

STATEMENT OF SPECIAL TERMS AND CONDITIONS

MADE this 24 day of February, 2014, by and between, the **MUNICIPAL AUTHORITY OF THE BOROUGH OF PORTAGE** and **THE EADS GROUP**, Engineers.

WHEREAS, the Municipal Authority of the Borough of Portage provides a potable water supply to nearly 2500 customers in the Borough of Portage and surrounding areas; and

WHEREAS, the EADS Engineers has been the Authority Engineer for a long period of time and in connection therewith has received, created and maintained information as to the design, configuration and vulnerabilities of the Authority potable water system; and

WHEREAS, with heightened awareness and concern for the safety and security of the potable water system, and technical information which could be utilized to assist a person or organization intending harm to the potable water system and through it the Authority's customers, the Authority and its Engineer wish to articulate the following terms and conditions to the existing and ongoing agreement to provide engineering services.

BE IT THEREFORE AGREED, that the following terms and conditions apply to all work hereinafter performed by the Engineer for the Authority and also to all work products held by the Engineer from work previously performed:

- 1) Confidential Information, as the term is used herein, shall include information concerning the capacities, operating methods, maps, plans, specifications and any other document or item of information concerning the potable water system which could assist a person intending harm to the system.
- 2) Engineer agrees to preserve the confidentiality of all records and information and not to release any of this information without the express written permission of the Authority.
- 3) The Engineer agrees to utilize reasonable efforts in maintaining the security and integrity of confidential information in its possession.
- 4) In the event that the Engineer and Authority ever terminate their relationship in the future, upon execution by the Authority of an appropriate and reasonable release, all maps, drawings specifications, or other confidential information shall be promptly delivered to the Authority and the Engineer shall retain only such information as mutually agreed to with the Authority and is required by law or by the standards for engineers practicing in the Commonwealth of Pennsylvania. Engineer agrees to preserve the confidentiality of all records and information and not to release any of this information without the express written permission of the Authority

IN WITNESS WHEREOF, we execute this document with our hands and seals intending to be legally bound thereby, the day and year first above written.

The EADS Group

Municipal Authority of the Borough of Portage

By: Jamie M. Stoly Pres. By: Raymond Bauman
Name: Chairman
Authorized Representative

STANDARD CONTRACT TERMS AND CONDITIONS

Where used, the term "Client" shall mean Municipal Authority of the Borough of Portage. The term "Engineer" shall mean "The EADS Group, Inc., ~~450 Aberdeen Drive, Somerset, PA 15501~~

227 Franklin St., Suite 300 Johnstown PA 15901.

1. Client agrees to assist the Engineer by placing at the Engineer's disposal, all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
2. Client will arrange for access to and make all provisions for Engineer to enter upon public and private property, as required for Engineer to perform services.
3. Client shall be responsible for such legal services as Client may require or Engineer may reasonably request with regard to legal issues pertaining to the Project.
4. All documents of any kind prepared by Engineer in performing services on this Project are instruments of service. Any use other than that specifically called for in their preparation shall be without liability on the part of the Engineer.
5. In any dispute involving the accuracy of surveying services, engineer will have no liability to anyone if reference points set by Engineer have not been preserved. Engineer field notes will govern in dispute.
6. Engineer will strive to perform services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.
7. Client understands that Engineer cannot, and does not, assure favorable action or timely action by any governmental entity.
8. Engineer will not furnish copies of project reports or drawings to third parties without permission of the Client.
9. Client agrees that if additional services are requested from Engineer by Client, fees for such services will be incurred on the basis of either time and material or on terms that the parties mutually agree upon.
10. Invoices are rendered monthly and are due and payable in full upon receipt. If client fails to make any payment due Engineer for services and expenses within thirty (30) days after receipt of engineer invoice therefor, the amounts due will be increased at the rate of 1% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, after giving seven (7) days' written notice to Client, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment and the undisputed portion will be paid.
11. Client and Engineer each may, at their own option, terminate this contract with no less than 10 working days written notice. Client agrees to pay fees earned for all services, billed or unbilled, provided by Engineer up to the date of receipt of termination notice.
12. Suspension of work on this project in excess of 60 days (if directed by Client) will cause Engineer to sustain unexpected costs to resume work. Client agrees that additional compensation, as agreed by the parties, will be paid to Engineer before such work resumes. The fee for uncompleted portions of the work is subject to renegotiation after a suspension period of 120 days.
13. Engineer has procured and will maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. Certificates of insurance will be provided if requested by the Client.

14. When hazardous materials are known, assumed, or suspected to exist at a site, Engineer is required to take appropriate precautions to protect the health and safety of their personnel, to comply with applicable laws and regulations, and to follow procedures that Engineer deems prudent to minimize physical risks to employees and the public. The Client hereby warrants that if he or she suspects that hazardous materials may exist at the project site, he or she will so inform Engineer.
15. Client agrees to give prompt written notice to Engineer when Client observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Engineer's services, or any defect or nonconformance in Engineer's services.
16. Issuance of a purchase order implicitly acknowledges acceptance of these Standard Contract Terms and Conditions.
17. Nothing under this contract shall be construed to give any rights or benefits to any third party.
18. Client acknowledges that any taxes or fees enacted by local, state or federal government, subsequent to the date of this contract and based on gross receipts or revenues, will be added to amounts due under this contract in accordance with any such fees or taxes.
19. The client shall pay all application and similar fees necessary to obtain approvals to construct the project.
20. Engineer is an equal opportunity employer and endeavors to observe the legal standards for employment of its personnel.
21. This contract is governed by the laws of the Commonwealth of Pennsylvania.
22. Non-binding mediation will be the preferred means of resolving any disputes arising between the client and engineer. If not successful, dispute resolution shall be decided by the Court of Common Pleas of Cambria County.
23. Any element of this Agreement later held to violate a law or regulation, or whose insurability cannot be confirmed by design professional, shall be deemed void and all remaining provisions shall continue in force. However, client and design professional will in good faith attempt to replace any such voided element with one that is enforceable and/or insurable, and which comes as close as possible to expressing the intent of the original provision.
24. The individual(s) executing this contract, if acting on behalf of a municipality, municipal authority, corporation, or funding agency, represent that they have the authority to do so.