

**STRATA, A Professional Services Corporation**  
**GENERAL CONDITIONS FOR CONSTRUCTION OBSERVATION, SPECIAL INSPECTION & MATERIAL TESTING SERVICES**

<b>Proposal No./Date:</b>	<b>TFP15049 – May 28, 2015</b>	<b>Client Name:</b>	<b>Jerome School District</b>
<b>Project Name:</b>	<b>Jerome High School Addition and Remodel</b>	<b>Project Location:</b>	<b>Jerome, Idaho</b>

**SCOPE OF SERVICES.** STRATA, A Professional Services Corporation (hereinafter "STRATA") shall perform the scope of services detailed in the proposal attached to these General Conditions. This Agreement may only be amended in writing and with the consent of both parties. STRATA can provide different levels of comprehensiveness in our services, for a corresponding increase or decrease in our fees. By signing the Agreement, Client acknowledges that it has reviewed STRATA's project scope of services and agrees that it is reasonable and acceptable.

If STRATA has provided an estimated total fee or proposal, we will notify Client before we exceed the total fee and shall not continue to provide services beyond such limit unless Client authorizes an increase.

**STANDARD OF CARE.** STRATA will perform our services using the customary care and skill employed by competent professionals performing similar services under similar circumstances in the project area, subject to any limitations or exclusions contained in our proposal or the scope of our services under this Agreement. STRATA is not responsible for the work or services performed by others, nor are we responsible for the safety of any persons or property, other than the safety of our own employees. STRATA does not warrant or guarantee our services.

**CLIENT RESPONSIBILITIES.** Client agrees to provide STRATA with all plans, specifications, addenda, change orders, approved shop orders, approved shop drawings, and other information for the proper performance of STRATA's scope of services. STRATA shall be entitled to reasonably rely on all information provided to it by Client. Client authorizes STRATA free access to the Project site, and to all shops or yards where materials are prepared and stored. Client agrees to designate in writing a person or firm to act as Client's representative with respect to STRATA's services to be performed under this agreement. Such person or firm is to have complete authority to transmit instructions, receive information and data, interpret and define Client policies and decisions with respect to the Project and to order, at Client's expense, such technical services as may be requested by STRATA. Client agrees to designate in writing those persons or firms who are authorized to receive copies of our observation and test reports. Client will advise us sufficiently in advance of any operations (usually 48 hours or as defined by the proposal and/or project documents) to allow STRATA personnel assignments and completing the required services. Client agrees to secure or have secured by Project contractor or consultant, by the construction contract, other means representative samples of those materials or procedures proposed for use that require testing, together with any relevant material data. Additionally, Client warrants that such casual labor and all facilities or equipment needed by STRATA to obtain and handle samples or gain site access for inspection and testing at the Project will be made available. It is necessary for the Client to provide and maintain for STRATA's use, adequate space at the Project for safe storage and proper test specimen curing.

**INVOICES AND PAYMENT.** STRATA will invoice for services in accordance with the terms of our proposal or on a monthly basis. All invoices are due on receipt and will be assessed a late payment charge of 1.5% per month if not paid within 30 days of the invoice date. If STRATA is not paid when due, we may suspend or terminate all services and Client agrees to return to STRATA all copies of any reports, plans, specifications or other documents prepared by STRATA under this Agreement and will not rely on these documents or use them in any fashion, including not bringing suit against STRATA. STRATA retains all rights to claim against performance bonds, lien project property, and other measures to receive payment for services rendered.

**CHANGED CONDITIONS.** If, after executing this agreement, STRATA discovers conditions or circumstances not anticipated by us, we will promptly notify Client of the changed condition. Client agrees to negotiate an appropriate modification to this Agreement, including an appropriate modification to STRATA's fees. If STRATA and Client cannot agree on a revised scope of services or fee, either party may terminate this Agreement as set forth in *Termination and Suspension*.

**HAZARDOUS MATERIALS.** STRATA is not responsible for any loss, injury, or damage to any person or personal property caused by Hazardous Materials. Further, our services are limited to construction observation and material testing and do not include any investigation, identification, evaluation, testing, or treatment of any Hazardous Materials. Client agrees to defend, indemnify, and hold STRATA harmless from any claims, liability, loss, or damage that arises from, or is alleged to arise from, Hazardous Materials. "Hazardous Materials" includes, but is not limited to any toxic, noxious, poisonous, radioactive, or irritating material, chemical, or gas, and includes biological materials such as bacteria, viruses, fungi, spores and mold, and the emissions from biological materials.

**CERTIFICATIONS.** STRATA will not execute any certification. STRATA's services are only an expression of our professional opinion based on the service STRATA performed for Client and are not a guarantee or warranty of any fact, condition, or result.

**SAMPLES.** If STRATA provides in-house laboratory testing, we will preserve unused or remnant samples until the requested laboratory testing has been completed and the results published to our client, at which time all non-contaminated, unused samples or sample remnants will be discarded. Any unused or remnant samples of material which fail to comply with project specifications will be retained for a period of five (5) working days beyond the date of publication of our laboratory test report to Client, unless specific instructions otherwise are received from Client. Additional fees may be incurred for reprocessing and/or storing unused samples or sample remnants. Samples contaminated with hazardous materials shall be promptly removed and lawfully disposed of by Client.

**PARTY RELATIONSHIP.** STRATA will perform our services as an independent consultant with our employees under our sole direction and control. STRATA will have the full power, discretion, and authority to select the means, manner, and method of completing our services for individual project tasks without detail, control, or direction. STRATA may subcontract for the services of others without obtaining Client's consent where STRATA deems it necessary or desirable to complete our scope of services.

**NON-SOLICITATION.** The parties agree that during the term of this contract and for a period of two (2) years after termination of this contract, for any reason, the parties shall not directly or indirectly, induce, engage, encourage, or attempt to induce, encourage, or otherwise counsel, advise, ask, or offer any person who is, at the time, employed in any capacity by the other party, to leave the employ of the other party, or to accept employment with another employer, including but not limited to the other party, or to become an independent contractor, or to offer employment to or hire such person.

The parties agree that it would be impractical and very difficult to determine the amount of actual damages caused by a breach of this non-solicitation provision. Therefore, the parties agree that in the event it is established that there has been a violation of the non-solicitation provision, the violating party shall pay the other party, as liquidated damages the sum of twenty-two thousand dollars (\$22,000) for each breach.

The parties agree that these liquidated damages represent reasonable compensation to the other party for losses that would be incurred by it due to any such breach, and nothing in this provision is intended to limit STRATA's right to seek and/or obtain injunctive or other relief as may be appropriate.

**SITE DISTURBANCE.** In the normal course of our services, STRATA may cause surface and subsurface disturbance. Property restoration is not included in STRATA's scope of services unless specifically included in the proposal.

**INDEMNITY.** STRATA and Client agree to indemnify and hold each other harmless from and against claims, suits, liability, damages, and expenses, (including reimbursement of reasonable attorneys' fees) to the proportionate extent caused by its negligent performance of services under this Agreement.

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GENERAL CONDITIONS FOR CONSTRUCTION OBSERVATION, SPECIAL INSPECTION & MATERIAL TESTING SERVICES REVISED JANUARY 2014.  
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**TERRORIST ACTIVITY.** Client understands and agrees that STRATA is not responsible for damages to persons, property, or economic interests arising from Terrorist Activity. Client will indemnify, defend, and hold STRATA harmless against all third-party claims for such damages that arise from, or are alleged to arise from Terrorist Activity. The term "Terrorist Activity" means any deliberate, unlawful act that any authorized governmental official declares to be or to involve terrorism, terrorist activity, or acts of terrorism; or that involves the use or threat of force, violence, or harm to: (a) promote or advance a political, ideological, or religious cause or objective; (b) influence, disrupt, or interfere with a government; (c) intimidate, coerce, or frighten the general public; or (d) disrupt or interfere with any segment of a national economy.

**RISK ALLOCATION.** Client agrees to limit STRATA's total aggregate liability to Client and all third parties arising from any and all injuries, damages, claims, losses, expenses or claim expenses, including attorney's fees, arising out of or relating to this agreement based on any cause or any theory of liability, including, but not limited to negligence, errors or omissions, strict liability, breach of contract, breach of warranty, and claims for indemnification or contribution, such that STRATA's total aggregate liability, including but not limited to attorney's fees and costs, shall not exceed the percentage share of STRATA's fee as it relates to the Client's total fee or in the case of an owner, the total project value, up to a maximum of fifty thousand dollars (\$50,000).

If Client wishes to increase this limitation amount, we can negotiate a higher limit in exchange for an appropriate fee increase to reflect the appropriate risk allocation. It is intended by Client and STRATA that this provision shall apply to the indemnity obligations set forth above. Client and STRATA agree that neither will be liable to the other for any consequential, liquidated, punitive, or incidental damages, except as specifically provided for in this agreement. Notwithstanding any period of limitations that might otherwise apply, the parties agree that no actions, claim, or proceeding of any kind, whether in tort, contract, or equity, arising out of STRATA's services, may be brought against STRATA more than 2 years after STRATA's last service date in connection with this project.

**SURVIVABILITY.** The indemnity obligations, limitations of liability, and assigned requirements established under this Agreement shall survive the expiration or termination of this Agreement. If STRATA provides additional services under this Agreement or any amendment to it, this Agreement's indemnity obligations and limitation of liability will apply to all such services.

**NO JOINT AND SEVERAL LIABILITY.** STRATA shall not be jointly or severally liable for any damage of any kind or nature, including loss or damage of any kind to land or any structures or other improvements planned, designed, constructed, or remodeled on the property which is the subject of this Agreement, or for any personal injury, including death, arising out of or resulting from any structural plan, design or construction, or the remodeling of any structure placed on the property which is the subject of this Agreement, unless and to the extent said loss or damage or injury is the direct and proximate result of STRATA's sole negligence.

**TERMINATION AND SUSPENSION.** Client or STRATA may terminate or suspend this Agreement within seven (7) days written notice delivered personally or by certified mail to the other party. In the event of termination, other than caused by a material breach of this Agreement by STRATA, Client shall pay for all of STRATA's services performed through the date of termination, and for any necessary services and expenses incurred in connection with the project's termination. STRATA shall not be liable to Client for any failure or delay in performance due to circumstances beyond STRATA's control.

**DISPUTE RESOLUTION.** No action may be instituted or prosecuted in any court related to any dispute arising from or in connection with this Agreement unless the party wishing to institute such action first demands in writing, and participates in good faith, in a non-binding facilitated mediation of the dispute. Each party will pay its own costs and fees of mediation, and the fees and costs of the mediator shall be shared equally between the parties. The mediation shall be conducted by a mutually agreed mediator selected by the parties from the roster of civil mediators approved by the jurisdiction's Supreme Court, or another mutually agreed upon mediator. In the event the parties cannot reach agreement on an approved mediator, either party may petition the local jurisdiction's District Court for the appointment of a qualified and approved mediator. A respondent's refusal to mediate relieves the other party from the mediation requirement.

**CONTROLLING LAW.** The laws of the State in which the project occurs will govern the interpretation and enforcement of this Agreement, and the venue for any legal dispute shall be in the county seat where the project is located.

**INTEGRATION AND SEVERABILITY.** The attached proposal and these General Conditions reflect the entire Agreement between STRATA and Client. If any portion of the Agreement is found to be void, such portion shall be stricken and the Agreement shall be reformed to as closely approximate the stricken portions as the law allows.

**DOCUMENT OWNERSHIP.** Provided STRATA is paid in full, we grant Client a non-exclusive license to use the Drawings, Specifications, Reports or other documents prepared by STRATA for this Project ("the Work"). STRATA owns the Drawings, Specifications, Reports and other documents, including document copies. Any reuse or modification of the Work by Client or anyone obtaining it through Client will be at Client's sole risk and without liability to STRATA. Client will defend, indemnify, and hold STRATA harmless from all third party claims, demands, actions, and expenses (including reasonable attorney's fees, expert fees, and other costs of defense) arising from or in any way related to the reuse or modification of the Work by Client or anyone obtaining it through Client.

**ELECTRONIC DELIVERABLES.** In recognition of STRATA's sustainability efforts in the services we provide, STRATA may elect to provide our deliverables in electronic formats, which may change from time to time, but at a minimum may include: electronic mail, portable document format, flash drives, PowerPoint presentations, or other reusable hardware devices. When notified in our proposed scope of services, Client agrees to accept deliverables in an electronic format, to not manipulate said format, and to reproduce deliverables in their entirety when necessary. Client further agrees to hold STRATA harmless from any misuse, loss, or other activity that compromises the deliverable intent.

**GENERAL CONDITIONS ACCEPTANCE AND AUTHORIZATION TO PROCEED:** If Client gives verbal authorization to proceed and does not object in writing to the General Conditions outlined above within 7 days, Client agrees to be bound by these terms.

Signature Dale Payne Title Superintendent Date 6-18-15

