

MASTER PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
GEOSYNTEC CONSULTANTS, INC.  
AND  
TOWN OF INDEPENDENCE

This Master Professional Services Agreement ("Agreement") is made effective June 1, 2023 by and between Town of Independence ("Client" or "Town") and Geosyntec Consultants, Inc. and its subsidiaries and affiliates (collectively "Geosyntec") to provide geotechnical review services for the Client on an as needed, project by project, basis. The Client and Geosyntec are referred to herein individually as "Party" and collectively as "Parties".

**NOW, THEREFORE**, in consideration of the promises set forth below, the Parties hereby agree as follows:

1. **SERVICE ORDERS:** The services to be provided by Geosyntec pursuant to this Agreement ("Services") shall be described and memorialized in written orders ("Service Orders") agreed to by the Parties. Service Orders shall set forth the Services, schedule, rate schedule, and budgeted fees and expenses for the Services. If Services are to be rendered in connection with a specific location, the Service Order shall also describe the site ("Project Site"). The terms and conditions of this Agreement shall apply to and be incorporated into each Service Order and any Purchase Order, or other document issued by Client and to all Services to be rendered. Any terms introduced or proposed by Client which are not expressly incorporated into this Agreement, or a Service Order, are rejected.
2. **CLIENT RESPONSIBILITY:** Client shall provide Geosyntec, in writing, all information relating to Client's requirements for Geosyntec's review of a Project applicant's assessment and proposed development of each Project Client engages Geosyntec's review in a timely manner, give Geosyntec prompt written notice of any suspected deficiency in the Services and with reasonable promptness to avoid impacts to the progress of the project ("Project"), and provide Geosyntec with approvals and decisions regarding next steps in the requested review. Client agrees to hold Geosyntec harmless from any claim related to or arising from circumstances, acts or omissions in connection with the Project Site which occurred prior to Geosyntec providing any Services under this Agreement.
3. **COMPENSATION, INVOICING AND PAYMENT:** The method of compensation shall be identified in the Service Order. When the method of compensation is on a time and materials basis, Geosyntec shall submit invoices to Client reflecting the number of hours worked multiplied by the hourly rate reflected in Geosyntec's rate schedule, along with any approved expenses for reimbursement. The rates and rate schedule for projects lasting more than one year may be adjusted annually. The rates are inclusive of all taxes except such value added, sales, service or withholding taxes that are imposed by some jurisdictions, and which shall be explicitly identified. Any such applicable taxes will be added to the invoice and shall be paid by the Client. Where compensation is subject to a "not to exceed" budget such limit shall only apply to the total approved budget. Any amount allocated to a task or milestone may be exceeded without Client authorization as long as the total budget limit identified in the Service Order is not exceeded.

Geosyntec shall periodically submit invoices to Client and Client shall pay each invoice in accordance with any applicable prompt payment legislation within thirty (30) days of the date of the invoice. Payment shall not be conditioned upon Client's receipt of payment from any other parties. If Client objects to all or any portion of any invoice, Client shall notify Geosyntec in writing of the objection within fifteen (15) calendar days from the date of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute.

Geosyntec may invoice Client for any expense authorized by the Client exceeding \$5,000 before the expense has been incurred by Geosyntec. Client shall pay the greater of an additional charge of the lesser of one percent (1%) of the amount of the invoice per month or the maximum percentage allowed by law for any payment received by Geosyntec more than thirty (30) days from the date of the invoice. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. The additional charge shall not apply to any disputed portion of any invoice resolved in favor of Client. No deductions shall be made from Geosyntec's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Client or others, or on account of the cost of changes in the Services.

In addition to the above, if payment of Geosyntec invoices is not maintained on a thirty (30) day current basis, Geosyntec may, by ten (10) days written notice to Client, suspend further performance and withhold any and all deliverables and data from Client until such invoice payments are restored to a current basis.

4. **CHANGES:** In the event services beyond those specified in the Services Order are provided by Geosyntec or requested by the Client, the Parties shall negotiate an adjustment to the scope, schedule or fee, and the Service Order shall be equitably adjusted to represent such changes.
5. **RECOGNITION OF RISK:** Client recognizes that services and opinions relating to Geosyntec's review of an applicant's assessment or characterization of environmental, geologic, and geotechnical conditions is based on limited data and that actual conditions may vary from those encountered at the times and locations where data are obtained, and that the limited data results and uncertainty with respect to the interpretation of these conditions, despite the use of due professional care. In addition, any estimate of costs prepared by Geosyntec represents judgment as a design professional and is supplied for the general guidance of the Client. Since Geosyntec has no control over the cost of labor and material, or over competitive bidding or market conditions, Geosyntec does not guarantee the accuracy of such estimates as compared to Contractor bids or actual cost to the Client. Accordingly, any estimates, forecasts and predictions provided as part of the Services are presented solely on the basis of the assumptions accompanying the estimates, forecasts and predictions.
6. **STANDARD OF CARE:** Geosyntec shall render its Services in a manner consistent with the level of care and skill ordinarily exercised by other firms rendering the same services under similar circumstances at the time the Services are performed. The representations provided herein are provided expressly in lieu of all other warranties or conditions, express or implied. All statutory or implied warranties and conditions including but not limited to those of merchantability and fitness for a purpose are hereby expressly negated and excluded. Should an error or omission become apparent in the Services during the term of the Agreement or within ninety (90) days following the completion of the Services, Geosyntec's liability shall be limited to the correction of the error or omission and shall be contingent upon Geosyntec being notified promptly.
7. **LIMITATION OF LIABILITY:** To the fullest extent permitted by law, the liability of Geosyntec, its employees, agents, and subcontractors for claims of loss, injury, death, damage, or expense incurred by the Client, including, without limitation, third party claims for contribution and indemnification, arising out of or relating to Services rendered or obligations imposed under this Agreement or any Service Order issued, shall not exceed, in the aggregate, the greater of \$100,000 or the amount paid to Geosyntec under the applicable Service Order. The Client shall indemnify and defend Geosyntec against any third-party claims against Geosyntec exceeding the limitation of liability. In addition, neither Party shall be entitled to recover consequential damages, including, without limitation, loss of use or loss of profits, from the other Party, their employees, representatives, agents, subsidiaries, affiliates, successors or assigns. The foregoing limitations of liability shall apply regardless of whether the allegation is based on a theory of breach of contract, negligence, or other wrongful act, but shall not apply if caused by gross negligence or willful misconduct.
8. **INSURANCE:** Geosyntec shall maintain during the term of this Agreement the following minimum insurance coverage:

(i)	Workers' Compensation Employer's Liability	Statutory - \$1,000,000 per occurrence
(ii)	Commercial General Liability or Public Liability Insurance	- \$1,000,000 per occurrence
(iii)	Comprehensive Automobile Liability	- \$2,000,000 combined single limit
(iv)	Professional Liability	- \$1,000,000 per claim

Geosyntec shall provide Client with a current insurance certificate identifying the foregoing coverage upon Client's request.

9. **DISPUTES:** The Parties agree to promptly resolve their differences through good faith negotiations as a condition precedent to filing a formal claim. In the event disputes remain following such good faith negotiations between the Parties, the remaining dispute shall be submitted to a senior representative of each Party who shall have the authority to enter into an agreement to resolve the dispute ("Representative"). The Representatives shall not have been directly involved in the performance of the Services and shall negotiate in good faith. If the Representatives are unable to resolve the dispute within three weeks or within such longer time period as the Representatives may agree, the dispute shall be mediated by an independent third-party agreed to by both Parties. Any disputes or portions thereof remaining following mediation shall be determined by remedies at law or equity, as they may be available, subject to the limitations in this Agreement and the venue selection stated in Section 20 below. Any applicable statute of limitations on any claim in any way related to this Agreement shall commence to run and alleged cause of action shall be deemed to have accrued no later than the date of either Geosyntec's final invoice or termination of this Agreement by either Party. Both Parties agree that the applicable statute of limitations for any claims in any way related to this Agreement shall be shortened to a period not longer than two years

unless a shorter statute of limitations would otherwise apply.

10. **RIGHT OF ENTRY:** Client grants to Geosyntec, and, if the Project Site is not owned by Client, will provide that permission for a right of entry from time to time for Geosyntec, its employees, agents, and subcontractors for the purpose of providing the Services. Geosyntec will not be required to enter into agreements with third parties to obtain access to property to perform the Services.
11. **PROJECT SITE RESPONSIBILITIES:** If included in the Service Order, Geosyntec shall visit the Project Site as requested to complete the Services. Subject to the Service Order, construction observation responsibilities will occur at appropriate intervals to allow Geosyntec to become generally familiar with the progress, and quality of work of the construction contractor, to determine if the work is proceeding in general accordance with the Client-approved plans, specifications, and contract documents. Visits to the Project Site and observations made by Geosyntec shall not make Geosyntec responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Geosyntec shall incur no liability for unforeseen costs and/or claims relating to the Services that arise from Project Site conditions that differ from anticipated conditions, including without limitation for any subsurface conditions or systems and/or utility configurations.
12. **HAZARDOUS SUBSTANCES:** “Hazardous Substances” shall refer to any hazardous, toxic, or dangerous substance that cannot be introduced back into the environment under existing law without additional treatment. In the event that Geosyntec encounters unanticipated Hazardous Substances, it shall inform Client of the finding and may suspend work until mutually agreeable arrangements are made, including but not limited to amendments to this Agreement.
13. **CONFIDENTIALITY:** Geosyntec will maintain as confidential the provisions of this Agreement and any business information that is not generally known to, and cannot be readily ascertained by others, and which a reasonable person under the circumstances would consider confidential and will not release, distribute, or publish same or Geosyntec’s test results to any third party without prior permission from Client, unless required by law, order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Client.
14. **INTELLECTUAL PROPERTY AND USE OF DOCUMENTS:** Provided that Geosyntec has been fully paid for the Services, Client shall have a perpetual, non-transferable license and right to use the documents, maps, photographs, drawings, and specifications resulting from Geosyntec’s efforts on the Project. Except where necessary to give effect to the foregoing limited license, Geosyntec is not granting Client any license for Geosyntec’s patents, patent applications, patent disclosures, inventions and improvements (whether patentable or not), copyrights, copyrightable works (including computer programs), trade secrets, trademarks, service marks, know-how, database rights, or any other form of intellectual property created, developed, or conceived outside the performance of Services. Geosyntec shall have the right to retain copies of all such materials. Work products delivered in electronic form are subject to anomalies, errors, misinterpretation, deterioration, and unauthorized modification, or may be draft or incomplete work products, electronic documents provided by Geosyntec are furnished solely for convenience and only those professional work products in hard-copy format bearing Geosyntec’s signature or professional stamp may be relied upon by Client or other recipients approved in writing. Geosyntec may rely upon data provided by Client or other third parties without independent verification unless otherwise provided in the Service Order. If the Services include the use of a Geographic Information Systems (“GIS”) database Client acknowledges that any changes to the information contained in the database will result in different results. The Client will be solely responsible for any modifications to the database made by Client.
15. **DELAYS AND FORCE MAJEURE:** Geosyntec shall not be responsible for any delays resulting from actions or inactions of the Client or third parties. In the event that Geosyntec field or technical work is interrupted due to causes reasonably outside of its control, Geosyntec’s schedule for performance and compensation shall be equitably adjusted (in accordance with Geosyntec’s current Rate Schedule) for the additional labor, equipment, time, and other charges associated with

maintaining its work force and equipment available during the interruption, and for such similar charges that are incurred by Geosyntec for demobilization and subsequent remobilization.

Except for the foregoing provision, neither Party shall hold the other responsible for damages or delays in performance caused by force majeure, acts of God, or other events beyond the reasonable control of the other Party. Delays within the scope of this Section which cumulatively exceed forty-five (45) days shall, at the option of either Party, make the applicable Service Order subject to termination for convenience or to renegotiation.

- 16. SUSPENSION/TERMINATION:** If a Service Order or Geosyntec's Services are suspended by the Client for more than thirty (30) days, upon resumption of Services the Client shall compensate Geosyntec for expenses incurred as a result of the suspension and resumption of Services and Geosyntec's schedule and fees for the remainder of the Services shall be equitably adjusted. If the Services are suspended for more than ninety days, consecutive or in the aggregate, Geosyntec may terminate the Service Order upon giving not less than five (5) days written notice to the Client.

Either Party can terminate this Agreement for cause if the other commits a material and uncured breach of this Agreement, including untimely payment, or becomes insolvent, has a receiver appointed, or makes a general assignment for the benefit of creditors. Termination for cause shall be effective five (5) calendar days after receipt of a written notice of termination, unless a later date is specified in the notice of termination. The notice of termination for cause shall contain specific reasons for termination, and both Parties shall cooperate in good faith to cure the causes for termination stated in the notice of termination. Termination for cause shall not be effective if reasonable action to cure the breach has been taken before the effective date of the termination. Client shall pay Geosyntec upon invoice for services performed and charges incurred prior to suspension or termination, plus suspension and termination charges. Termination charges shall include, without limitation, the putting of Project documents and analyses in order and all other related charges incurred which are directly attributable to termination. In the event of termination for cause, the Parties shall have their remedies at law as to other rights and obligations between them, subject to the other terms and conditions of this Agreement.

- 17. ASSIGNMENT AND THIRD-PARTY RIGHTS:** Neither Party to this Agreement shall assign its duties and obligations hereunder without the prior written consent of the other Party. This Agreement shall not create any rights or benefits to parties other than Client and Geosyntec.

- 18. VALIDITY AND SEVERABILITY:** The provisions of this Agreement shall be enforced to the fullest extent permitted by law. If any provision of this Agreement is found to be invalid or unenforceable, the provision shall be construed and applied in a way that comes as close as possible to expressing the intention of the Parties with regard to the provisions and that saves the validity and enforceability of the provision. In the event that any provision or portion of this Agreement is held to be unenforceable or invalid the remaining provisions or portions shall remain in full force and effect.

- 19. GOVERNING LAW AND VENUE:** This Agreement, and all disputes related to it, shall be governed, and construed by, the laws of the State of Utah, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. Any disputes, controversies, or claims related to this Agreement shall be heard in the state or federal courts located in Utah. The Parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

- 20. INTEGRATED WRITING:** This Agreement constitutes a final and complete repository of the master services agreement between Client and Geosyntec. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Modifications to the terms and conditions of this Agreement shall not be binding unless made in writing and agreed to by both Parties. Any written authorization or notice to proceed given by the Client to Geosyntec regarding Services shall be incorporated into the relevant Service Order and shall have the effect of attaching this Agreement to the authorized Services.

- 21. NOTICES, SIGNATURES AND AUTHORIZED REPRESENTATIVES:** The following signatories of this Agreement are the authorized representatives of Client and Geosyntec for the execution of this Agreement. Each Service Order shall set forth the name and address of the respective authorized representatives of the Parties for the administration of that Service Order. Any information or notices required or permitted under this Agreement, or any Service Order, shall be deemed to have been sufficiently given if in writing and delivered to the authorized representative identified in the applicable Service Order. Notice given by mail may also be transmitted electronically at the time of mailing.

**IN WITNESS WHEREOF**, the Parties hereby consent to the use and enforceability of electronic signatures in the course of their doing business, and they have caused this Agreement to be executed by their duly authorized representatives, as follows:

Town of Independence

Geosyntec Consultants, Inc.

By: \_\_\_\_\_

Name: Phil Sweat

Title: Mayor

Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_

Name: Ron Johnson

Title: Senior Principal

Date of Signature: \_\_\_\_\_