



## **REVISED STANDARD TERMS AND CONDITIONS FOR RUSSELL COUNTY BOARD OF SUPERVISORS**

1. Potesta & Associates, Inc., hereinafter referred to as POTESTA, is an Equal Opportunity Employer and is in compliance with the Drug-Free Workplace Act of 1988 and governmental requirements relating to Right-To-Know regulations. The engineering and consulting services of POTESTA will be performed on an hourly basis for all time rendered to the project, unless the project is quoted for a lump sum, including project scoping by professional, technical, and clerical personnel in accordance with the attached hourly rate schedule. All invoice charges are based on and are payable in U.S. dollars.
2. Services performed by POTESTA under this Agreement will be conducted 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, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.
3. Unless stated otherwise, any cost estimate presented in the attached proposal is for budgetary purposes only and is not a fixed lump-sum price. The actual cost of POTESTA's engineering and consulting services and all expenses may be less than that estimated; accordingly, only the cost incurred will be invoiced. If at any time during the progress of the work it appears that the estimated cost will be exceeded, Client will be informed immediately. However, unless written notification is received to stop work, POTESTA will continue working on the project to completion and will invoice Client for all engineering and consulting services and expenses incurred.
4. These terms are subject to and incorporate the provisions of POTESTA's attached proposal. In the event of any conflict, the terms of the accompanying proposal shall govern.
5. Invoices will be submitted periodically as required (but not more frequently than every two (2) weeks) unless charges for such periods are minimal, in which event an invoice will be submitted when total charges exceed \$500.00, or when the work is completed, whichever occurs first. Invoices are due and payable within 30 days from the date of invoice. All delinquent charges are subject to a service charge of 1½ percent per month or a fraction thereof. Should Client fail to pay any invoice within 45 days of its date, POTESTA may, upon 3 days' written notice to Client, stop work and recover from Client payment for all work executed. ***Clients requiring specific invoice formats or accounting backup (copies of timesheets, copies of receipts or invoice support data, etc.) will be invoiced for those associated costs; these costs are not included in our proposal and will be invoiced in addition to the approved proposal costs.***

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6. Client agrees to limit POTESta's liability to Client and to all construction contractors and subcontractors on the project due to POTESta's professional negligent acts, errors, or omissions, such that the **total aggregate liability of POTESta to all those named shall not exceed \$50,000 or POTESta's total fee** for all expenses and services rendered on this project, whichever is greater.
7. POTESta shall indemnify and hold harmless the Client, its officers, directors, shareholders and employees (collectively, "Client Indemnities"), from and against those liabilities, losses, damages, and costs (including reasonable attorney's fees where recoverable by law) that Client is legally obligated to pay as a result of third party claims, to the extent caused by the intentional or negligent act, error, or omission of POTESta or anyone for whom POTESta is legally responsible, subject to any limitations of liability contained in this Agreement.

Client shall indemnify and hold harmless POTESta, its officers, directors, shareholders and employees (collectively, "Client Indemnities"), from and against those liabilities, losses, damages, and costs (including reasonable attorney's fees where recoverable by law) that POTESta is legally obligated to pay as a result of third party claims, to the extent caused by the intentional or negligent act, error, or omission of the Client or anyone for whom the Client is legally responsible, subject to any limitations of liability contained in this Agreement.

8. Time required for POTESta personnel to travel between POTESta's office and the site (or other destination applicable to the project) is charged in accordance with the attached hourly rate schedule.
9. POTESta expenses shall be charged according to the attached Field Supply and Equipment Rate Sheet. External expenses, such as airfare, subcontracted services, etc., shall be charged at direct cost (including taxes) plus a twelve percent (12%) surcharge to the project. A per diem (daily food allowance) of \$35.00 per day will be charged for all personnel required by the work to remain away from their normal residence. For those working out of the office area, but not spending the night, an allowance for lunch (\$6.50 maximum) and, if arriving back after 7:30 p.m., for dinner (\$17.50 maximum) may be charged. Lodging will be charged at \$90.00/night, except in limited availability areas where it will be charged at direct cost plus a twelve percent (12%) surcharge.
10. Specialized equipment purchased with Client's approval specifically for the project will become Client's property upon completion of the work. The purchase price and maintenance cost of such equipment shall be charged to Client at cost plus twelve percent (12%).
11. Client acknowledges that POTESta's reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, permit applications and other similar

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documents are instruments of professional service, not products. Although ownership of such documents normally is retained by POTEOTA, they nonetheless shall, in this instance, become the property of Client upon Client's payment in full of all POTEOTA invoices. Client recognizes that no such documents should be subject to unauthorized reuse; that is, reuse without written authorization of POTEOTA to do so. Such authorization is essential because it requires POTEOTA to evaluate the documents' applicability given new circumstances, not the least of which is passage of time. Accordingly, in return for POTEOTA's relinquishment of ownership, Client agrees to waive any claim against POTEOTA and defend, indemnify and hold POTEOTA harmless from any claim or liability for injury or loss allegedly arising from unauthorized reuse of POTEOTA's instruments of service. Client further agrees to compensate POTEOTA for any time spent or expenses incurred by POTEOTA in defense of any such claim, in accordance with POTEOTA's prevailing fee schedule and expense reimbursement policy. Client agrees that POTEOTA may retain one set of documents for their files and use.

12. Client recognizes that conclusions regarding the assessed condition(s) of the site do not necessarily represent a warranty that all portions of the site are of the same quality. Specific conditions may not be observable or readily interpreted from available documents, but may become evident at a later date. POTEOTA will be responsible for data it collects, its interpretations and recommendations, but shall not be responsible for the interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys or explorations and the information and recommendations developed by POTEOTA are based solely on the information available from such borings, surveys and explorations.
13. The responsibility of POTEOTA's field representative(s) is to make observations and conduct field tests. This work does not include supervision or direction of the work of the contractor, his employees, or agents. The contractor should be so advised. The contractor should also be advised that neither the presence of POTEOTA's field representative nor the observation and testing by POTEOTA shall excuse him in any way for defects discovered in his work. Any review and/or observation of the contractor's performance by POTEOTA does not include the contractor's safety measures on or near the construction site. The contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Unless specifically stated in POTEOTA's proposal, construction review and/or observation is not included in the scope of services. As indicated in Item 13 above, POTEOTA should be allowed to perform construction observation services; a separate proposal will be prepared after construction documents are available.
14. Soil, rock, water and/or other samples obtained from the project site are the property of Client. POTEOTA will preserve such samples for no longer than ninety (90) calendar days after the issuance of any document that includes the data obtained from them, unless other

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arrangements are mutually agreed upon in writing. Further storage or transfer of samples will be made at Client's expense. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from POTEOTA's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Due to the risks to which POTEOTA is exposed, Client agrees to waive any claim against POTEOTA, and to defend, indemnify and hold POTEOTA harmless from any claim or liability for injury or loss arising from POTEOTA's containing, labeling, transporting, testing, storing or other handling of contaminated samples unless employees or agents of POTEOTA are grossly negligent in containing, labeling, transporting, testing, storing or other handling of contaminated samples. Client also agrees to compensate POTEOTA for any time spent and expenses incurred by POTEOTA in defense of any such claim, with such compensation to be based upon POTEOTA's prevailing fee schedule and expense reimbursement policy.

15. Unless otherwise agreed, Client or Owner will furnish right-of-entry on the land and/or facilities for POTEOTA to make the planned borings and other explorations and perform necessary sampling. POTEOTA will take reasonable precautions to minimize damage to said land or facilities from use of POTEOTA's equipment and operations. If Client or Owner desires POTEOTA to restore the land or facilities to their former condition, this will be accomplished at the expense of the Client or Owner.
16. In the execution of Client's work, POTEOTA will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. The Client and Owner agree to hold POTEOTA harmless for any damages to subterranean structures or utilities which are not called to POTEOTA's attention, or are not correctly shown on the plans furnished.
17. Client agrees to advise POTEOTA about the presence of any known hazardous substances or any known condition(s) existing in, on, or near the site presenting a potential danger to human health or the environment. If during performance of services, any unforeseen hazardous substances or other unforeseen conditions or occurrences, in, on, or near the site presenting a potential danger to human health or the environment are encountered which, in the judgment of POTEOTA, significantly affect or may affect the services or the recommended scope of services, POTEOTA will promptly notify Client thereof. Subsequent to that notification, Client and POTEOTA agree to pursue one of the following options:
  - a. If practicable, in the judgment of POTEOTA, the original scope of services will be completed in accordance with the procedures originally intended in POTEOTA's proposal for services.

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- b. The scope of services will be modified and the estimate of charges revised to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated therein.
  - c. The services for the work in POTEOTA's proposal will be terminated, effective on the date specified in writing by POTEOTA, and POTEOTA shall recover any extra charges associated with the previously unforeseen conditions or occurrences, as well as any charges up to such date for the originally proposed services.
- 18. Neither the Client nor POTEOTA may delegate, assign, sublet or transfer their duties or interest, as described in the Standard Terms and Conditions and accompanying proposal, without the written consent of the other party. Unless stated otherwise, POTEOTA's proposal is firm for 90 days.
- 19. In the event that a dispute should arise relating to the performance of the services to be provided under the Standard Terms and Conditions and the proposal, it is agreed that the dispute shall be mediated. Should mediation fail and litigation result, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, including staff time, court costs, attorney's fees, and other claim-related expenses.
- 20. The law of the Commonwealth of Virginia will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement. All legal proceedings shall be filed in the Commonwealth of Virginia.
- 21. POTEOTA may submit to Client an opinion of the probable cost required to construct work. POTEOTA is not a construction cost estimator or construction contractor, nor should POTEOTA's rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. POTEOTA's opinion will be based solely upon their own experience with construction. This requires POTEOTA to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which POTEOTA has no control. Given the assumptions which must be made, POTEOTA cannot guarantee the accuracy of their opinions of cost, and—in recognition of that fact—Client waives any claim against POTEOTA relative to the accuracy of POTEOTA's opinion of probable cost.

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22. Client or POTESta may terminate this Agreement upon fourteen (14) days' written notice to the other for reasons included in the notice. In the event such termination becomes necessary, the party effecting termination shall so notify the other party in writing, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause therefore, Client shall within thirty (30) calendar days of termination remunerate POTESta for services rendered and costs incurred, in accordance with POTESta's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred up to the time of termination, as well as those associated with termination and post-termination activities, such as demobilization, decontaminating and/or disposing of equipment, disposal and replacement of contaminated consumables, and so on. Should the contract be terminated by the Client for breach of contract by POTESta or should the contract be terminated for convenience by POTESta, the Client shall not be responsible for any services including services associated with the termination itself, such as demobilizing, modifying schedules, and reassigning personnel, or any costs associated with the termination and post termination activities, such as demobilization, decontaminating and/or disposing of equipment, and disposal and replacement of contaminated consumables.
23. Client shall not be liable to POTESta and POTESta shall not be liable to Client for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or POTESta, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
24. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and POTESta shall survive the completion of the services hereunder and the termination of this Agreement.
25. POTESta shall indicate to Client the information needed for rendering of services hereunder, and Client shall provide to POTESta such information as is available to Client. Client recognizes that it is not possible for POTESta to assure the sufficiency of such information, either because it is not possible to do so, or because of errors or omissions which may have occurred in assembling the information. Accordingly, Client waives any claim against POTESta, and agrees to defend, indemnify and hold POTESta harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to POTESta by Client. Further, Client agrees to compensate POTESta for any time spent or expenses incurred by POTESta in defense of any such claim, with such compensation to be based upon POTESta's prevailing fee schedule and expense reimbursement policy.



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26. This Agreement shall not create any rights or benefits to parties other than Client or POTESta. No third-party shall have the right to rely on POTESta's opinions rendered in connection with POTESta's services without POTESta's written consent and the third-party's agreement to be bound to the same terms and conditions as Client.
27. If, for any reason, any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
28. For engagements that we accept for other than regular clients, our normal practice is to require a retainer or security deposit in advance of our performing any significant services. On occasion, such a deposit is required at a later time due to payment irregularities. The engagement letter will state whether an advance has been required before undertaking a particular representation.
29. POTESta will not have any obligation to issue a report or other document, or communicate our research, analyses, or conclusions, and will not have any obligation to appear for or provide written or oral testimony or evidence at trial, deposition or elsewhere, until Client's account is paid in full. POTESta will have no liability to the Client, or any other person, by reason of not issuing a report, appearing for, and/or providing testimony or other evidence because of the Client's failure to pay all amounts due POTESta, and the Client agrees to indemnify POTESta against any such liability.
30. **CERTIFICATIONS**
  - 31.1 For purposes of this Agreement, "certification" means to state or declare a professional opinion based on the standard of performance set forth in Item 2 above.
  - 31.2 POTESta shall not be required to execute certificates that would (i) result in POTESta having to certify, guarantee or warrant the existence of conditions whose existence POTESta cannot reasonably ascertain under the existing Services; (ii) require knowledge, services or responsibilities beyond the Services; or (iii) require POTESta to make a certification that would exceed what may reasonably be expected from firms of similar experience and expertise providing services of a similar nature. In addition, Client agrees not to make resolution of any dispute with POTESta or payment of any amount due to POTESta in any way contingent upon POTESta executing such certificate.

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- 31.3 A professional's certification in no way relieves other parties from meeting their respective requirements imposed by contract or other means, including commonly accepted industry standards and practices. If required as a part of its Services, POTESTA will provide a written report stating whether, in POTESTA's professional opinion and based on periodic site visits, the construction work complies generally with the Contract Documents.