

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
 (“Owner”) and Nortex Foundation Design, Inc. (“Nortex”)

Nortex agrees to provide to Owner:

Description of Nortex’s Services: Foundation design and inspection services based on Geotechnical Report provided by owner. Owner agrees to construct foundation following the plan specification provided.

Owner and Nortex further agree as follows:

1.01 Basic Agreement

A. Nortex shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Nortex for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Nortex will prepare a monthly invoice in accordance with Nortex standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable by the 10th of each month. If Owner fails to make any payment due Nortex for services and expenses within 15 days after due-date, the amounts due Nortex may be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Nortex may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Nortex has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Nortex shall furnish services in addition to those set forth above.

B. Owner shall pay Nortex for such additional services as follows: For additional services of Nortex’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Nortex’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Nortex’s consultants’ charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement’s terms through no fault of the terminating party.

b. By Nortex:

1) upon seven days written notice if Nortex believes that Nortex is being requested by Owner to furnish or perform services contrary to Nortex responsibilities as a licensed professional; or

2) Upon seven days written notice if the Nortex services for the Project are delayed or suspended for more than 90 days for reasons beyond Nortex control.

3) Nortex shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Nortex.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Nortex to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state Texas.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Nortex each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Nortex (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Nortex) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Nortex may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Nortex under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Nortex makes no warranties, express or implied, under this Agreement or otherwise, in connection with Nortex services. Nortex and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Nortex shall not at any time supervise, direct, or have control over any contractors work, nor shall Nortex have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractors work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractors work.

C. Nortex neither guarantees the performance of any contractor nor assumes responsibility for any contractors failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Nortex shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractors agents or employees or any other persons (except Nortex's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Nortex.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract@ as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Nortex are instruments of service, and Nortex retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Nortex (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the

Project, and (2) agree that Nortex's total liability per project to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Nortex, whichever is greater.

H. The parties acknowledge that Nortex's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Nortex or any other party encounters a Hazardous Environmental Condition, Nortex may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate,

9.01 Payment (Lump Sum Basis)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Nortex as follows:

1. Attached as "Appendix 1"

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

NORTEX:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

License or Certificate No. and State

Address for giving notices:

4416 Keller Hicks Road

Fort Worth, Texas 76244

Address for giving notices:

remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Nortex and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.