



“There is no substitute for experience”

CONSTRUCTION CONSULTANT / LITIGATION CONSULTANT CONTRACT

CONTRACT PROVISIONS:

1. All time is measured portal to portal.
2. The good-faith retainer will be credited to a retainer account. Accumulated charges will be billed against the retainer for each billing period, with payments re-establishing the retainer account balance for the next billing period, the final bill will be charged to the retainer account, any overages in the retainer account to be returned to the client. When the services of the construction consultant/expert witness are retained but not used in good faith, the full retainer amount shall be forfeited by the client and kept by the construction consultant/expert witness as payment for having been “on standby” for the client.
3. Unless otherwise agreed to in writing, the “client” is the person to whom the cover letter is addressed, along with his or her employer if it is included as part of the client’s address. The individual client warrants his/her authority to bind the principal. If one or more other parties are to be responsible, each must sign a copy of the contract and each attachment page and return them to the construction consultant/expert witness’ office. In the event responsibility for the case changes hands, or in the event of a change of personnel, no entity is relieved of responsibility without the written approval of the construction consultant/expert witness.
4. In the event the individual addressee is employed by a public agency and the public agency is to be responsible, the individual addressee warrants his or her authority to bind the public agency unless otherwise stated in writing or unless the agreement is executed by the appropriate authority.
5. The client is responsible for paying all fees and expenses of the construction consultant/expert witness related to this engagement of services. This shall include activities in response to discovery efforts by other parties. As a courtesy, if the client wishes, after deducting the charges from the retainer, the construction consultant/expert witness will bill opposing parties for time and expenses involved in responding to discovery, these payments, if any, will be credited to the retainer upon clearing of the payment.
6. Trips requiring overnight stays will be billed for time spent on the case between 8:00 a.m. and 5:00 p.m., or such greater time as is actually worked and traveled.
7. The construction consultant/expert witness reserves the right to bill for lost or wasted time in the event of a cancellation, whether the cancellation is caused by the client or the opposing party.
8. Fees and expenses will be deducted from the retainer as time and expenses accrue; amount to reestablish the retainer amount will be billed monthly, unless other arrangements are made with the construction consultant/expert witness.
9. Rates are subject to change on a calendar-year basis without notice.
10. Payment is due from the client within ten (10) days of the invoice, unless different arrangements are made in writing with the construction consultant/expert witness. The construction consultant/expert witness reserves the right to charge a late fee of 1-1/2% per month, or fraction thereof, on all invoices not paid within ten (10) days of the date due. The client shall pay any and all collection costs, including any legal fees and costs incurred by the construction consultant/expert witness in connection with the collection of his or her account.
11. Unless expressly agreed to by the construction consultant/expert witness in writing, any cost estimates for services stated are for the client’s budgeting purposes only, and are not quotes that are binding on the construction consultant/expert witness.

12. The client agrees to inform the construction consultant/expert witness of all history, facts, relationships and circumstances relevant to this agreement or the construction consultant/expert witness' assignment that are available to the client. The client further agrees to advise the construction consultant/expert witness of the disposition of the case promptly and to advise whether there will be future need for the construction consultant/expert witness' services related to the incident which was addressed.
13. The client agrees to be responsible for, and to make all necessary provisions for, the construction consultant/expert witness to have access upon such public or private land as is necessary for the construction consultant/expert to perform the necessary investigation and services.
14. Confidentiality. The construction consultant/expert witness agrees that the client's identification and all information obtained from the client is and shall remain confidential and that the construction consultant/expert witness shall not release any information to any third party without the express permission of the client or a specific court order or subpoena. The construction consultant/expert witness shall not respond to any subpoena, court order or request therefore without first giving the client reasonable notice of the request, subpoena or court order.
15. The construction consultant/expert witness shall keep detailed records, as deemed necessary by the construction consultant/expert witness' sole discretion, of the investigation undertaken in regard to the incident in question. These records may include notes, sketches, drawings, photographs, recordings, videos, etc., as deemed necessary by the construction consultant/expert witness, which will illustrate the findings of the construction consultant/expert witness. The client, prior to actions being taken by the construction consultant/expert witness, may request photographs to be standard print photographs, slides, digital photos, or a combination of the different types of photographs, with digital photos being the default photographic record means without other notification.
16. Throughout the investigation, the construction consultant/expert witness shall keep the client apprised of the status and results of the investigation. Status reports may be oral or written, as may be appropriate under the circumstances; no written reports shall be provided unless requested by the client or deemed necessary by the consultant/expert witness.
17. To the extent possible or permissible, the construction consultant/expert witness will take custody of and maintain safe and secure any physical objects or articles requested by the client which the construction consultant/expert determines may be useful in describing the findings of the construction consultant/expert witness to others, or which the construction consultant/expert witness determines should be subjected to special testing. The construction consultant/expert witness will use reasonable care to safeguard such objects or articles; however, the construction consultant/expert witness will not be liable for the loss, damage, or destruction of such objects or articles if such loss, damage, or destruction was beyond the direct control of the construction consultant/expert witness.
18. Research reports, drawings and other documents prepared by the construction consultant/expert witness are instruments of service and shall, unless otherwise agreed, remain the property of the construction consultant/expert witness. The client may retain copies, but the information contained therein may not be used on any other case or project without the express written consent of the construction consultant/expert witness. The construction consultant/expert witness reserves the right to copyright documents prepared by the construction consultant/expert witness as instruments of service, subject to a license to the client for his or her own purposes. This provision is designed for the protection of the construction consultant/expert witness' interests in the event the requirements of discovery suggest a widespread dissemination of the construction consultant/expert witness' prepared documents unconnected with litigation arising from this case.
19. The construction consultant/expert witness agrees and warrants that he/she will provide the client with his/her best professional thought and judgment in performing the agreed services. The client agrees that no other warranty, responsibility or liability shall pertain, and any liability which the construction consultant/expert witness may incur here from shall not exceed the amount of the previously paid fee for those services related to the disputed action(s)/activity(ies) of the construction consultant/expert witness.
20. The construction consultant/expert witness is retained and employed by the client only for the limited extent of serving as a forensic consulting construction consultant/expert witness, and the construction consultant/expert witness' relation to the client shall, during the periods of rendering the services hereunder, be that of an independent contractor. The construction consultant/expert witness shall be free to dispose of such portion of his/her time, energy and skill during regular business hours as is not required for service to the client in such a manner as he/she may see fit, and for such person, firms or corporations as he/she may deem advisable. The construction consultant/expert witness shall not be considered eligible under the provisions of this agreement or otherwise in any of the client's group insurance plans or worker's compensation benefits, nor shall the construction consultant/expert witness be entitled to participate in any other plans, arrangements or distribution by the client pertaining to, or in connection with, a pension, stock bonus, profit sharing or similar benefits for the client's regular employees.

21. The construction consultant/expert witness shall not be held liable for any delay or failure to perform the assignment which is the subject of this agreement if such delay or failure is incurred directly or indirectly by fire, flood, explosion or other casualty, strike, labor disturbance, state of war, insurrection, riot, government regulation, either existent or future restriction, appropriations, or any other cause beyond the direct control of the construction consultant/expert witness.
22. The construction consultant/expert witness has instituted policies of hiring which are in accordance with the Federal Civil Rights Act of 1964, the Fair Employment Practices laws of the states in which the construction consultant/expert hires and in compliance with Presidential Order 11246. The construction consultant/expert witness attempts to maintain a staff, as needed and when needed, of capable, loyal, conscientious individuals, without regard to race, creed, color, age, origin or sex.
23. This agreement is to be covered by the law of the principal place of business of the construction consultant/expert witness.
24. All disputes for collection of monies due under this agreement, except as otherwise herein provided, shall be submitted to binding arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association. Arbitrable issues under this paragraph shall be limited to the construction consultant/expert witness' enforcement of the charge by the construction consultant/expert witness under this agreement, exclusive of any counter, cross claims or offsetting claim arising out of, or relating to, services performed by the construction consultant/expert witness under this agreement. Enforcement and execution on any arbitration award in favor of the construction consultant/expert witness entered pursuant hereto shall not be stayed pending resolution by a court of law.
25. A good-faith retainer in the amount of: \$ _____ (**based on anticipated billing period amounts or \$7,500.00, whichever is greater**), shall be deposited with the construction consultant/expert witness prior to performance of services. Such good faith retainer shall be administered as outlined in this document in provision 2 above.

Make payment payable to:
Jerry Peck
 3 Whispering Pines Trail
 Ormond Beach, Florida 32174

I have read, understand, and agree to all the terms and provisions stated above as Provisions 1 through 25 of the Construction Consultant / Litigation Consultant Contract:

Client's signature: _____ Date: _____

Print name: _____

Print address: _____

Client's signature: _____ Date: _____

Print name: _____

Print address: _____

For Jerry Peck / Construction Litigation Consultants

Signature: _____ Date: _____