultants, to Client for any claim or action arising in tort, contract, or strict liability, to the amount of Land Surveyor's fee under this agreement.

28. In the event there is litigation arising from or related to the services provided under this agreement, the prevailing party will be entitled to recover all reasonable costs incurred, including staff time, court costs, attorneys' fees and other related expenses.

29. In the event Land Surveyor institutes litigation to enforce or interpret the provisions of this agreement, such litigation shall be brought and adjudicated in the appropriate court in the county in which the Land Surveyor's place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.

30. Land Surveyor shall not be required to sign any documents, no matter by who requested, that would result in Land Surveyor having to certify, guarantee or warrant the existence of conditions whose existence the Land Surveyor cannot ascertain. Client agrees not to make resolution of any dispute with the Land Surveyor or payment of any amount due the Land Surveyor contingent upon the Land Surveyor's signing or agreeing to any such certification.

31. (a) Except as provided in subdivisions (b) and (c), in an effort to resolve any conflicts that arise during the project or following completion of the project, Client and Land Surveyor agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

(b) Subdivision (a) shall not preclude or limit Land Surveyor's right to file an action for collection of fees in a court of competent jurisdiction.

(c) Subdivision (a) shall not preclude or limit Land Surveyor's right to perfect or enforce applicable land surveyor's, mechanic's or materialman's liens.

Client Initials _____
Land Surveyor _____

IN WITNESS WHEREOF, the parties hereby execute this agreement upon the terms and conditions stated above.

Client _____

Land Surveyor _____

By _____

By _____

Name/Title _____

Name/Title _____

Date Signed _____

Date Signed _____

Project Number _____

Project Number _____