



Water Well Drilling Agreement and Instructions for Use

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WATER WELL DRILLING AGREEMENT

What Terms are Necessary to Create a Contract?

If two parties agree to a price and a product, they create a contract. An oral agreement is a contract, and many disputes end up in court because persons do not realize that courts applying contract law might enforce any such agreement.

Thus, the purpose of drafting a written agreement is to make sure that all parties understand exactly to what they are agreeing. All changes to the Agreement should be in writing, and the parties should agree that any oral agreements simply shall not be enforced.

Terms of the Agreement attempt to reflect the parties' mutual understanding on all issues which typically lead to disputes in construction contracting. If construction proceeds as planned, the Agreement terms need not be enforced or even reviewed. The written agreement is re-read only after a dispute arises, and therefore any contract should contain all necessary provisions to avoid foreseeable disputes. For instance, in addition to a precise description of the parties, the work, and the price, the Agreement should address the schedule for completion, responsibility for safety and injuries, how changes to the work or Agreement can be agreed upon, and how the parties will resolve disputes.

Many contractors use a one-page "purchase order" with no terms addressing areas of common misunderstanding. This does not serve either the customer or the contractor, avoiding discussion of issues which may be agreeable before a dispute, but cannot be agreed upon after a problem arises. Therefore, the goals of this standard Water Well Drilling Agreement are:

- 1) To provide a simple, complete contract primarily for use with individual homeowners or short-term commercial subcontractors;
- 2) To allow for flexibility in the work and state or local law, through use of customized attachments; and
- 3) To include basic terms to raise issues oriented language as a sales tool, not leverage to significant advantage.

This Agreement may be used as a complete document, or either party may select only individual provisions from the Agreement to develop their own form. If the owner has a contract for review, this document is intended to help the contractor consider the issues, and offer individual alternative provisions as appropriate.

Construction Contract Review and Negotiation

Several general areas of dispute require routine consideration when negotiating any construction contract, whether the contractor or owner writes the first draft. A contractor must make practical business judgments about these issues, as precise legal language always is subject to interpretation. Depending upon the parties' relationship and experiences, in a positive environment the contractor might overlook unfavorable contract terms, or alternatively in a negative environment the contractor might walk away from a job no matter how favorable the contract terms.

THE PARTIES: A contractor must consider the other party carefully. If the Agreement is directly with the owner, the contractor should expect the job description to be reliable, as no third parties' intervene to misinterpret the buyer's intent. The contractor can assess financial responsibility for payment based on the property value. However, an owner may not understand even the most basic principles of construction contracting, and misunderstandings arise when a contractor relies upon "industry standards" which the owner does not know. Scheduling conflicts and numerous change orders typically result because an Owner does not plan the project based upon construction experience.

In contrast, if the Agreement is with another contractor or owner's representative, the Water Well Drilling Contractor may assume that the other party has some experience in construction procedures. However, care must be given to the work description detail, and determine whether the other party is reputable, is authorized to allow the contractor onto the property, and is financially responsible for payment. In addition, the other party may insist on unfavorable contract terms based on construction experience and leverage.

PAYMENT: Unlike public works projects, private projects seldom offer payment bonds or other evidence of financial responsibility. Therefore, the contractor must review the local **Mechanics' Lien Law**, to determine whether a statutory notice must be filed, and whether specific notices must be included in the contract language. Most states also have **Home Solicitation** statutes, requiring that consumers be given specific notices with a right to cancel any contract in certain circumstances, even if the work has been performed. Finally, **credit terms** require compliance with federal and state laws, with necessary disclosures. Consult a local attorney to determine necessary provisions in particular states.

The contract should specify enough information for the contractor to provide all **notices**, both for payment applications and for any change orders or claims. The contractor must follow any specific procedures in the agreement, or risk loss of payment.

SCHEDULE: Owners look for a date certain in completion, where contractors look to avoid this commitment. As a business policy to avoid disputes, it is better to have a date certain, negotiated well-beyond the likely date of completion. This avoids any misunderstanding arising from the owner taking other actions which depend upon completion, such as moving into that new home only to find no running water. The owner may expect the contractor to pay any costs.

For construction, the contractor must review whether the owner will pay for **owner-caused delays**, which cost the contractor more in rental equipment, labor, increased material prices, and lost opportunities on other jobs. Some owner documents will include a "no damage for delay" clause if legal in the state, allowing only an extension of the completion deadline, but no money. Contractors should look for these provisions, as the owner has no liability if the contractor agreed to the term knowingly.

The contractor also should insist that the owner is liable for **unknown conditions**, particularly underground. While most courts will allow additional compensation to a contractor for latent conditions even without express contract language, as the building site is the owner's responsibility, some contracts require the contractor to warrant that the Contractor inspected and tested the site and agrees that there are no such conditions, thus waiving any additional compensation.

The parties should have a clear understanding of when the project is "**complete**". Is the well complete when it pumps water, or does the well require testing, and site restoration? This understanding cannot be left to chance.

DAMAGES: Case law in each state will determine the extent to which a contractor can claim money damages if the other party breaches the agreement. Many contracts contain a **liquidated damages clause**, stating that damages are difficult to determine and thus limiting the parties to a set amount. Such amount must bear some relation to potential losses, or the courts will not enforce the clause if it appears to be a penalty. These provisions can be favorable to contractors, limiting potentially large liability to a fixed amount. However, some provisions will apply only to certain losses, such as liquidated damages for delay in completion. A contractor must consider carefully any limitation to damages in a contract.

DOCUMENTATION: Just as a written contract avoids disputes, usually requiring written notices of any changes to insure accuracy, the contractor must develop a consistent practice of internal documentation on each project. **Daily job logs** provide an invaluable source of information when alleging cumulative weather delays, or owner or other contractor interference.

As well drilling typically requires that the contractor undertake **design** of the work, the contractor should document the precise well site in a diagram approved by the owner, with any other system architecture if it could be subject to disagreement. The owner should initial the final design so there is no doubt of approval.

When incidents occur which may lead to later liability, the contractor should send a **written notice** immediately to the owner if the contractor will claim that the owner should bear the cost. The owner has a right to "mitigate the damages", and can avoid payment if the contractor allowed an incident to continue causing greater damage by failing to give the notice.

Review of NGWA Water Well Drilling Agreement Terms

The enclosed standard Agreement should be reviewed by the Water Well Drilling Contractor's local attorney for compliance with state laws. Additional provisions can be incorporated by attachment, or the Water Well Drilling Contractor can prepare a customized contract by selecting only those provisions desired. All blanks should be filled in and attachments completed before submitting the Agreement to the Owner for consideration.

PROPERTY OWNER'S NAME: Make sure that the customer has proper authority to contract for the work. Identify on the document whether the customer owns the property, rents the property, is a prime contractor with the owner, or has another interest that provides the authority to contract. What happens if the owner does not like the location or specifications of the well once finished?, Will the "authorized representative" pay to re-drill the well? If in doubt, get the owner's direct approval on any key documents.

PROPERTY DESCRIPTION: Be as specific as possible in filling in the legal description of the property where the well will be located. This is necessary to aid in filing for any lien, judgment, or other statutory notices such as a notice of commencement. Identify the actual property owner if the owner is not signing the Agreement.

DESCRIPTION OF THE WORK: For a standard contract form agreement to be used successfully while providing flexibility, a "Job Proposal" and a "Site Location Diagram" should be attached. As the Water Well Drilling Contractor will be responsible for some design, any variables should be submitted to the Owner and initialed to show the Owner's express approval. Then the Water Well Drilling Contractor can rely precisely on the work described and the prices quoted. Neither document requires any specific form; a letter, purchase order, and hand-drawing are acceptable, as long as they accurately reflect the final deal.

Government approvals must be considered before signing the Agreement. Which agencies must approve, and who will be responsible to get the approval (and liable if not approved) should be listed in writing. Consider the building permit, zoning restrictions, water and sewer tie-in requirements, septic or drainage restrictions, testing and health approvals. Any single failure will land the Water Well Drilling Contractor in court if not expressly stated to be the owner's responsibility and risk.

WATER WELL DRILLING CONTRACTOR'S STATUS AND DUTIES: The standard of care under "Control" requires the Water Well Drilling Contractors' "best skill and attention". This standard is lower than requiring the Water Well Drilling Contractor to follow industry standards, or the standard of care available.

The Agreement includes an express reservation under "**Debris, Restoration**" that the Owner will be responsible for site restoration. This should be called to the Owner's attention, so there are no surprises. If the Owner disagrees, add a specific item to the Job Proposal.

Liability for job site injuries is limited in "**Responsibility**" to only the work of the Water Well Drilling Contractor, its employees and subcontractors. Typical construction contracts vary this clause in many ways, and a contractor should review any alternative provisions carefully. Some states prohibit over-reaching shifting of liability.

Under "**Safety**," the Water Well Drilling Contractor agrees to "take all reasonable precautions" to protect even the Owner's and neighbors property. This is a selling point to Owners, but requires the Water Well Drilling Contractor to make an affirmative effort in protecting even the adjoining property. If an injury occurs the Water Well Drilling Contractor can point to the "reasonable precautions" taken. This provision does not say that the Water Well Drilling Contractor will be liable to pay for those damages, unless the Owner can demonstrate that the Water Well Drilling Contractor failed to take reasonable precautions. In essence, the Owner must allege Water Well Drilling Contractor negligence, for which the Water Well Drilling Contractor would be liable anyway.

CONTRACT PRICE: The Contract Price must equate to the prices listed on the Job Proposal. Often a contractor will propose one set of services, but fail to amend the proposal in writing before performing the work - a sure formula for litigation.

This Agreement establishes a unit **Drilling Price** with maximum depth, which cannot be exceeded without written authorization. If the Owner wants to continue beyond the maximum depth, the Water Well Drilling Contractor may change the per foot price and need not agree to the same unit prices in the Job Proposal.

The **Materials, Costs** price should be identical to the same price on the Job Proposal, and the **Total Price** should be included to give the Owner an express understanding as to the total cost, sales tax included, if the maximum depth is reached and all services are performed. Contracts which do not specify a maximum depth or total price leave to chance the possibility that a court will find that the Owner did not agree to that total; what is the point of a contract if such variables are possible?

Included as an option is the "**Dry Hole Discount**," as a sales tool. If the Water Well Drilling Contractor does not wish to offer this, the paragraph should be crossed out. Likewise, the Initial Payment is an option, which sophisticated Owners and prime contractors may refuse.

The **Payments** schedule allows to the Owner a specific number of days to pay after the Water Well Drilling Contractor sends the invoice. No interest is charged in this Agreement, as credit terms generally are regulated by federal and state laws; if incorrectly done, the contract can be voided. While most wells will not take a month for completion, the Agreement contemplates use for multiple drillings for one Owner, or a commercial use which might extend more than thirty days. In that event, an Owner may expect to pay only when the entire project is complete; the Water Well Drilling Contractor cannot claim interim funds without an express provision for periodic payments.

OWNER'S CHANGES: Typical to any construction project are changes. This provision requires that all changes be in writing and that the Water Well Drilling Contractor need not accept them on the face of the order but has the chance to re-price the contract in consideration of the change. The Agreement also disclaims any Water Well Drilling Contractor liability for delay due to a change order.

Unlike many Owner-drafted contracts, once this Agreement is signed the Owner is liable under this Agreement for the entire Job Proposal, and may not stop the project to cut costs. Such stop action would be a change order, and the Water Well Drilling Contractor is entitled to the profit under the Agreement just as if the well is completed.

SCHEDULE OF WORK: Some contractors prefer not to give a firm completion date. But owners plan on a date whether the contractor intends it or not. This term should not be excluded, so that both parties have a mutual understanding. Not included is the phrase "time is of the essence", so that the Water Well Drilling Contractor may argue that any delay does not breach the contract.

The Agreement defines "Complete" for the well as merely operational by the Owner. Thus, the Water Well Drilling Contractor may request payment even if some government approvals or testing still might be required for full use. The parties should discuss what they believe is "complete" when drafting the Job Proposal, so that the Owner does not dispute payment even if the Water Well Drilling Contractor technically finished.

DISPUTE, RESOLUTION, TERMINATION: This provision could include a number of foreseeable events upon which the parties might want to declare the Agreement in breach or simply no longer in force. As a standard form, included only are non-payment by the Owner and non-conforming work by the Water Well Drilling Contractor.

The Water Well Drilling Contractor must give the Owner a written notice if not paid on time, with a grace period of seven days. Likewise, the Owner must give the Water Well Drilling Contractor "a reasonable opportunity" as a grace period to correct any work problems.

Disputes must be resolved by binding arbitration, which in most states bars any action in court. The provision favors the Water Well Drilling Contractor, as arbitrators tend to represent members of the construction industry and not owner's interests. The process is faster than court, and less formal.

WARRANTIES: Local counsel must review this provision to include any requirements of state law. Most states imply into the contract the warranties of fitness for purpose and merchantability, which can be waived with express terms. The Water Well Drilling Contractor should review exactly what is warranted, and for how long, attaching a specific description so as to avoid any doubt. A year or more after the well was drilled will be the test of whether the Owner is satisfied based upon the mutual understanding from the written warranty provisions.

The law regarding warranties on the materials and equipment constantly changes. Generally, the trend is to hold the Water Well Drilling Contractor responsible for any merchandise, regardless of the fact that the Water Well Drilling Contractor did not manufacture it. The Water Well Drilling Contractor should discuss "products liability" insurance and other proper insurance coverage with an insurance agent and discuss warranties with an attorney. For example, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act governs the labeling of warranties of consumer goods. Unless the warranty meets the minimum standards for full warranties provided in the Act, it must be designated a "limited warranty".

The Water Well Drilling Contractor must expressly disclaim any guarantee of water quantity or quality. If the Water Well Drilling Contractor wants to assure the Owner of specific quantity as a condition of drilling, or quality after testing, put the exact understanding in writing, along with the impact to price or cost. For instance, under the "Dry Hole Discount", the Owner gets a price break, but no more.

In a specific geographic area that is known to be prone to natural contamination of a certain character, (e.g., the western part of the United States where arsenic levels are potentially higher than those deemed safe pursuant to governmentally-imposed standards), it may be advisable to also use a more specific addendum page that more explicitly warns of the type of potential contamination, as well as the potential effect on human health from the use of such water for human consumption.

ENTIRE AGREEMENT: This provision makes clear that all understandings must be in writing and any oral agreement before or after this Agreement is signed is irrelevant and unenforceable. If a handshake is good enough, there is no purpose for a written Agreement which is not to be followed.

SEVERABILITY: Some court precedent holds that if any single provision in the Agreement is declared void, the entire Agreement is void as the document must be enforced as a whole to give full effect to the parties' understanding. Unfortunately, this may prevent the Water Well Drilling Contractor from payment on the undisputed work due to a dispute on one provision. Therefore, this clause should appear in any contract, unless the parties feel all clauses are necessary as a whole.

SIGNATURES: Both parties each should sign two copies of the Agreement, so that each has a signed original copy in the event of a dispute.

LOCAL, STATE LAWS: This Agreement is a form designed to apply to typical well drilling and repair sales. However, it cannot apply to all situations and comply with all laws of the

50 states. As a consequence, before using this Agreement, consult your attorney for specific legal requirements applicable to consumer and/or home solicitation sales, among other specific state law requirements.

Many states require notices and statutory language included in the contracts. Two examples are provided; the Texas statute requiring the contractor to give notice of an existing well which requires plugging, and the Minnesota statute requiring notice of mechanics' lien rights. In addition, other specific contract variations may be necessary for particular terms agreed to by the parties. This form Agreement and Instructions are provided as a service, and are not intended to offer legal advice whatsoever. **The National Ground Water Association and its agents disclaim any and all liability for damages attributable to the use of this standard form Agreement.**

LIENS: Specific steps must be taken within specific time limits to obtain certain liens. The Water Well Drilling Contractor always should consult a local attorney prior to contract as to the proper way to meet the lien requirements, attaching such language in the Agreement if required. Time limitations are critical under all state lien laws. In some states, a notice of commencement must be filed before construction begins for purposes of mechanic's lien laws. Be aware of the specific requirements in the project state.

NO CREDIT TERMS: This Agreement should not be used in installment payment transactions where credit has been extended to your customer. Use it only where the customer's obligation is to pay cash upon termination of your work. If used for a credit transaction, the parties will violate numerous state and federal laws, which carry severe penalties.

JOB PROPOSAL: This attachment is necessary, as referred to in the "Description of the Work" in the Agreement. In a larger construction contract, this would contain the plans and specifications describing the scope of work. The Water Well Drilling Contractor may use any similar proposal form, but must list all work to be performed in detail. If work is left to verbal agreement or is unclear, a court may not enforce the Agreement for payment of that work, as the parties did not have a "meeting of the minds". Thus, be sure to get the Owner's initials at the bottom of this page, just so there is no doubt that the Owner intends to pay for these items.

WELL MAINTENANCE, TESTING SERVICE ADDENDUM: This form is optional. Water Well Drilling Contractors may not consider either an ongoing maintenance contract or testing until an owner initiates a request later. As this is different than the scope of work contained in the primary Agreement, an additional form and signature are required.

The Addendum must contain a description of the work, a price, and a schedule. An express warranty also protects the Water Well Drilling Contractor from any Owner mistake. If prepared separately from the primary Agreement, other terms (such as dispute resolution) should be added. Here, by attaching it as an addendum, not only is the agreement made as early as possible, prior to problems arising, but the Addendum can refer to the other terms of the Agreement.

Summary

The National Ground Water Association hopes that this standard "Water Well Drilling Agreement" serves its membership as a form useful in most individual or commercial sales opportunities. With a careful review and understanding of the terms, including all understandings in writing, the Water Well Drilling Contractor will anticipate typical issues addressed in construction contracts while offering a flexible Agreement to foster a positive relationship with the customer.

Please contact us to offer comments or feedback for consideration in future additions.

WATER WELL DRILLING AGREEMENT

This Water Well Drilling Agreement (the "Agreement") is made and entered into effective this _____ day of _____, 20____ between:

_____ ("Owner" or Owner's Authorized Representative) and

_____ ("Water Well Drilling Contractor"), for the construction

of a Water Well on the real property at the following location ("Premises"):

_____ [STREET ADDRESS],

_____ [CITY], _____ [COUNTY], _____ [STATE],

and for which Premises the Owner has the authority to undertake the improvements contemplated by this Agreement, upon the following terms and conditions.

1. DESCRIPTION OF THE WORK.

1.1 Work: Water Well Drilling Contractor agrees to furnish all labor, services, materials, equipment, and all other things necessary for the timely and proper completion of the Water Well in accordance with the Job Proposal and to be located as identified on the Site Location Diagram, each attached hereto and made a part of this Agreement (the "Work").

1.2 Restrictions: Water Well Drilling Contractor agrees to cause construction of the Water Well in accordance with all applicable zoning and building regulations, laws, ordinances, and orders of any public authority bearing on the construction and all restrictions and covenants of record concerning the subdivision in which the Premises are located, if applicable and provided to Water Well Drilling Contractor by Owner.

2. WATER WELL DRILLING CONTRACTOR'S STATUS AND DUTIES.

2.1 Control: Water Well Drilling Contractor will supervise and direct the Work, using its best skill and attention, and shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Agreement. Construction of the Water Well shall conform to the Job Proposal, with such changes only stopped as may be agreed to by the parties in writing. Neither party will unreasonably withhold its agreement.

2.2 Debris, Restoration: During construction, Water Well Drilling Contractor shall keep the work site and surrounding area free from any unreasonable accumulation of debris and waste materials. Unless expressly agreed to in writing in the Job Proposal, upon completion of the Work the Owner shall be responsible to remove all debris, waste and surplus materials or rubbish remaining on the work site, and to restore the site to its required condition. The Water Well Drilling Contractor shall not be responsible for any site restoration.

2.3 Responsibility: Water Well Drilling Contractor shall be responsible to Owner for the acts and omissions of Water Well Drilling Contractor's employees, subcontractors, and their agents and employees, and other persons performing portions of the Work under a contract with Water Well Drilling Contractor.

2.4 Safety: Water Well Drilling Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and shall comply with all applicable laws, ordinances, rules, regulations, and orders. Water Well

Drilling Contractor shall take all reasonable precautions for safety of, and shall provide protection to prevent damage, injury, or loss to a) persons who may be directly injured during the Work, b) the Water Well and materials and equipment to be incorporated therein, and c) any other property and improvements at the site or adjacent thereto.

3. CONTRACT PRICE.

Owner shall pay Water Well Drilling Contractor as follows:

3.1 Water Well Drilling Price: \$_____.00 total drilling price at the rate of \$_____.00 per lineal foot drilled, to a maximum depth of _____ feet. Water Well Drilling Contractor shall not exceed this depth without the Owner's written authorization, and agreement by the Water Well Drilling Contractor, as to the maximum additional depth to drill and the lineal foot price to be paid for the additional depth. If the Work is stopped while the Owner decides if additional work is required, Water Well Drilling Contractor can charge the Owner a stand down rate as described in the Job Proposal.

3.2 Materials, Costs: \$_____.00 total materials and costs, as itemized in the Job Proposal. No additional Work shall be performed other than as itemized in the Job Proposal without written authorization of Owner agreed to by Water Well Drilling Contractor.

3.3 Total Price: \$_____.00 total contract price including maximum depth drilling and all other costs as itemized in the Job Proposal. This price shall not be changed without written authorization of Owner agreed to by Water Well Drilling Contractor.

3.4 Dry Hole Discount: If the Water Well Drilling Contractor reaches the maximum depth without producing _____gallons of water per day, and the Owner decides not to authorize additional drilling, the total drilling price shall be discounted by \$_____.00, and the Owner shall pay only for the drilling, those materials and other costs in the Job Proposal actually used to that date.

3.3 Initial Payment: Owner agrees to prepay \$_____.00 of the total price to Water Well Drilling Contractor upon signing of this Agreement to provide Water Well Drilling Contractor with funds in advance for expenses relating to the Work.

3.4 Payments: Upon receipt of each payment made by Owner to Water Well Drilling Contractor, Water Well Drilling Contractor will provide the Owner with a lien waiver in the amount of the payment received. If the duration of the Work continues for more than one month, Water Well Drilling Contractor shall be entitled to payment of the Work completed monthly, by submitting a Payment Application accompanied by properly executed releases of liens by subcontractors and substantial material suppliers for the prior payment. The Owner shall pay Water Well Drilling Contractor not later than _____ days after receipt of a Payment Application.

4. OWNER'S CHANGES.

Owner, without invalidating this Agreement, may order changes in the Work. Such changes shall be authorized by written modification of this Agreement. An appropriate adjustment to the price will be made with the consent of both Owner and Water Well Drilling Contractor in writing, which consent shall not be unreasonably withheld. Owner acknowledges and agrees that Water Well Drilling Contractor's ability to complete the Work in a timely manner will be directly affected by any change order requested by Owner.

5. SCHEDULE OF WORK.

Construction shall begin by _____[date] and shall be complete by _____[date] excepting delays beyond Water Well Drilling Contractor's control. "Complete" shall mean that the Water Well is ready for the installation of the permanent pumping system.

6. DISPUTE RESOLUTION, TERMINATION.

6.1 Non-Payment: If Owner fails to make payment due to Water Well Drilling Contractor for a period of _____ days after the submission of a Payment Application for Work that is not disputed by Owner, Water Well Drilling Contractor may terminate this Agreement seven (7) additional days after written notice to Owner, and recover from Owner payment for all Work executed and for loss of materials, equipment, tools, and machinery, including reasonable overhead, profit and other consequential damages.

6.2 Corrections: Owner shall provide Water Well Drilling Contractor with a reasonable opportunity to cure any claimed non-conformity and agrees not to remove Water Well Drilling Contractor from the Premises or order Water Well Drilling Contractor to stop work so long as Water Well Drilling Contractor diligently undertakes to cure the claimed non-conformity.

6.3 Mediation, Arbitration: All claims or disputes between Owner and Water Well Drilling Contractor arising out of or relating to this Agreement shall be submitted to non-binding mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. Owner and Water Well Drilling Contractor shall mutually select and equally share in the cost of the services of a mediator. The chosen mediator must have reasonable knowledge of the water well drilling industry. In the event that the dispute is not resolved following mediation, the matter shall be resolved by binding arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association.

7. WARRANTIES.

7.1 Workmanship, Materials: Water Well Drilling Contractor warrants that (i) all Work performed hereunder will be performed in accordance with this Agreement and in a proper workmanlike manner, free from all defects; (ii) all materials used will be new; and (iii) all materials, the Work, and the Premises will at all times be free and clear of liens and encumbrances. In addition to the foregoing warranty, Water Well Drilling Contractor will assign to Owner all warranties received by Water Well Drilling Contractor in connection with the Work, including, specifically, manufacturer's warranties and guarantees on appliances and equipment incorporated into the Water Well.

7.2 Express Warranties, Only: No representations or warranties, expressed or implied, are made or agreed to be made by any party hereto, except those specifically provided herein. Water Well Drilling Contractor provides no other warranty or guarantee, unless expressly in writing attached to this Agreement and signed by both Owner and Water Well Drilling Contractor.

7.3 No Quantity of Water Guaranteed: Water Well Drilling Contractor specifically does not warrant that the water well being constructed will produce water in any specific quantity, or that it will produce any water at all. All risk of failure to produce water shall be borne by the Owner, and failure to produce water shall not release Owner from payment other than in accord with this Agreement.

7.4 No Quality of Water Guaranteed: Water Well Drilling Contractor specifically does not warrant that the water well being constructed will produce water of any specific quality, or that it will be fit for human consumption. All risk of failure to produce water fit for human consumption shall be borne by the Owner, and failure to produce water fit for human consumption shall not release Owner from payment other than in accord with this Agreement.

8. NOTICE OF POSSIBLE CONTAMINATION.

8.1 Notice of Potential Natural Contamination: Water Well Drilling Contractor hereby gives notice to Owner that certain naturally occurring contaminants may be present in the ground water that will supply the water well being constructed. Such naturally occurring contaminants may include, but are not limited to, certain minerals, bacteria and toxics such as arsenic, and may render the water produced by the water well unfit for human consumption unless the water is treated on an ongoing basis.

Water Well Drilling Contractor specifically disclaims any guarantee that the water produced by the water well will be free from any such contamination, and Owner acknowledges being notified of such potential natural contamination by signing this Agreement and initialing here: _____

8.2 Notice of Importance of Testing: Water Well Drilling Contractor hereby gives notice to Owner that prior to using the water in the water well for any purpose, and in particular for human consumption, Owner is advised to have the water tested for naturally occurring contamination. Owner is responsible for arranging, ensuring completion of, and payment for such testing, unless otherwise provided in this Agreement. All risk of the presence of naturally occurring contaminants in the water shall be borne by the Owner, and the presence of naturally occurring contaminants in the water shall not release Owner from payment other than in accord with this Agreement. Owner acknowledges being notified of the importance of testing for naturally occurring contaminants by signing this Agreement and initialing here: _____

9. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties hereto and all prior agreements, which fully and completely constitutes the entire Agreement between the parties regarding the construction of the Water Well.

10. SEVERABILITY. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under law. If any term, condition, covenant, agreement or provision of this Agreement shall be deemed invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating, impairing or otherwise effecting any other provision of this Agreement, which shall remain in full force and effect.

Signed and agreed to effective the day and year first above stated.

OWNER:

WATER WELL DRILLING CONTRACTOR:

By: _____

By: _____

Address: _____

Address: _____

ATTACHMENTS AND ADDENDA:

- _____ Job Proposal
- _____ Site Location Diagram
- _____ Well Maintenance, Testing Service Addendum
- _____ Addendum of Notification of Potential Contamination

LEGAL NOTICES ATTACHED:

- _____ Express Warranties, Waivers
- _____ Notice of Abandoned or Deteriorated Well¹
- _____ Mechanics' Lien Notice²

Other Legally Required Notices:

- _____ A _____
- _____ B _____
- _____ C _____

¹ For example, excerpts from Texas Rev. Civ. Statutes, Water Code, Title 2, Sub. D, Sec. 32.017:
"(b) A licensed driller shall notify the commission and the landowner or person having a well drilled when the driller encounters water injurious to vegetation, land, or other water, and the well must be plugged, repaired, or properly completed in order to avoid injury or pollution. The driller shall assure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the commission."

"(c) A licensed driller who knows of an abandoned or deteriorated well shall notify the landowner or person possessing the well that the well must be plugged or capped in order to avoid injury or pollution."

² For example, Minnesota Statutes, Sec. 514.011 requiring in contract notice to owner of lien rights.

WATER WELL DRILLING AGREEMENT
JOB PROPOSAL

Drilling

1. Test drilling, estimated depth ____ feet at \$ _____ per foot \$ _____
2. Well drilling, estimated depth ____ feet at \$ _____ per foot \$ _____

Maximum Drilling Depth, Total Drilling Price: \$ _____

Materials, Costs

1. Well casing, maximum depth ____ feet at \$ _____ per foot \$ _____
Casing size: _____
2. Well and pump permit \$ _____
3. Well screen and installation \$ _____
4. Well developing and surging \$ _____
5. Well acidization \$ _____
6. Well disinfection \$ _____
7. Chemical and bacteriological laboratory tests \$ _____
8. Pump and installation, Repairs \$ _____
9. Other Materials, concrete, gravel \$ _____
10. Labor (Non-supervisory base rate \$ _____ per hour). \$ _____
11. Other skilled trades (electrical) \$ _____
12. Trencher or backhoe work \$ _____
13. Crane, truck or service rig \$ _____
14. Mobilization and demobilization \$ _____
15. Other water-supply equipment and installation \$ _____
16. Area cleanup \$ _____
17. Other: _____ \$ _____
18. 0 hours stand down at \$ _____ per hour stand down rate \$ _____

Sub-Total Material and Costs: \$ _____

Total Drilling, Material and Costs: \$ _____

Sales tax: \$ _____

Total Proposal Price: \$ _____

APPROVED BY OWNER: _____

WATER WELL DRILLING AGREEMENT
WELL MAINTENANCE, TESTING SERVICE ADDENDUM

This Water Well Maintenance, Testing Service Addendum ("Addendum") to the Water Well Drilling Agreement (the "Agreement") originally dated _____, 20____ between the parties signed below, is made and entered into this _____ day of _____, 20____ upon the following terms and conditions:

1. DESCRIPTION OF THE WORK.

1.1 Maintenance: The Water Well Drilling Contractor shall perform periodic labor for maintenance of the Well upon request of the Owner, furnishing and installing replacement materials as required and directed by Owner. Maintenance visits shall not be less than once per _____ (time period), nor more than _____ per year.

1.2 Testing: The Water Well Drilling Contractor shall perform periodic tests of the Well upon request of the Owner. Tests shall be conducted not less than once per _____ (time period), nor more than _____ per year, including the specific tests listed below.

2. CONTRACT PRICE. Owner shall pay Water Well Drilling Contractor as follows:

2.1 Maintenance: Maintenance work shall be charged at the rate of \$_____.00 per _____ (insert "visit", "hour" or other basis), plus Water Well Drilling Contractor's actual cost of replacement materials, with a markup of _____% (percent), plus tax.

2.2 Testing: Testing shall be charged at the rate of \$_____.00 per _____ (insert "test", "hour" or other basis), plus Water Well Drilling Contractor's actual cost of testing supplies, with a markup of _____% (percent), plus tax. Specific tests shall be performed at an inclusive price:

- | | |
|---------------------|----------|
| a. _____ \$_____.00 | b. _____ |
| \$_____.00 | |
| c. _____ \$_____.00 | d. _____ |
| \$_____.00 | |

2.3 Maximum Price: In no event shall the total cost pursuant to this Addendum exceed \$_____.00 without additional agreement between the parties.

3. SCHEDULE OF WORK: The Work shall begin on _____, 20____ and continue as required by the Owner, in effect until _____, 20____.

4. OTHER TERMS: Water Well Drilling Contractor specifically does not warrant and shall not be held liable for the quantity or quality of the water produced during or after maintenance or testing, or to determine whether any maintenance or tests are required, but shall serve only as the Owner directs. The parties hereby incorporate all other terms of the prior Agreement, not in direct conflict with the terms of this Addendum, as though fully restated herein.

Signed and agreed to effective the day and year first above stated.

OWNER:

WATER WELL DRILLING CONTRACTOR:

By: _____

By: _____

Address: _____

Address: _____

**Addendum of Notification
of
Potential Contamination**

By this addendum, Water Well Drilling Contractor hereby notifies Owner that because Owner's water well will be located in _____ [insert general geographic area here; e.g. "the western portion of the United States"], it is possible that ground water that will supply the water well will be contaminated with higher levels of _____ [insert specific contaminant here; e.g. arsenic] than are considered safe for human consumption. Over time, the consumption of water containing higher levels of _____ [insert specific contaminant here; e.g. arsenic] than are considered safe for human consumption may lead to serious health risk, including but not limited to, _____ [insert specific health risk here].

Water Well Drilling Contractor hereby gives notice to Owner that prior to using the water in the water well for any purpose, and in particular for human consumption, Owner is advised to have the water tested for all naturally occurring contamination, and specifically for _____ [insert specific contaminant here; e.g. arsenic]. Owner is responsible for arranging, ensuring completion of, and payment for such testing, unless otherwise provided in this Agreement. All risk of the presence of naturally occurring contaminants, including but not limited to _____ [insert specific contaminant here; e.g. arsenic], in the water shall be borne by the Owner, and the presence of naturally occurring contaminants in the water shall not release Owner from payment other than in accord with this Agreement. Owner acknowledges being notified of the importance of testing for naturally occurring contaminants, including but not limited to _____ [insert specific contaminant here; e.g. arsenic], by signing this Agreement and initialing here: _____