

Moore & Associates Inc. ("MAI") - TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

1. SCOPE OF SERVICES

MAI will perform the services set forth in the Agreement, of which these terms and conditions are hereby made a part.

2. PAYMENTS TO MAI

A. Compensation will be as stated in the attached Agreement. Statements (invoices) are payable within 30 days from statement date. A late payment charge will be added to all amounts not paid within 30 days of statement date; calculated at 1.5 percent per month from statement date. Any costs incurred by MAI in collecting any delinquent amount, including reasonable attorney's fees, shall be reimbursed by Client. If a portion of MAI's statement is disputed, the undisputed portion shall be paid by Client by the due date. Client shall advise MAI in writing of the basis for any disputed portion of any statement. If placed for collection, reasonable collection fees will be added; if placed with an attorney, reasonable attorney fees will be added. All drafts dishonored for any reason shall be assessed a \$100.00 service charge. In the event that Client stops payment on any draft issued to MAI, for any reason, Client hereby recognizes that MAI would suffer damage, the exact amount which cannot be determined with certainty and Client shall pay MAI liquidated damages of \$500.00 for each such draft.

B. Taxes as may be imposed by Federal, state and local authorities (other than Federal and state income tax, and County of Posey Earnings Tax) shall be in addition to the payments due MAI stated in the Agreement.

3. INSURANCE

A. During the course of performance of its services, MAI will maintain Employer's Liability insurance with limits of at least \$1,000,000 and Commercial General Liability insurance with combined single limits of at least \$1,000,000.

B. If the Project involves on-site construction-phase services by the MAI, construction contractors shall be required to provide (or Client may provide) Owner's Protective Liability Insurance naming the Client as a Named Insured and MAI as an additional insured or to endorse Client and MAI as additional insured's on construction contractor's liability insurance policies covering claims for personal injuries and property damage. Construction contractors shall be required to provide certificates evidencing such insurance.

4. INDEMNIFICATION

A. Client agrees to require all construction contractors to indemnify, defend and hold harmless Client and MAI from any and all loss where loss is caused or incurred (or alleged to be caused or incurred) in whole or in part as a result of the negligence or other actionable fault of the contractors, their agents, or subcontractors.

B. If the project involves construction, and MAI does not provide engineering services during construction including, but not limited to, on-site monitoring, site visits, shop drawing review and design clarifications, Client agrees to indemnify and hold harmless MAI from any liability arising from this Project or Contract.

C. Client shall indemnify and hold MAI, and its officers, directors, employees, agents and consultants, harmless from all damages, costs, liabilities, expenses and fees, including attorney's fees for any claim or cause of action for bodily injury or property damage arising out of or relating to the Project, but only to the extent such damages, costs, liabilities, expenses and fees are caused by the negligent act or omission or other breach of duty by Architect, Owner, Developer, General Contractor and the General Contractor's sub-Contractors. MAI shall be held harmless against all damages, liabilities, expenses, or costs, including attorney's fees, for any claim or petition, or where MAI is dismissed from the claim or petition, for defense costs, arising out of or resulting from the use of engineering documents, the petitioner will be responsible for the compensation of all legal fees and defense costs, including MAI's personnel's time for defense of petition.

5. PROFESSIONAL RESPONSIBILITY

A. MAI will exercise reasonable skill, care and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted good engineering practices (GEPs). No warranty, expressed or implied, is included in this Agreement or in any drawing, specification or opinion produced pursuant to this Contract.

B. In no event will MAI be liable for any special, indirect or consequential damages; including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, or governmental fines or penalties.

C. MAI's aggregate liability for all damages connected with its services for the Project, not excluded by the preceding subparagraph, will not exceed the compensation paid for services.

D. The obligations and remedies stated in this Paragraph 5. Professional Responsibility, are the sole and exclusive obligations of MAI and remedies of Client, whether liability of MAI is based on contract, warranty, strict liability, tort (including negligence), indemnity or otherwise.

6. ACCESS

Client will provide access (right of entry) for MAI's staff, its agents, sub-consultants, and others, as appropriate for this Project; and Client will be responsible for the time, place, and manner of entry upon all property where MAI is to provide services under this Agreement. Client agrees to hold MAI harmless from any and all liability or claims arising from such entry onto property by MAI. MAI will take reasonable precautions to minimize property damage; however, it is understood that some minor damage may occur; for which MAI shall not be held responsible.

7. HAZARDOUS ENVIRONMENTAL CONDITIONS

Nothing in this Agreement shall impose any responsibility or liability on MAI for expenses, claims, or damages arising from, or in any manner related to, hazardous environmental conditions and/or the presence of other regulated substances.

8. ESTIMATES AND PROJECTIONS

MAI's estimates and projections of construction costs and/or schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on MAI's experience, qualifications and judgment. Since MAI has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractor's procedures and methods, and other factors, MAI cannot and does not guarantee the accuracy of any of MAI's estimates and projections related to this Project.

9. ON-SITE SERVICES

On-site visits by MAI during construction or equipment installation for Project, or the furnishing of on-site Project representatives, shall not make MAI responsible for construction means, methods, techniques, sequences or procedures; for construction safety precautions or programs; or for any failure by construction contractor(s) to perform their work in accordance with the Contract Documents.

10. CHANGES

Client shall have the right to make changes within the general scope of MAI's services, with an appropriate change in compensation, upon execution of a mutually acceptable contract amendment signed by an authorized representative of the Client and a respective MAI representative.

11. TERMINATIONS OR SUSPENSION

A. Services may be terminated by the Client or MAI by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay MAI all amounts due MAI for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by MAI in terminating the services. In addition, Client may terminate the services for Client's convenience upon payment of twenty percent of the yet unearned and unpaid lump sum or not-to-exceed fee.

B. The provisions of this Contract have been agreed upon with the expectation of any orderly progression of the project to completion. In the event of project suspension by the Client for a period in excess of three (3) months, MAI may (at MAI sole discretion) perform activities necessary to complete critical calculations, organize project files, or otherwise prepare for an orderly cessation of work; and MAI shall be entitled to invoice Client for labor and reimbursable expenses incurred in performing such activities.

12. DISPUTE RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction, or following completion of the Project, Client and MAI agree that all disputes between them arising out of, or relating to, this Contract shall be submitted to non-binding mediation (unless the parties mutually agree otherwise), thereby providing for mediation as the primary method for dispute resolution between Client and MAI.

13. PRINTED OR ELECTRONIC MEDIA

A. Client shall not make, or permit to be made, any modifications to any documents, including drawings and specifications, furnished by MAI pursuant to this Contract, without the prior written authorization of MAI. Client shall indemnify and hold harmless MAI from all claims, damages, losses, and expenses (including attorney fees) arising from any modification of such documents.

B. Electronic files transmitted by MAI are submitted for an acceptance period of fourteen (14) calendar days. Any defects which Client discovers during this period will be reported to MAI, and subsequently corrected by MAI. Any corrections of defects reported after the acceptance period will be at Client's cost.

C. Only copies of data or work products delivered by MAI as instruments of service with respect to this Contract as hard copies may be relied upon by Client. Any electronic files furnished in respect to MAI services are supplied for the convenience of the Client or others. Any conclusions or information derived from such electronic files shall be at Client's sole risk, because such files can be modified by others or inadvertently corrupted.

14. OWNERSHIP OF DOCUMENTS

All documents, including drawings and specifications, furnished by MAI pursuant to this Contract are instruments of service; and shall remain the property of MAI. Such documents are not intended, or represented, to be suitable for reuse by Client or others, on extensions of this Project or any other work. Any reuse without the written permission of, or adaptation by, MAI shall be at Client's sole risk, and without liability to MAI; and MAI shall be entitled to further compensation, at rates to be mutually agreed between Client and MAI. The Client shall indemnify and hold harmless MAI from all claims, damages, and expenses (including attorney fees) arising out of any unauthorized reuse.

15. RIGHTS AND BENEFITS

MAI services under this Contract will be performed solely for the benefit of the Client, and not for the benefit of any other person or entity.

16. ENTIRE CONTRACT

A. These Terms and Conditions and the related Agreement contain the entire Contract between MAI and Client relative to MAI's services for this Project. All previous or contemporaneous agreements, representations, promises, or conditions pertaining to MAI's services for this project are hereby superseded.

B. Since terms contained in purchase orders do not generally apply to professional services, in the event the Client issues to MAI a purchase order, no preprinted terms thereon shall become part of this Contract. Said purchase order document, whether or not signed by MAI, shall be considered solely as a document for Client's internal management purposes.

C. This Contract may be amended, in writing, by mutual agreement between the MAI and Client.

17. LIMITATION OF LIABILITY

Limitation of Liability: To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of MAI, and its officers, directors, employees, agents and consultants, and any of them, to Client and anyone claiming by, through or under Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of MAI's officers, directors, employees, agents or consultants, or any of them, shall not exceed the total compensation received by MAI under this agreement, or the total amount of \$25,000.00, whichever is lesser.

END OF DOCUMENT