

# PROPOSAL/AGREEMENT

WADE CONSTRUCTION LC  
P.O. BOX 651272  
Salt Lake City, Utah 84165  
(801) 735-9500

WADE CONSTRUCTION LC (“Wade”) hereby proposes to furnish labor, equipment, materials, and supplies for the completion of the work described below (the “Work”). This Proposal does not include design services. Design services, if desired, shall be contracted for and paid for by Client prior to entering into this Agreement.

**DESCRIPTION OF WORK:**

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**PRICE:**

Wade hereby proposes to perform the Work for a total lump sum of \_\_\_\_\_, \$ \_\_\_\_\_ (the “Contract Price”). The balance shall be due immediately upon completion of the Work, or within ten (10) days of any progress billings as in the case of progress payments for portions of the Work during lengthy projects or during phases of construction or remodeling.

This Proposal, the Acceptance of Proposal and Sales Agreement, and Wade’s Additional Terms and Conditions, enclosed herewith, constitute the entire agreement between Client and Wade, and may only be modified in a separate writing signed by the party against whom enforcement is sought.

**This Proposal shall be void if not accepted in writing within 30 days of the date it was signed by Wade’s representatives.**

WADE CONSTRUCTION LC

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Office/Position)*

\_\_\_\_\_  
*(Office/Position)*

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

***(Two signatures by authorized Wade representatives are required for Proposal/Agreement to be valid; see Section 1.j. below.)***

**ACCEPTANCE OF PROPOSAL AND SALES AGREEMENT**

For valuable consideration, the legal sufficiency of which is hereby acknowledged, this Proposal is accepted and is a binding contract (the "Agreement"). Wade is authorized to perform the work described herein. Wade shall be paid according to the terms set forth herein. Client acknowledges receipt of Wade's Additional Terms and Conditions, all of which are incorporated herein and made a part hereof.

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Office/Position)*

DATED: \_\_\_\_\_

# ADDITIONAL TERMS AND CONDITIONS

## 1. Contract Formation and the Scope of Work

- a. The labor, equipment, services, or materials supplied (the “Work”) by Wade Construction shall be provided to the Client (“Client”) only pursuant to these Additional Terms and Conditions; provided, however, that in the event that a negotiated Master Service Agreement or Master Sales Contract applicable to the Work has been previously executed between Client and Wade Construction, the negotiated Master Service Agreement or Sales Contract Master Contract shall govern the relationship between the parties with respect to the Work.
- b. Contract formation and acceptance by Wade is expressly conditioned upon Client’s acceptance of the terms of the Agreement, including these Additional Terms and Conditions. If the terms of this Agreement are not acceptable, Client must notify Wade of its objections at once.
- c. Wade objects to and shall not otherwise be bound by any additional or different terms, whether implied, verbal, printed, or otherwise, in Client’s orders for Work or in any other communication from Client to Wade.
- d. The Agreement shall be for the benefit of Wade and Client and not for the benefit of any other person. Prior courses of dealing, trade usage, and verbal agreements not reduced to writing and signed by Wade, to the extent they differ from, modify, add to, or detract from the Agreement, shall not be binding on Wade and are void ab initio. There are no agreements, promises, or understandings, either verbal or written, that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions.
- e. Offers, bids, estimates, quotes, prices, rates, costs, proposals, etc. (hereafter “Proposal”), from Wade or any of its employees, in order to be relied upon or considered contractual must have **all** of the following elements:
  - i. A clearly defined scope of work;
  - ii. An acknowledgment of plans, if any, what portion of the plans are included, and the revision number and date of plans;
  - iii. An acknowledgement of addendums;
  - iv. If any specifications are available, an acknowledgment of the specifications and what sections or portions of sections of the specifications are included;
  - v. Inclusions and exclusions sections;

- vi. An offer-good-to date (e.g. “good for thirty days”);
  - vii. Signatures of two or more authorized officers of Wade Construction;
  - viii. Date of Proposal and signature dates; and
  - ix. Prices written in words in addition to numerals.
- f. The terms contained in Wade’s Proposal are incorporated of this Agreement.
- g. Unless specifically stated as included, the Work does not include Wade’s standard exclusions including: removal of any existing building components, the repair of any building components reasonably affected by Wade’s performance of the Work (such as, for example, wall repair), clean-up, or any other Work, including but not limited to separate mobilization for each site; additional mobilizations necessitated by acts of Client, landscaping; re-vegetation; painting; surface coatings; finishes; any cleaning beyond reasonable clean-up of electrical construction debris, removal of debris, trash containers; repair of any building, structure and/or surface finish; repair of existing conditions, repair/replacement of any existing equipment/wiring or equipment/wiring provided by others that is unsuitable, damaged, not to code, not to specifications, etc.; fees, permits, permit fees, permit costs, special insurance, bonds, parking costs; in-house testing, third party testing/inspections, engineering, as builds, drawings, plans, contract costs and legal costs; outhouses or portable toilets; fire extinguishers, fire safety systems, security systems, CCTV, systems, fiber optic systems, confined space safety systems, eye wash stations, air monitoring, special safety systems or equipment, training or special requirements, cost of additional orientation/safety meetings not already part of Wade’s standard program, mitigation of unsafe site conditions, site security, snow removal, environmental requirements, any storm water protection plan/mitigation, (e.g. SWP, SWPP, SWPPP, etc.) and its implementation, vehicle wash stations, and any other environmental stipulations, requirements, etc.
- h. Wade’s standard exclusions are typical and are not all inclusive, Wade reserves the right to exclude or include any or all portions of work before any contracts are signed by Wade. Lack of specific mention will not result in any items that are not listed in either category, inclusions or exclusions, being included.
- i. Unless included in the Proposal, all bonding and/or special insurance requirements are supplied at additional cost.
- j. Any and all agreements or contracts between any person, entity, company, cooperative, association, group, etc. and Wade, its officers, owners, parents, subsidiaries, representatives, employees, or subcontractors shall be in writing and signed by at least two authorized officers of Wade: by at least Shawn Wade or Emily Wade and the Chief Operating Officer or Chief Estimator or General

Manager. Any verbal agreement that is not placed in writing as part of the Agreement and signed by two authorized officers is null and void.

- k. The Proposal is good for a maximum of thirty (30) days unless specifically listed. If no date is listed, the date of email sent or postmarked date shall be used. If date is not listed otherwise, the document is invalid, null, and void.
- l. Wade reserves the right to propose or offer to contract for only a portion or select portions of the scope of work intended by Client. If Wade's offer is incomplete, the balance of work is the responsibility of Client.
- m. Wade only performs work in Utah at this time; any work outside of Utah voids any and all documents and contracts and or obligations with Wade.
- n. If Client requests, or the scope of work includes Wade to finish, add to, add on, complete, modify, reconstruct, or remodel any portion of work that was started by others and can affect Wade's portion of work, Client will hold Wade harmless for all liability and costs or potential costs associated with or because of the existing work or work of others that Wade interfaces with.

**2. Performance of the Work**

- a. Client represents to be the record owner or authorized agent of the record owner of the real property that shall be improved pursuant to this Agreement (the "Property") with authority to enter into contractual agreements and to grant Wade authority to perform the work identified herein. Client agrees that all materials in this Agreement will be used in the construction, alteration, or improvement of the structure(s) located upon the Property. Client shall not use this document to acquire financing.
- b. All of the Work will be completed by Wade in a workmanlike manner according to standard practices and any applicable legal requirements. If the Work is performed according to plans and specifications provided by the undersigned Client (the "Client"), then all costs incurred for any additions, changes or corrections necessitated by inaccuracies, errors, discrepancies or changes in such plans and specifications shall be borne by Client.
- c. Any other alteration or deviation from the specifications involving extra cost in time or materials will be completed only upon Client's order and will result in an extra charge over and above the Contract Price.
- d. The Work will be performed during normal business hours (typically 7:00 a.m. to 3:30 p.m.) on normal business days. Client shall pay Wade its prevailing surcharge for any installation required to be made during non-normal hours, on weekends, or legal holidays as defined in Utah Code Ann. § 63G-1-301 or successor statutes.

- e. If Wade is erroneously scheduled by Client and any additional mobilizations are necessitated by the Client's actions or lack of coordination, Client shall pay Wade its prevailing surcharge for any additional mobilizations and costs associated.
- f. Wade shall not be held liable for errors or omissions in designs by others, nor inadequacies of materials and equipment specified or supplied by others. Moreover, Client shall be responsible to pay Wade any and all additional costs that Wade incurs as a result of errors or omissions in the designs by others, or inadequacies of materials and equipment specified or supplied by others.
- g. Wade reserves the right to subcontract any or all portions of the work as deems necessary.
- h. Client represents and warrants that before commencement of the Work, Client shall secure, at its cost, all permits, licenses, etc. required from all authorities which are required to enable Wade's performance of the Work.
- i. Client shall maintain safe working environment in conformance to all applicable safety rules and guidelines, including but not limited to security fencing, safety barriers, eye wash stations, fire safety systems, guards, signs, subcontractor coordination, etc.
- j. Unless specifically stated otherwise, any excavation of earth is assumed to be in normal soils, as determined by Wade, in other than normal soils (such as, for example, frozen ground, solid rock, fractured rock, unforeseen underground obstacles, ground water, human/non-human bones, possible archaeological artifacts, etc.), excavation may be performed at Wade's option for additional charge above the contract price on a cost plus 30% basis. Wade shall not be penalized or held liable for any time delay resulting from this extra work.
- k. Unless specifically stated otherwise, Client shall assume all responsibility for and assure any and all provisions to meet environmental requirements including but not limited to: erosion control, water quality, tire washing, road graveling, washing/cleaning/disinfecting stations and retaining stations or ponds, waste disposal, ground stabilization, ground water management, street sweeping and or cleaning, dust control, flood control, etc.
- l. If Client requests that Wade performs any type of testing or any type of locating including but not limited to underground locating Client expressly agrees to and understands the following:
  - i. All testing is not and shall not be considered engineering or design services.
  - ii. Wade's liability for any problems, deficiencies, errors, whether known or unknown, arising out of any testing or locating performed by Wade shall

be limited to either (1) a full refund of the testing fees or (2) Wade shall retest.

- iii. The accuracy of testing or locating services provided is not guaranteed as it can be affected by test equipment limitations, environmental electrical noise, and other field and environmental conditions beyond Wade' control.
- iv. Data obtained by testing or locating services performed by Wade is for information purposes only and further testing may be required to verify the data obtained by Wade.
- v. Any interpretation of the data for design engineering or legal reasons is not included and must be bargained for and purchased separately.
- vi. Any statement by any Wade representative commenting verbally or in writing on the testing procedure, equipment, results, data, etc. is only a personal opinion and does not constitute professional engineering advice.
- vii. Wade accepts no responsibility for test(s) performed by others.
- viii. Wade accepts no responsibility for test(s) performed at the request of Client using equipment supplied by others.
- ix. Any locating service is for preliminary investigation and must be physically verified by inspection hole/pot hole (i.e. physical removal of cover material over the electrical utility or other object being located).
- x. Inspection holes are the responsibility of Client and must be bargained for and purchased separately.
- xi. If any inspection holes or pot holes are performed by Wade, Client accepts full responsibility for all consequential damages incident to the creation of the inspection hole or pot hole and any costs associated with the filling the inspection holes or pot holes and repairing any consequential damage.
- xii. Client accepts the potential consequences for testing including, but not limited to: radio frequency interference (RFI); power outages/loss of power; arc flash; damage to building finish; area restrictions; equipment/machinery shut down; damage to electronics/electrical circuitry; damage to software; electrical insulation damage/aging/failure; equipment damage; potential for inaccurate or erroneous readings; cost of additional testing for further investigation; cost of the use of energy during testing; loss of product; damage to cabling; interruption of costumers services; triggering alarms/notification systems, etc.
- xiii. Client acknowledges and accepts that testing is diagnostic and does not repair, refurbish, restore, predict functionality or longevity of service.

### **3. Termination or Modification**

If either party cancels any of the Work, any Work in progress on the effective date of such cancellation shall be controlled and governed by this Agreement until its completion. Client shall pay Wade as compensation for the Work performed prior to said cancellation, all documented, reasonable costs incurred by Wade (such as costs for orders of goods which orders are not cancelable or which goods cannot otherwise be utilized or sold in the ordinary course of Wade's business) and demobilization costs, if applicable.

### **4. Payment**

- a. Wade shall receive compensation specified in the Proposal (the "Contract Price"), plus any additional amounts as may be required under this agreement, including, but not limited to, amounts approved in change order.
- b. Any balances unpaid after thirty (30) days will be charged interest at 1.5% per month (18% per annum).
- c. Wade shall be entitled to immediately suspend its performance of the Work if any required payments of the Contract Price are not paid when due.
- d. In the event Wade employs an attorney for collection of any account, Client agrees to pay all attorney fees accumulated before payment of the unpaid account, plus all collection and court costs whether such sums are incurred with or without suit, on appeal, or in any bankruptcy or insolvency proceeding.
- e. Until the full Contract Price is paid, legal title, ownership, and right of possession of all materials (the "Materials") included in the Work shall remain in Wade until Wade's right of lien under Utah Code Ann. §38-1a-101 et seq. (and any related/successor statutes) attaches to the Materials. By its signature above, Client grants to Wade a security interest in all of Client's right, title and interest, if any, in and to the Materials.

### **5. Limited Warranty**

- a. Wade shall supply its own personnel of the type and number reasonably necessary to perform the Work specified in the applicable Proposal.
- b. Unless otherwise specified in the applicable Proposal, Wade or Wade's subcontractors shall, at its or their own expense, furnish all tools, equipment, machines, appliances, parts, material, and supplies necessary for the performance of the Work. Wade's equipment shall be in good working condition.
- c. Wade's warranty is one (1) year for workmanship. Equipment and materials supplied by Wade are warranted only to the extent that the same are warranted by the manufacturer, not to exceed one year.



- d. Wade warrants that it will perform all Work in conformity with the specifications and requirements provided by Client in the applicable Proposal. Such warranty of performance shall commence when Wade first performs Work and shall extend until Wade's departure from the applicable Work site (the "Warranty Period").
- e. If any of the Work is not in compliance with the warranties of this Section, Client must provide Wade written notice of such non-compliance during the Warranty Period. Failure by Client to give such notice within the Warranty Period shall be deemed an absolute and unconditional waiver of Client's claim for any breach of warranty under this Agreement. Provided that Client timely provides such notice, Wade, as Wade's sole and exclusive obligation and Client's sole and exclusive remedy for any breach of warranty under this Agreement, shall elect either to (a) re-perform the non-complying Work or (b) refund to Client any amounts paid by Client for such non-complying work.
- f. To the fullest extent permitted by applicable law and except as expressly provided in this agreement, Wade disclaims all other warranties, express or implied, or otherwise, contained in or derived from this agreement, including without limitation, warranties of suitability, merchantability, or fitness for a particular purpose. Without limiting the foregoing, Wade makes no warranty, express or implied, as to the results that may be obtained from the use of the services, data or materials provided hereunder.

## 6. Indemnification

### a. *Definitions.*

- i. "Claims" shall include, without limitation, any and all claims, losses, damages, causes of action, fines, penalties, enforcement proceedings, suits, and liabilities of every kind (including interest and all expenses of litigation, court costs, and attorneys' fees), whether arising in tort, contract, strict liability, under statute, or of any other character whatsoever.
- ii. "Client Group" means Client, its parent, subsidiary, and affiliated companies, and companies for whom it performs services, and its and their co-lessees, partners, joint ventures, co-owners, companies (other than Wade), and its and their respective directors, officers, employees, agents, and representatives.

### b. *Mutual Indemnification for Bodily Injury.*

- i. To the fullest extent permitted by law, Client shall indemnify and hold harmless Wade, its consultants, agents, and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of Wade's Work under this Agreement, provided that any such claim, damage, loss or

expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of Client or other member of the Client Group, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

- ii. It is agreed that the above obligations to indemnify are limited to the extent allowed by law. To the extent a party supports its indemnity obligations with insurance (as opposed to qualified self-insurance), such party agrees to cause its insurers to waive rights of subrogation against the other party's Group (Wade Group or Client Group, as applicable) but only to the extent such party has agreed to defend, indemnify, and hold harmless the other party's Group.
- iii. The release, hold harmless, defense and indemnity obligations contained in this section shall apply even if caused, in whole or in part, by pre-existing conditions, strict liability, breach of representation or warranty, contractual liability to other members of the indemnified party's group or the joint, sole, or concurrent negligence or any other fault whatsoever of any kind, whether passive or active, of any person or entity, including but not limited to the indemnified party or any member of the indemnified party's group, but not to the extent caused by or resulting from the gross negligence or willful misconduct of the indemnified party or any member of the indemnified party's group. Both parties agree that this statement complies with the requirement known as the express negligence rule to expressly state in a conspicuous manner to afford fair and adequate notice that this section has provisions requiring one party to be responsible for the negligence, strict liability, or other fault of another party.

*c. Notification.*

Client and Wade shall promptly notify each other, as appropriate under the above Sections, of any Claims that may be presented to either by any party. Client and Wade shall afford each other full opportunity to assume the defense of such Claims, and to protect all implicated interests. A party's participation in, or selection of counsel for the defense of the such party's Group as to any legal process shall not constitute a waiver of such party's Group's right to insist upon the other party's full compliance with the other party's obligations under this Section.

*d. Survival.*

All indemnity provisions of the Agreement shall survive termination, expiration, or cancellation of the Proposal, Agreement, work order, or any change order hereunder.

## **7. Mutual Waiver of Consequential Damages**

- a. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other party or its group for, and each party hereby releases the other party and its group from, any of the releasing party's indirect, special, punitive, exemplary, or consequential damages or losses, including, but not limited to, damages or losses for lost production, lost revenue, lost product, lost profits, lost business or business interruptions, without regard to the cause(s) thereof including, without limitation, pre-existing conditions, whether such conditions be patent or latent, imperfection of material, defect or failure of equipment, breach of representation or warranty (express or implied), ultra-hazardous activity, strict liability, tort, breach of contract, breach of statutory duty, breach of any safety requirement or regulation, or the negligence of any person or party, including, but not limited to, the released party and its group, whether such negligence be sole, joint or concurrent, active or passive, or any other theory of legal liability.
- b. Wade shall not be liable for indirect loss or damage.

## **8. Force Majeure and Delays**

- a. Wade shall not be liable for delay in performance or completion of the Work due to any cause beyond Wade's control, including but not limited to: strikes, picket lines, boycott efforts, power failures or other interruption of utility or communication, storms, fires, floods, freeze, accidents, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government (including without limitation any agency or department of the United States of America or any other country), terrorism, cyber attacks, electronic espionage, vandalism, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of the defaulting party. Wade shall notify Client of any such delay and its cause. The replacement of any of the Materials damaged or destroyed by such events shall be at Client's expense.
- b. Wade will not be held liable for any errors or delays caused by the acts of others including suppliers or any entity not directly controlled by Wade; stop-work orders not directly caused by Wade; faulty designs; errors or omissions in the plans or specifications; etc.
- c. Wade will not be held liable for delays by manufactures, shippers, expeditors, and suppliers.

## **9. Headings**

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

## **10. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, but without regard to any conflict of laws or provisions of that state which would have the effect of applying the law of another state or jurisdiction.

## **11. Severability Clause**

Should any clause, sentence, or part of this Agreement be held invalid, such holding shall in no way affect the validity of the remainder, which shall remain in full effect. Failure to enforce any or all of the provisions of this Agreement in a particular instance or instances, shall not constitute a waiver or preclude subsequent enforcement thereof.