

## **Reserve Analysis Terms & Conditions**

Reserve Analysis Terms & Conditions ("Terms") are an integral part of the Contract entered into by and between PAUL HUIJING, INC., Doing Business As ADVANCED RESERVE SOLUTIONS, hereinafter referred to as Consultant, and the Client identified in the title block of the attached proposal letter ("Letter"), which Letter is incorporated herein and made a part hereof (the Letter and the Terms constitute the "Contract" between the parties). The term "Client" as used herein includes the agents and employees of Client. The Contract enumerates the services Consultant shall provide to Client as well as the duties and obligations of Client and Consultant in connection with the performance of such services. In consideration of the mutual promises and obligations enumerated in the Contract, Consultant and Client agree as follows:

### **I. CONSULTANT DUTIES & OBLIGATIONS**

Consultant shall diligently proceed with the preparation of a Reserve Analysis Report ("Report") identifying, among other things, the reserve components that the Client advises Consultant in writing that Client is obligated to maintain in connection with the real property identified in the title block of the Letter (the "Property"). This analysis will be calculated in a manner chosen by Consultant based upon applicable circumstances and Consultant's best judgment.

- Consultant will deliver a draft Report to Client via email as an Adobe Acrobat "pdf" file. A printed draft Report ("hard copy") will be provided to Client upon written request.
- Consultant shall discuss minor changes and/or revisions to the draft Report (if such changes or revisions are required) with Client's authorized representative, make appropriate changes to the draft Report and, upon acceptance of the changes, deliver a final Report to Client via email as an Adobe Acrobat "pdf" file. A printed final Report ("hard copy") will be provided to Client upon written request at additional cost.

### **II. CLIENT DUTIES & OBLIGATIONS**

Client shall provide and Consultant shall retain legible copies of the following items:

- Map of Client's common areas.
- Client's Governing Documents
  - Covenants, Conditions, & Restrictions (CC&Rs)
  - Master Deed
  - Declaration of Trust
- Client's most recent financial statements
- Client's most recent reserve analysis prepared by another firm, if applicable
- Client's Department of Real Estate budgets.
- Listing of Client's maintenance contractors (i.e., landscape, etc.).
- Written disclosure of any conditions, whether structural, cosmetic, environmental, geological or otherwise, of which Client is aware that has or may reasonably be expected to impact Consultant's calculations with respect to the estimated useful life and/or repair or replacement cost of the components included in the Report.

In addition, Client shall provide keys and/or other devices required for Consultant to gain access to the common areas of the Property. Consultant is granted permission to enter onto and access the common areas of the Property.

Client hereby acknowledges and agrees that with regard to the disclosures the Client assumes full responsibility for all such disclosures and their content and, further, the information provided by Consultant pursuant to this Contract shall be qualified in the text of any such disclosures as follows: "The information contained in this Disclosure Summary includes (i) estimates of replacement value and life expectancies of the components and (ii) assumptions regarding future events. Estimates are projections of a future event based on information currently available and are not necessarily indicative of the actual future outcome. The longer the time period between the estimate and the estimated event, the more likely the possibility of error and/or discrepancy. For example, some assumptions inevitably will not materialize and unanticipated events and circumstances may occur subsequent to the preparation of the this Disclosure Summary. Therefore, the actual replacement cost and remaining life may vary from this report and summary and the variation may be significant. Additionally, inflation and other economic events may impact this report and summary, particularly over an extended period of time (such as thirty (30)

years) and those events could have a significant and negative impact on the accuracy of this Disclosure Summary and, further, the funds available to meet the association's obligation for repair and/or replacement of major components during their estimated useful life. Furthermore, the occurrence of vandalism, severe weather conditions, earthquakes, floods, acts of nature or other unforeseen events cannot be predicted and/or accounted for and are excluded when assessing life expectancy, repair costs and/or replacement costs of the components." Except where specifically indicated, the Disclosure Summary only includes items that the Client has advised its consultant in writing that the Client has a clear and express responsibility to maintain, pursuant to its CC&Rs or otherwise. Based on the foregoing, Client may want to consider supplementing, expanding or modifying the form of Assessment and Reserve Funding Disclosure Summary ("Summary") to clarify the information delivered to its members, so long as the minimum information set forth in the Summary is also provided. Client further acknowledges and agrees that, based on the foregoing, it would be in its best interest, and that of its members, to review its reserve fund and most recent Reserve Analysis Report on an annual basis.

Client shall respond to Consultant's requests for, and provide all, additional information as may be necessary for Consultant to perform its obligations under this Contract. Client's approval of the draft Report and any changes thereto, if any, shall be confirmation of Client's representations as to the accuracy of the content of all documents and other information provided to the Consultant for purposes of this engagement and the preparation of the Report including, without limitation, the list of components required to be maintained by Client included in the Report.

### **III. CONSULTANT FEES & EXPENSES**

This Contract shall be considered a fixed price contract. The fee paid to Consultant shall cover all services enumerated in this Contract. The fixed price contract amount shall be paid to Consultant as follows:

- 50% due upon Client's acceptance of this Contract.
- 50% due upon delivery of the First Draft Reserve Analysis Report.

Terms shall be "Net 30." Invoices are due within thirty (30) days after the invoice date. Past due accounts are subject to a service charge of two percent (2%) of the unpaid balance per month, or \$5.00, whichever is greater. Additional services, not anticipated or specifically enumerated in this Contract, requested by Client, shall be billed at Consultant's standard hourly rate for such services at the time they are rendered. Except for one incident of minor revisions or corrections, Consultant shall bill for additional time and/or expenses associated with revisions, meetings and/or presentations. Such additional services requested by Client shall be considered as part of this Contract, whether or not they are requested in writing.

### **IV. CONSULTANT LICENSE(S)**

Consultant shall at all times hold a federal and/or state license(s) necessary to perform the services enumerated in this Contract, if such a license(s) exists.

### **V. INDEPENDENT CONTRACTOR**

Consultant shall at all times act in the capacity of an independent contractor. At no time, and in no event, do the parties to this Contract contend that Consultant, their employees, representatives, or agents shall be considered as employees, partners or agents of Client.

### **VI. INSURANCE**

Consultant shall obtain and maintain during the term of this Contract worker's compensation insurance as required by law, and comprehensive general liability insurance coverage with limits of not less than One Million Dollars (\$1,000,000.00). Upon request, and at Client's sole cost and expense, Client will be named as an additional insured where possible and Consultant will provide Client with a Certificate of Insurance evidencing said insurance before any work commences. Consultant will request that its insurer endeavor to provide Client with a thirty (30) day notification of any cancellation, alteration or termination of any referenced insurance coverage.

### **VII. LIMITATIONS OF SERVICES**

Consultant will diligently proceed with the services enumerated in this Contract and report to Client in a timely manner, except for delays occasioned by factors beyond Consultant's control, by factors that were not reasonably foreseeable, or by factors initiated or occasioned by Client. Consultant will

assume that all reserve components have been properly designed, constructed and maintained unless notified in writing to the contrary by Client. Any such notice by Client should specify, in detail, the specifics of any factors that will impact Consultant's estimate calculations. Data and information used in Consultant's analyses are a matter of opinion only based on Consultant's best judgment and experience. Client acknowledges that Consultant has no control over the costs of labor, material or equipment, over contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, Consultant cannot and does not warrant that bids or actual costs will not vary substantially from any statement or estimate of probable cost. Additionally, Consultant does not warrant estimated useful life as set forth in this Report.

Consultant will perform all services enumerated in this Contract in accordance with current standards of practice, except as otherwise provided herein. No other warranty, expressed or implied, is made concerning services performed under this Contract, including Consultant's findings, recommendations or professional advice. Consultant's liability to Client, due to Consultant's negligent acts, errors or omissions, shall be limited to ten thousand dollars (\$10,000.00) or the amount of Consultant's fee, whichever is less. In no event shall Consultant be liable, directly or indirectly, for any direct or consequential damages of any kind due to Consultant's failure to perform or performance under, or the termination, cancellation or expiration of this Contract.

#### **VIII. INDEMNIFICATION**

Consultant shall not be responsible for, and Client shall defend, hold harmless and indemnify Consultant, its officers, directors, agents, employees, and representatives from and against all claims, damages, losses, and expenses (including reasonable attorneys' fees and court costs) arising out of or resulting in whole or in part from (i) any inaccurate information furnished to Consultant by Client, negligence, gross negligence, willful misconduct or omission of Client, its employees, agents, or principals (provided, however, that Client shall not be required to defend, hold harmless or indemnify Consultant for Consultant's willful misconduct or gross negligence), or (ii) Client's failure to deliver report to its members.

#### **IX. ADDITIONAL CONSULTANT(S)**

If during the performance of services enumerated in this Contract, Consultant or Client determine that an additional consultant(s) is necessary for the proper determination of the present condition, probable useful life or probable remaining life of a component, it shall be the Client's sole responsibility to hire, supervise and compensate such additional consultant(s).

#### **X. THIRD PARTY LITIGATION**

In any litigation involving Client and any third party or parties, in which Consultant is compelled by subpoena or judicial order to testify at a deposition or trial, or to produce documents regarding work performed by Consultant for Client, Client agrees to compensate Consultant, at Consultant's standard hourly rate, for all time spent by Consultant responding to such legal process, including all time spent in preparation for, and travel to and from, such testimony. Client shall also pay Consultant's reasonable attorneys' fees and expenses incurred with the foregoing. In the event of such subpoena or judicial order, Consultant will give prompt notice to Client to allow Client to object to any such testimony or production of documents.

#### **XI. TERM SURVIVAL OF TERMS AND TERMINATION OF CONTRACT**

The term of this Contract ends upon the delivery of the final Report or one (1) year, whichever occurs first. This Contract may be terminated by either party to this Contract with or without cause and without penalty charge upon ten (10) days written notice to the other party. In the event of termination, Consultant shall be entitled to payment of fees for services rendered and reimbursable expenses incurred through the effective date of termination. In addition to the survival language contained in any other provision of this Contract, any provision of this Contract that, by its sense and context, is intended to survive the termination of this Contract, shall so survive this Contract.

The term of this Contract may be extended and/or renewed upon mutual execution of an update proposal that makes reference to the terms and conditions as set forth in this Reserve Analysis Terms and Conditions.

#### **XII. SCOPE OF CONTRACT**

This Contract is deemed effective when accepted by Consultant and upon acknowledgement of receipt by Consultant of a fully executed (signed and dated) Letter (including Terms). These Terms and the attached Letter constitute the entire Contract between Consultant and Client concerning the subject matter addressed therein and supersedes any prior or contemporaneous contracts, discussions and/or agreements between the parties. No party is relying upon any warranties, representations or inducements not set forth in this Contract. Any provision of this Contract that violates any law shall be deemed stricken from the Contract and the remaining terms and conditions of this Contract shall remain in full force and effect.

#### **XIII. ENFORCEMENT OF CONTRACT**

Any legal action or proceeding to enforce or interpret this Contract shall be governed by the laws of Massachusetts, without regard to the choice of law rules thereof, except to the extent that United States law preempts state law. The venue for any such action shall be in the Hampden County Massachusetts and, further, by executing this Contract, Client submits to the personal jurisdiction of Massachusetts. If any legal action or proceeding is instituted by any person to enforce or interpret this Contract, the prevailing party in any such action or proceeding shall be entitled to recover from the other party or parties its costs and expenses in connection therewith, including without limitation, reasonable attorneys' fees and the costs and expenses of litigation. No action may be brought in connection with this Contract more than one (1) year after the accrual of such action. This Contract is entered into for the exclusive benefit of the specific parties signing this Contract, and no other person or entity shall have any rights under, or ability to enforce, the terms of this Contract. Both parties hereto waive the right to a jury trial.

#### **XIV. NOTICES, AMENDMENTS AND WAIVERS**

All amendments to, notices and waivers of obligations under this Contract must be in writing. Client and Consultant must sign all amendments and waivers of obligations. Notices to a party shall be duly and properly given and delivered upon the earlier of personal delivery, confirmation of facsimile transmission or three (3) business days after deposit in the United States mail, postage prepaid, in each case properly addressed to the party to receive notice at the address or facsimile number set forth on the attached Letter.

#### **XV. AUTHORIZATION**

Each party hereunder represents and warrants that the execution, delivery and performance of this Contract have been duly authorized, that such party and the person executing this Contract on behalf of such party have full power, right and authority to execute, deliver and perform this Contract, and that such execution, delivery and performance do not conflict with, and will not result in the breach of, any term, condition or provision of any other agreement, instrument, order, judgment or decree.

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