



**ENGINEERING SERVICE
AGREEMENT**

FC Version 1.0

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System Feasibility & Engineering Agreement

This System Feasibility & Engineering Agreement (“Agreement”) is entered into as of _____, 20____ (“Effective Date”) by and between **Fluent Conveyors, LLC**, (“Fluent”), and (_____), (“Customer”). Fluent and Customer may each be referred to individually as a “Party” and collectively as the “Parties.”

1. Intent

This Agreement establishes the terms and conditions under which Fluent will perform preliminary engineering, feasibility analysis, conceptual system development, and related professional services in connection with a proposed industrial conveyor, recycling, material handling, sorting, processing, or automation project (“Project”). The specific Scope of Services is set forth on “Exhibit A” attached hereto.

The Parties acknowledge and agree that:

- a. The Services are preliminary and conceptual in nature;
- b. The Services are intended solely to assist Customer in evaluating potential Project feasibility, budgeting, planning, and development options;
- c. Deliverables produced under this Agreement are not construction-ready documents and shall not be relied upon for fabrication, permitting, procurement, installation, or construction purposes unless expressly incorporated into a subsequent written agreement executed by Fluent; and
- d. Execution of this Agreement does not obligate either Party to proceed with any future equipment purchase, fabrication, installation, EPC, or construction contract.

2. Scope of Services

- a. **General Scope:** Fluent shall perform the services described in Exhibit A attached hereto (collectively, the “Services”). Any services not expressly listed on Exhibit A are expressly excluded from the Scope of Services.
- b. **Deliverables:** As part of the Services, Fluent will provide client with the deliverables set forth on “Exhibit B.” All Deliverables under this Agreement are: (1) conceptual only; (2) subject to revision; (3) based upon preliminary assumptions and information provided by Customer; (4) Not construction-ready; and (5) Not intended for permitting, fabrication, procurement, or installation purposes. Unless expressly stated otherwise in writing by Fluent, Deliverables do not include: (1) Issued-for-construction drawings; (2) Structural engineering documents; (3) Civil engineering documents; (4) Geotechnical evaluations; (5) Architectural plans; (6) Stamped engineering documents; or (7) Final design packages.

- c. **No Structural, Civil, or Geotechnical Engineering:** Unless expressly identified in Exhibit A, Fluent is not performing structural engineering, civil engineering, geotechnical engineering, architectural services, surveying; or code compliance evaluations. Any references to structural loading, foundations, supports, utility requirements, or installation considerations are preliminary conceptual observations only.

3. Customer Data, Site Conditions, Reliance

- a. **Reliance on Customer Information:** Customer acknowledges and agrees that Fluent shall be entitled to rely entirely upon information, drawings, surveys, specifications, measurements, utility information, process data, operational data, and other materials provided by Customer or third parties retained by Customer. Fluent shall have no responsibility to independently verify the accuracy, completeness, or suitability of such information and shall not be liable to Customer for any errors or omissions in the Services or Deliverables resulting from the inaccuracy or errors in any information provided by Customer.
- b. **Existing Site Conditions:** Customer shall retain sole responsibility for all existing site conditions, including but not limited to: (1) Structural integrity of buildings; (2) Existing concrete slabs; (3) Foundations and footings; (4) Existing structural steel; (5) Supports, mezzanines, and elevated platforms; (6) Utilities and utility capacities; (7) Existing equipment interfaces; (8) Tie-in points; (9) Underground conditions; (10) Hidden or concealed conditions; (11) Code compliance of existing facilities; and (12) Site access and constructability constraints. Fluent has no obligation to and does not warrant, inspect, certify, or verify existing site conditions.
- c. **Visual Observations Only:** If Fluent makes any onsite visits, Customer acknowledges that such visits are limited visual observations only and do not constitute detailed inspections, testing, destructive investigation, surveying, or engineering certification.
- d. **Explicit Reliance Disclaimer:** Customer expressly acknowledges and agrees that Fluent does not warrant or verify existing site conditions or information provided by Customer. All structural adequacy, foundation capacity, utility availability, dimensional accuracy, field fitment, and field conditions remain the sole responsibility of the Customer and its designated engineers, contractors, and consultants. Fluent is entitled to rely on all information provided by Customer in performance of its Services.

4. Consideration

- a. Customer shall pay Fluent the total sum of \$_____ for performance of the Services under this Agreement.
- b. Fluent shall send Customer an invoice each month setting forth the fee due for that month and include a summary of the Services performed during the pay period. Customer will pay all invoiced amounts within the timeframe specified on Fluent's invoices. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Fluent's reasonable costs of collection, including but not limited to all court costs and reasonable attorneys' fees. In addition to all other remedies

available to Fluent (which Fluent does not waive by the exercise of any rights hereunder or the failure to exercise any right hereunder), Fluent may suspend the Services if Customer fails to pay any amounts when due and the failure continues for five (5) days following Customer's receipt of notice thereof. Customer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Fluent, regardless of whether relating to Fluent's breach, bankruptcy, or any other cause.

5. Changes

Fluent will only provide additional or changed Services if the Parties have executed a written change order that sets forth the change in the Scope of Services, the change in the contract sum related thereto and any change in the schedule for delivery of the Services.

6. Schedule

- a. **Estimated Delivery Timeline:** Fluent's estimate of the schedule for delivery of each Deliverable is set forth in Exhibit B.
- b. **Schedule Contingencies:** Any project schedule or delivery timeline is expressly contingent upon (1) Timely receipt of required Customer information; (2) Access to facilities and personnel; (3) Prompt review cycles; (4) Timely decisions and approvals; (5) Availability of third-party vendor information; and (6) Uninterrupted access to relevant project data.
- c. **Delays:** Fluent shall not be responsible for delays caused by: (1) Customer action or inaction; (2) Incomplete or incorrect information; (3) Delayed approvals; (4) Site access restrictions; (5) Third-party delays; or (6) any other cause outside Fluent's reasonable control. Delivery schedules shall be equitably adjusted for such delays.

7. Intellectual Property

- a. **Ownership:** All drawings, layouts, calculations, models, concepts, engineering work product, methodologies, processes, designs, recommendations, specifications, software, templates, and other intellectual property developed or furnished by Fluent ("Fluent IP") shall remain the exclusive property of Fluent. No ownership rights are transferred to Customer.
- b. **Limited License:** Upon full payment of all fees due, Customer shall receive a limited, revocable, non-transferable, non-exclusive license to internally use Deliverables solely for evaluation of the Project.
- c. **Prohibited Uses:** Customer shall not, without Fluent's prior written consent: (1) Share Deliverables with any party other than individual employees or independent contractors of Customer who are actively involved in the evaluation of the Deliverables for the Customer's Project; (2) Use Deliverables for competitive bidding; (3) Solicit third-party pricing based upon Fluent IP; (4) Replicate or reverse engineer Fluent's IP; (5) Construct systems derived from Fluent Deliverables without Fluent's involvement; (6) Transfer Deliverables to third parties for fabrication or installation purposes.

- d. **Unauthorized Use/Indemnity and Defense:** Any unauthorized use of Deliverables shall constitute material breach and may entitle Fluent to injunctive relief, damages, and recovery of attorneys' fees. Fluent will have no responsibility or liability to Customer with respect to, and the Customer shall indemnify, defend and hold Fluent harmless from, claims to the extent caused by (i) modifications made to the Fluent IP by Customer or others on Customer's behalf without Fluent's involvement or written approval, and (ii) the use of the Fluent IP by the Customer or others on Customer's behalf on projects other than the Project for which they were created without Fluent's involvement or written approval.

8. Exclusivity

- a. If the following box is checked , Customer agrees that during the feasibility phase, Fluent shall have exclusive rights to continue development of the proposed system concept and the exclusive right to submit an initial proposal for manufacture and/or installation of the proposed system should Customer decide to move forward with the Project.
- b. Customer may reasonably determine to proceed with another supplier using concepts substantially derived from Fluent Deliverables, but in any such even Customer shall pay a release fee or design-use fee to Fluent in the amount of \$_____.

9. LIMITATION OF LIABILITY/WAIVER OF CONSEQUENTIAL DAMAGES/DISCLAIMER OF WARRANTIES

- a. THE REMEDIES SET FORTH IN THE AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF FLUENT TO COMPLY WITH ITS OBLIGATIONS UNDER THE AGREEMENT. FLUENT MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND FLUENT DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL FLUENT BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDERUTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF FLUENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM FLUENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FLUENT'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS OR THIS AGREEMENT WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT PAID FOR THE SERVICES UNDER THIS AGREEMENT.

10. Confidentiality

If Customer has entered into a Non-Disclosure Agreement (“NDA”) with Fluent, Customer acknowledges the same and all terms thereof remain in full force and effect. If Customer has not entered into an NDA with Fluent, Customer agrees to the terms of Fluent’s standard NDA, incorporated herein and available at [Mutual Non-disclosure agreement for Customers | Fluent Conveyors](#). “Confidential Information” is defined therein. Customer shall not use the Confidential Information for any purpose other than as provided in the NDA and in order to perform its obligations under the Agreement.

11. Termination

- a. Either Party may terminate this Agreement, with or without cause, by giving thirty (30) days written notice to the other Party.
- b. Either Party may immediately terminate this Agreement with written notice if the other Party ceases to conduct business in the normal course, becomes insolvent, makes general assignment for the benefits of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under any Bankruptcy Act or any other federal or state statute relating to insolvency or the protection of rights of creditors.
- c. Fluent may terminate this Agreement if Customer fails to make any payment due and owing more than five (5) days of Fluent providing a notice to Customer that amounts are due and owing.
- d. **Rights of Parties on Expiration or Termination:** The following provisions shall apply on the expiration or termination of this Agreement:
 - i. Customer all Confidential Information and Fluent IP which is then in Customer’s possession or control unless Customer is permitted to retain the same pursuant to the terms of this Agreement;
 - ii. All amounts due and owing by Customer to Fluent shall become immediately due and payable and Fluent shall be entitled to reimbursement of attorney’s fees that it may incur in collecting such indebtedness;
 - iii. The expiration or termination of this Agreement shall not release Customer from the payment of any sums then owing to Fluent or from any other obligations herein provided to be performed after such expiration or termination of this Agreement;
 - iv. The requirement to keep Confidential Information confidential and not to use such Confidential Information shall survive the termination of this Agreement.

12. General Provisions

- a. **Notices:** Any notice which either Party may desire to give the other Party must be in writing and may be given by (i) personal delivery to an officer of the Party, (ii) by mailing the same by registered or certified mail, return receipt requested, to the Party whom the notice is directed at the address of such Party as set forth in this Agreement, or such address as the Parties may hereinafter designate.
- b. **Governing Law and Jurisdiction:** This Agreement and its effect on the rights and duties of the Parties hereto shall be governed by and enforced in accordance with the laws of Colorado, irrespective of any choice of law considerations to the contrary. Subject to Section 12(m) hereof, each Party hereto agrees that the other Party may institute any action against it in any state court of competent jurisdiction located in the City of Denver, State of Colorado, or in any Federal Court of competent jurisdiction located in the District of Colorado and irrevocably submits to jurisdiction of such courts and waives any objection it may have to either the jurisdiction of or venue in such courts.
- c. **Cooperation:** Each Party agrees to execute and deliver such further documents and to cooperate as may be necessary to implement and give effect to the provisions contained herein.
- d. **Failure to Enforce:** The failure of Fluent to enforce one or more of the terms or conditions of this Agreement shall not be a waiver of such terms or conditions or of Fluent's right thereafter to enforce each and every term and condition of this Agreement.
- e. **Counterparts:** This Agreement may be executed in several counterparts, each of which when so executed will be deemed to be an original and all of which will together constitute one and the same agreement. Copies of executed counterparts transmitted by facsimile, e-mail or other electronic transmission service shall be considered original executed counterparts, provided receipt of such counterparts is confirmed.
- f. **Incorporation of all Exhibits:** Each and every exhibit referred to herein and attached hereto is hereby incorporated herein by reference as if set forth herein in full.
- g. **Severability:** If any provision of this Agreement is held or determined to be illegal, invalid or unenforceable under any present or future legal requirement, and if there shall be no material adverse effect with respect to the rights or obligations of any Party under this Agreement in connection therewith: (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement; and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.
- h. **Binding Effect/Assignment:** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective representatives, successors and permitted assigns. This Agreement shall not be assignable by either Party, without the express written consent of the other Party, which consent shall not be unreasonably withheld.

- i. **Entirety:** Other than the NDA, which remains in full force and effect, the terms and provisions of this Agreement constitute the entire agreement between the Parties and there are no collateral agreements or representations or warranties other than as expressly set forth or referred to in this Agreement. This Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into by any Party to this Agreement (or by any manager, member, director, officer, partner or representative thereof) relating to the matters contemplated by this Agreement.
- j. **Attorney's Fees:** Subject to the terms of this Agreement, in the event either Party takes legal action to enforce any right under this Agreement, the prevailing Party shall be entitled to recover all reasonable costs, including attorney fees and expert witness fees.
- k. **Remedies:** No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each remedy will be cumulative and will be in addition to every other remedy given hereunder or hereafter existing at Law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.
- l. **Non-Disparagement.** The Parties will not make any false or defamatory statements regarding each other or their businesses. Specifically, the Parties will not interfere with each other's prospective business relationships by making disparaging statements about each other or their officers, employees, attorneys, and representatives. Further, it is expressly understood and agreed that this non-disparagement provision is an essential provision of this Agreement. As such, a breach of this non-disparagement provision will be deemed a material breach of this Agreement.
- m. **Mediation/Arbitration:** In the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the Parties shall first attempt to settle the dispute by informal mediation between the executives and/or officers of the Parties and their respective legal counsel. If settlement is not reached via informal mediation, any unresolved controversy or claim shall be settled by arbitration administered by JAMS, Inc. (or other mediation and arbitration service by mutual written agreement of the Parties) under its Comprehensive Arbitration Rules & Procedures (or those of another mutually-agreed upon mediation and arbitration service, as applicable). The number of arbitrators shall be one, to be selected according to the JAMS Rules & Procedures (or those of another mutually-agreed upon mediation and arbitration service, as applicable). The place of arbitrations shall be Denver, Colorado. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), shall be borne by the unsuccessful party, as determined by the arbitrator and/or court, and shall be awarded as part of the arbitrator's award and/or judgment. Nothing in this Section 8.13 will be deemed as prohibiting a Party from seeking an injunctive relief or other similar protective order. This Section shall survive the termination or cancellation of this Agreement.
- n. **Force Majeure:** Neither Party shall be in default hereunder by reason of any failure or delay in the performance of any obligation under this Agreement (other than an obligation to make payments in accordance with this Agreement) where such failure or delay arises out of any cause beyond the reasonable control and without the fault or negligence of such Party. Such causes shall include, without limitation, storms, floods, other acts of nature, fires, explosions, riots, war or civil disturbance, strikes and other labor disputes, embargoes, export control laws, delays in transportation and inability to obtain labor, supplies or manufacturing facilities.
- o. **Authorization.** The undersigned Parties are authorized to enter into this Agreement.

FLUENT CONVEYORS, LLC.

By: _____

Name: [_____]

Title: [_____]

Date: [_____ / _____ / _____]

CUSTOMER

By: _____

Name: [_____]

Title: [_____]

Date: [_____ / _____ / _____]

