

# SAMARTANO & COMPANY

*Consulting Engineers*

221 N. LA SALLE ST. • CHICAGO, ILLINOIS 60601 • 312/332/2326

PRESIDENT  
JAMES A. SAMARTANO

ASSOCIATE  
STEVEN NEUBAUER

March 11, 2011

Mr. Jess Fisher, LEED AP  
Director A&E Services  
Flaherty & Collins Properties  
Via e-mail: jfisher@flahertycollins.com

Re: Main St. Triangle (Contract for Engineering Services)  
Mixed Use Development  
Orland Park, Illinois

Dear Mr. Fisher

We have reviewed the architectural drawings dated October 6, 2010 prepared by RTKL architects for the referenced project and are pleased to submit this proposal. It is our understanding the project will include the following elements:

- **Building C**- Five story residential building with partial parking at the ground level, approximately 144,000 square feet.
- **Building D-E** Six story residential building with mixed residential, retail and partial parking at the ground level, approximately 230,000 square feet.
- **Garage Building**- Four story parking structure with rooftop parking, approximately 153,000 square feet.
- **Bridge Structure**- (not shown on drawings) A single story pedestrian bridge across main St. linking the C buildings and D-E buildings.

We propose to provide full engineering services as described in the attached Scope of Services (Exhibit A) in accordance with the attached Terms and Conditions (Exhibit B). In consideration for these services we require the fee of \$335,000 (Three Hundred Thirty Five Thousand dollars). The total fee will be distributed per service phase as follows:

Project Development and Schematic Design.....	15%
Design Development.....	20%
Construction Documents.....	50%
Construction Administration.....	15%

Note this proposal does not include design of earth retention structures for excavation purposes or permanent site retaining walls outside the footprint of the buildings. Revisions, and other requested additional services will be billed at \$150.00 per hour. Additional field trips will be billed at \$150 per hour with a minimum fee of \$400 per trip. Printing, plotting, deliveries and other reimbursable expenses will be billed at cost.

Prior to beginning any of the services outlined herein we require a retainer fee of \$30,000 which will be credited to the final invoicing. If this proposal is acceptable, please return a signed copy to our office.

Sincerely,  
SAMARTANO & CO.

*SN*  
Steven Neubauer  
Associate

Accepted By \_\_\_\_\_ Date \_\_\_\_\_

Enclosures: Exhibits A and B

**An Agreement Between Owner and Structural Engineer of Record for Professional Services**  
**EXHIBIT A – Summary of services**

This is an exhibit attached to and made part of the letter of agreement dated March 11, 2011 (“Letter Agreement”) between *Samartano & Company* (SER) and *Flaherty Collins Properties* (Owner).

The services of the Structural Engineer of Record (SER) for this proposal include those summarized below. See Exhibit B – Terms and Conditions – for further details.

<b>Scope of SER’s Basic Services</b>	<b>Included</b>	<b>Not Included</b>	<b>Remarks</b>
<b>PROJECT DEVELOPMENT PHASE</b>	<b>X</b>		<i>Project development work already completed under previous agreement</i>
1. Define Scope of Structural Services	<b>X</b>		
2. Assist in Development of Schedule	<b>X</b>		
3. Assist in Determining Channels of Communication	<b>X</b>		
4. Assist in Determining Responsibility for Dimensions	<b>X</b>		
5. Assist in Determining Drawing Standard and Specifications Format	<b>X</b>		
6. Assist in Determining Number of Meetings and Number of Site Visits	<b>X</b>		
7. Negotiate Fees and Payment Schedule	<b>X</b>		
8. Execute Contact	<b>X</b>		
<b>SCHEMATIC DESIGN PHASE</b>	<b>X</b>		<i>Maximum of 2 meetings</i>
1. Attend Meetings	<b>X</b>		
2. Establish Structural Design Criteria	<b>X</b>		
3. Prepare Studies of Alternative Structural Systems	<b>X</b>		<i>Maximum of 1 alternative</i>
4. Assist in Selection of Structural System	<b>X</b>		
5. Provide Structural Criteria for Geotechnical Consultant	<b>X</b>		
6. Assist in Determining Need for Special Studies	<b>X</b>		
7. Consult with Public Agencies as required		<b>X</b>	
8. Prepare Schematic Opinion of Probable Construction Costs		<b>X</b>	
9. Suggest Possible Changes to Effect Savings	<b>X</b>		
10.			

Scope of SER's Basic Services	Included	Not Included	Remarks
<b>DESIGN DEVELOPMENT PHASE</b>	<b>X</b>		<i>Maximum of 2 meetings</i>
1. Attend Meetings	<b>X</b>		
2. Prepare Design Development Documents	<b>X</b>		
a) Prepare Preliminary Structure Design Calculations for Typical Elements	<b>X</b>		
b) Prepare Preliminary Foundation Drawings	<b>X</b>		
c) Prepare Preliminary Framing Layout Drawings	<b>X</b>		
d) Prepare Typical Detail Sheets	<b>X</b>		
3. Prepare or Edit Outline Specification for Structural Items	<b>X</b>		<i>Hand edit specifications provided by others.</i>
4. Identify Pre-Engineered Structural Elements	<b>X</b>		
5. Review Results of Special Design	<b>X</b>		
6. Coordinate Structural Design with Special Design Criteria	<b>X</b>		
7. Submit Design Development Documentation for Approval	<b>X</b>		
8. Revise Schematic Opinion of Probable Construction Costs		<b>X</b>	
<b>CONTRACT DOCUMENTS PHASE</b>	<b>X</b>		
1. Prepare Structural Design of Primary Structural system	<b>X</b>		
2. Designate Elements to be Designed by Specialty Engineers and Specify Structural Criteria for Specialty Engineers Design of Pre-Engineered Structural Element	<b>X</b>		
3. Review Effect of Secondary or Non- Structural Elements Attached to Primary Structural System	<b>X</b>		
4. Attend Meetings	<b>X</b>		<i>Maximum of 2 meetings</i>
5. Assist in Coordination with Building Code Officials	<b>X</b>		
6. Complete Structural Calculations	<b>X</b>		
7. Complete Structural Drawings	<b>X</b>		
8. Prepare or Edit Specifications for the Primary Structural System	<b>X</b>		<i>Hand edit specifications provided by others.</i>
9. Assist in Establishing Testing and Inspection Requirements	<b>X</b>		
10. Perform Checking and Coordination of the Structural Documents	<b>X</b>		

Scope of SER's Basic Services	Included	Not Included	Remarks
11. Design Non-Structural elements		X	
a) Exterior curtain walls		X	
b) Non-bearing partitions		X	
c) Stair railings		X	
12. Revise Opinion of Probable Construction Costs		X	
13. Assist in Filing Construction Documents for Approval by Building Official I	X		
14. Make Revisions to Construction Documents as required by Building Official (and by Peer Reviewer)	X		
<b>BIDDING OR NEGOTIATION PHASE</b>			
1. Bidding and Award			
a) Assist in Evaluating Bidder's Qualifications		X	
b) Provide Structural Addenda and Clarifications	X		Revisions due to value re-engineering by others are not included.
c) Attend Pre-Bid Conference		X	
d) Assist in Bid Evaluation		X	
<b>CONSTRUCTION ADMINISTRATION PHASE</b>			
1. Pre-Construction Services	X		<i>Maximum of 1 meeting</i>
a) Attend Meetings		X	
b) Assist in Establishing Communications Procedures	X		
c) Assist in Establishing Procedures for Testing and Inspections		X	
d) Assist in Confirming Submittal Procedures	X		
e) Assist in Selection of Testing and Inspection Agency		X	
f) Advise Client and Contractor Which Structural Elements Require Construction Observation by SER	X		
g) Respond to Building Department and Peer Reviewer Comments	X		
2. Submittal review			
a) Review of Specified Submittals for Items Designed by SER	X		
b) Review Submittals for Pre-Engineered Structural Elements	X		

Scope of SER's Basic Services	Included	Not Included	Remarks
3. Site Visits			
a) Make Site Visit at Intervals Appropriate to the Stages of Construction	X		<i>At SER Discretion</i>
b) Prepare site Visit Reports		X	
4. Materials Testing and inspection		X	
a) Review Testing and Inspection Reports	X		
b) Initiate Appropriate Action to Those reports, If for the Structural Work	X		
5. Assist in Determining the Amounts Due the Contractor for the Structural Work		X	
6. Provide Interpretations of Structural Construction Documents	X		
7. Provide Recommendations Regarding Claims, Disputes and Other Matters Relating to Execution or Progress of the Structural Work		X	
8. Assist in Determining Whether Non-Conforming Structural Work Should be Removed		X	
9. Assist in Reviewing Change Orders Relating to the Structural Work	X		
10. Assist in Conducting Inspections to Determine Substantial Completion of the Structural Work		X	
11.			
12.			

Additional Services	
Services	Remarks
1.	
2.	
3.	
4.	
5.	

## **CASE Document 2 1996**

### **An Agreement Between Owner and Structural Engineer of Record for Professional Services**

#### **EXHIBIT B – Terms and Conditions**

This is an exhibit attached to and made a part of the letter of agreement dated March 11, 2011, between *Samartano & Company* and *Flaherty Collins Properties, (Owner)*

#### **Section 1 – General**

##### **1.1 This Agreement**

- 1.1.1 These Terms and Conditions, along with the Letter Agreement, and Exhibit A – Summary of Services, from the Agreement as if they were part of one and the same document. Unless otherwise specified, this Agreement shall be governed by the laws of the State of Illinois.
- 1.1.2 The Letter Agreement and Exhibit A may limit or negate the applicability of these Terms and Conditions. Such limitation shall take precedence over provisions of this Exhibit.
- 1.1.3 If a Prime Design Professional (as defines below) is also engaged by the Owner to participate in this project, then that Prime Design Professional shall be responsible for determining and interpreting the needs of the Owner, and for coordinating the work of the SER and other members of the design team.

##### **1.2 General Obligations of the SER and the Owner**

- 1.2.1 *Samartano & Company*, hereinafter referred to as the Structural Engineer of Record (SER), shall perform those professional structural engineering services as specified in Exhibit A and detailed in these Terms and Conditions. In rendering these services, the SER shall apply the skill and care ordinarily exercised by structural engineers at the time and place the services are rendered.
- 1.2.2 The Owner shall verify that the contemplated project will be financed adequately, including provisions for contingencies, to accomplish the stated and desired goals and commitments.
- 1.2.3 The Owner shall provide all criteria and full information with regard to his or her requirements for the Project and shall designate a person to act with authority on his or her behalf with respect to all aspects of the Project. This shall include, but not be limited to, review and approval of design issues in the schematic design phase, design development phase, and contract documents phase. These approvals shall include an authorization to proceed to the next phase.
- 1.2.4 The SER shall recommend that the Owner obtain those geotechnical investigations, property surveys, reports and other data necessary for performance of the SER's services.
- 1.2.5 The SER shall designate a person to act with authority on his or her behalf with respect to all aspects of the Project.
- 1.2.6 The SER shall submit, or coordinate with the Prime Design Professional to submit, to the Owner a timely schedule for the performance of the SER's services, to the degree possible consistent with the SER's requirements for skill and care as well as the owner's desired goals and commitments.
- 1.2.7 The Owner shall provide to the SER reports of geotechnical investigations, property surveys, and other reports and data requested, as well as any previous reports or other data relative to the Project in the possession of the Owner.
- 1.2.8 The owner shall coordinate, or arrange for coordination through the Prime Design Professional, the services of the design team to minimize conflicts or misunderstandings.
- 1.2.9 SER agrees to cooperate fully with the Prime Design Professional and to take all steps reasonable necessary to complete its work so that there are no delays to the project schedule caused by SER. Exhibit C is the schedule of completion for SER's work.

### 1.3 General Obligations of the SER and the Owner

- 1.3.1 **Prime Design Professional** is the leader of the design team charged with the design of a new or remodeled facility, either an architect or an engineer. The Prime Design Professional is responsible for determining and interpreting the needs of the Client and for coordinating the work of the other members of the design team.
- 1.3.2 **Primary Structural System** is the completed combination of elements which serve to support the Building's self weight, the applicable live load (which is based upon the occupancy and use of the spaces), the environmental loads such as wind and thermal, plus the seismic loading. Curtain wall members, non-load bearing walls or exterior façade are examples of items which are not part of the Primary Structural System.
- 1.3.3 **Pre-Engineered Structural Elements** are structural elements which are specified by the SER but may be designed by a Specialty Engineer. These elements are normally fabricated off-site, may require specialized equipment not usually available at the job site or could require a proprietary process. The SER shall specify the design criteria including the incorporation of the Pre-Engineered Structural Elements into the structure. Examples of Pre-Engineered Structural Elements may include but are not limited to:
- Open web steel joists and joist girders
  - Wood trusses.
  - Combination wood and metal, and plywood joists.
  - Precast concrete elements.
  - Prefabricated wood or metal buildings.
  - Tilt-up concrete panel reinforcement and hardware required for lifting to position.
- 1.3.4 **Specialty Engineer** is an engineer who is legally responsible for sealing plans and designs for Pre-Engineered Structural Elements which become part of the building. The Specialty Engineer is usually retained by a supplier or subcontractor who is responsible for the design, fabrication and (sometimes) installation of engineered elements.
- 1.3.5 **Secondary Structural Elements** are elements that are structurally significant for the function they serve but do not contribute to the strength or stability of the primary structure. Examples may include but not be limited to: Support beams above the primary roof structure which carry a chiller, elevator support rails and beams, retaining walls independent of the primary building, and flagpole or light pole foundations.
- 1.3.6 **Non-Structural Elements** are elements of a structure that are not primary or secondary structural elements. Items in this category could be exterior Curtain walls and cladding, non-bearing partitions, stair railings, etc.
- 1.3.7 **Reimbursable Expenses** are expenses incurred directly or indirectly in connection with the project such as, but not limited to, transportation, meals lodging for travel, long distance telephone calls and facsimile transmissions, overnight, deliveries, courier services, professional services sales taxes, and the cost of reproductions beyond those normally required for coordination and information purposes.
- 1.3.8 **Fast Track Projects** are projects in which any portion of the contract drawings are released for pricing/bid/fabrication or are submitted for building permit prior to such issuance of full design team documents.

## Section 2 – Basic Services

### 2.1 General

- 2.1.1 The Basic Services of the SER shall include the analysis of, design of preparation of drawings and specifications for review of structural submittals related to and construction observation of the Primary Structural System, as designated in Exhibit A.
- 2.1.2 Provide Structural criteria for Pre-Engineered Structural Elements, if required by Exhibit A. This included the type of element, position within the structure, connection to the Primary Structural System, the loading and deflection criteria and the required shop drawing and calculation submittal requirements.
- 2.1.3 Review the effect of Secondary and Non-Structural Elements on the Primary Structural System and design the Primary Structural System to accept the support such items. The contract documents shall provide information regarding the supporting capability and physical attachment limitations of the Primary Structural System. Where Exhibit A Summary of Services includes secondary and non-structural elements to be reviewed by the SER, the SER shall be entitled to rely on the accuracy and completeness of information furnished by the Owner and Prime Design Professional.

- 2.1.4 **Submittal Review**  
Review specified Submittals pertaining to items designed by the SER. Determine whether Submittals have received prior approvals as required by the Contract Documents. Review of Submittals shall be for general conformance with the information given and design concept expressed in the Structural Contract Documents.
- Review submittals pertaining to Pre-Engineered Structural Elements specified by the SER and designed by Specialty Engineers. Determine whether Submittals have received prior approvals as required by the Contract Documents.
- Determine whether Submittals bear the signature and professional seal of the Specialty Engineer responsible for the design as required by the Contract Documents. Review of Pre-Engineered Structural Elements shall be for type, position and connection to the elements within the Primary Structural System and for criteria and loads used for their design. Review shall include determination that structural elements necessary for a stable structure will be provided.
- 2.1.5 **Construction Observation:**  
Make site visits at intervals appropriate to the stage of construction and as defined by the Contract to observe and become generally familiar with the quality and the progress of the construction work relative to the Primary Structural System. Prepare construction observation reports.
- 2.1.6 **Field investigation of existing building and structures including surveys of existing construction.**

### **Section 3 – Additional Services**

#### **3.1 General**

- 3.1.1 **Services beyond those outlined under Basic Services may be requested. These services may be provided by the SER under terms mutually agreed upon by the Client and the SER.**
- 3.1.2 **Unless specifically provided for herein, Special Services are services which may or may not be foreseen at the beginning of design stages, and are not normally included as Basic Services. Examples include, but are not limited to:**
- 1) **Services related to Non-Structural Elements and their attachments, such as:**
    - a. Exterior cladding systems.
    - b. Interior architectural systems.
    - c. Window washing systems and tie downs.
    - d. Antennas and flagpoles.
    - e. Mechanical, electrical and plumbing equipment, storage tanks, cooling towers and underground vaults.
    - f. Mechanisms and guild systems for elevators, escalators, other conveyor systems and associated operating equipment.
    - g. Ladders, handrails, railings, grills screen and signs.
  - 2) **Services related to Secondary Structural Elements and their attachments, such as:**
    - a. Site-work elements not part of the Building Structural System, such as retaining walls, culverts, bridges, etc: as well as support for landscape furnishing such as flagpoles, lighting poles, benches, fountains, pools, signs, etc.
    - b. Stairs.
  - 3) **Tenant-related design services.**
  - 4) **Services related to special dynamic analysis such as spectrum or time-history response to seismic forces, or floor response analysis for foot-fall or vibratory equipment.**
  - 5) **Services related to special wind analyses, such as wind-tunnel tests, etc.**
  - 6) **Services related to “seismic risk” analysis.**
  - 7) **Services related to the preparation of documents or files as part of a Building Information Model (BIM).**
  - 8) **Preparation of demolition documents.**
  - 9) **Studies of various schemes to accommodate special energy requirements.**
  - 10) **Services connected with the preparation of documents for alternate bids or for segregated contracts for phased or fast-track construction.**



- 11) Continuous and/or detailed inspections of construction.
- 12) Design or field observations of shoring and bracing for excavations and buildings or underpinning of adjacent structures.
- 13) Design or review related to contractor's construction related equipment, e.g. cranes hoist, etc.
- 14) Design of swimming pools.
- 15) Design for future expansion.
- 16) Filing application for and obtaining a building permit.
- 17) Preparation of "as-built" or record set of drawings.
- 18) Preparation of shop or fabrication drawings, for example, tilt-up wall panel drawings, reinforcing and structural steel detailing, etc.
- 19) Review and determination of structural resistance requirements.

3.1.3 Extra Services – These are services which arise as a result of unforeseen circumstances during the design or construction process.

Examples include, but are not limited to:

1. Services resulting from changes in scope or magnitude of the project as described and agreed to under the Basic Services Agreement.
2. Services resulting from changes necessary because of a construction cost over-run which is outside the control of the SER.
3. Services resulting from revisions which are inconsistent with approvals or instructions previously given by the Client.
4. Services resulting from revisions due to the enactment or revisions of codes, laws, or regulations subsequent to the start of preparation of construction documents.
5. Services resulting from change orders.
6. Services resulting from corrections or revisions required because of errors or omissions in construction by the building contractor or in design by consultants other than the SER.
7. Services resulting from construction procedures over which the SER has no control.
8. Services due to extend design or construction time schedules not caused by SER.
9. Services, including assisting in preparation for litigation or arbitration as witness or consultants in connection with any public hearing, arbitration, or legal proceedings with respect to the project unless caused by SER.
10. Services resulting from damage, as the result of fires, man made disasters, or acts of God.
11. Review and design of alternate or substitute systems.
12. Review of additional shop drawings submittals when occasioned by improper or incomplete submittals not caused by SER.
13. Attendance at construction progress meetings unless provided for herein.
14. Overtime work required by the Owner.

15. Services rendered for special foundations when the discovery of poor soil conditions is made after execution of this Agreement. Examples include, but are not limited to: Deep foundations, mat footings, structural grade slabs, and grade beams.

## **Section 4 – Fees and Payments**

### **4.1 Fees and Other Compensation**

- 4.1.1 Fees for Basic Services, Additional Services and Compensation for Reimbursable Expenses are set forth in the Letter Agreement.

### **4.2 Payment on Account**

- 4.2.1 Invoices for the SER's services shall be submitted, at the SER's option, either upon completion of any phase of service or on a monthly basis. Invoices shall be payable when rendered and shall be considered Past Due if not paid within 30 days after the invoice date.
- 4.2.2 Retainers, if applicable to this project, shall be credited to the final invoice(s).
- 4.2.3 Any inquiry or questions concerning the substance or content of an invoice shall be made to the SER in writing within 21 days of receipt of the invoice. A failure to notify the SER within this period shall constitute all acknowledgements that the services had been provided.

### **4.3 Late Payments**

- 4.3.1 A services charge will be charged at the rate of 1% per month or the maximum allowable by law on the then undisputed outstanding balance of Past Due accounts. In the event that any undisputed portion of any account remains unpaid 30 days after billing, the SER may, without waiving any claim or right against the Owner, and without liability whatsoever to the Owner suspend or terminate the performance of all services.

## **Section 5 – Insurance, Indemnifications & Risk Allocation**

### **5.1 Insurance**

- 5.1.1 Prior to the commencement of the services (a) SER shall become familiar with the project site and local conditions applicable to the project and services and (b) the SER shall secure and maintain professional liability insurance, commercial general liability insurance and automobile liability insurance to protect the SER from claims for negligence, bodily injury, death, or property damage which may arise out of the performance of the SER's services under this Agreement, and from claims under the Worker's Compensation Acts. The SER shall, issue certificate confirming such insurance to the Owner and name Owner, its managers, agents, successors, assigns and lender as additional insured. The amount of such insurance shall not be less than \$1,000,000 professional liability, \$2,000,000 general liability, per occurrence. SER shall deliver original certification of insurance that is acceptable to Owner in all respects.

### **5.2 Indemnifications**

- 5.2.1 The Owner shall indemnify and hold harmless the SER and all of its personnel, from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense are caused in whole or in part by the grossly negligent act or omission and / or strict liability of the Owner, anyone directly or indirectly employed by the Owner (except the SER) or anyone for whose acts any of them may be liable.
- 5.2.2 The SER shall indemnify and hold harmless the Owner and its personnel from and against any all claims, damages, losses and expenses (including reasonable attorney's fees) to the extent they are caused by the grossly negligent act, error, or omission by the SER in performance of its services under this Agreement, subject to the provisions in the paragraph below on Risk Allocation.
- 5.2.3 The Owner shall indemnify and hold harmless the SER and all of its personnel, from and against any and all claims, damages losses and expenses (including reasonable attorney's fee) arising from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants at the site.

### **5.3 Risk allocation**

- 5.3.1 In recognition of the relative risks, rewards and benefits of the Project to both the Owner and the SER, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, the SER's total liability to the Owner for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement, from any cause or causes, shall not exceed the amount of SER's fee. Such causes include, but are not limited to, the SER's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

## **Section 6 – Miscellaneous Provisions**

### **6.1 Reuse of Documents**

- 6.1.1 All documents including calculations, computer files, drawings, and specifications prepared by the SER pursuant to this Agreement are instruments of professional services intended for the one-time use in construction of this project. They are and shall remain the property of the SER. Any reuse without written approval or adaptation by the SER is prohibited. Editable electronic files will not be provided to owner or contractors.
- 6.1.2 Our basic fee does not include preparation of a Building Information Model or conversion of our documents for use by others in a Building Information Model. Our fee assumes delivery of conventional two dimensional documents; printed or in portable document format (pdf).

### **6.2 Opinion of Probable Construction Costs**

- 6.2.1 The SER's opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. The SER cannot guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the Project may affect estimates.

### **6.3 Hidden Conditions**

- 6.3.1 A structural condition is hidden if concealed by existing finishes or if it cannot be investigated by reasonable visual observation. If the SER has reason to believe that such a condition may exist, the SER shall notify the client who shall authorize and pay for all costs associated with the investigation of such a condition and if necessary, all costs necessary to correct said condition. If (1) the client fails to authorize such investigation or correction after due notification, or (2) the SER has no reason to believe that such a condition exists, the client is responsible for all risks associated with this condition, and the SER shall not be responsible for the existing condition nor any resulting damages to persons or property.

### **6.4 Termination, Successors and Assigns**

- 6.4.1 This Agreement may be terminated upon 10 days prior written notice by either party should the other fail to perform its obligations hereunder. In the event of termination, the Owner shall pay the Engineer for all services rendered to the date of termination, and all reimbursable expenses incurred.
- 6.4.2 The Owner and the SER each binds himself, partners, successors, executors, administrators, assigns and legal representative to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representative of such other party in respect to all covenants, agreements, and obligations of this Agreement.
- 6.4.3 Neither the Owner nor the SER shall assign, sublet or transfer any rights under or interest in (including but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, which consent shall not be unreasonably withheld or delayed, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law which consent shall not be unreasonably withheld or delayed. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the SER from employing such independent consultants, associates and subcontractors as he or she may deem appropriate to assist in the performance of services hereunder.
- 6.4.4 The SER and Owner agree that the services performed by the SER pursuant to this Agreement are solely for the benefit of the Owner and are not intended by either the SER or the Owner to benefit any other person or entity. Tot

the extent that any other person or entity, including but not limited tot the Contractor and/or any of it's Subcontractors and other Design Professional, is benefited by the services performed by the SER pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to this contract.

## **6.5 Dispute Resolutions**

- 6.5.1 In the event of any dispute, controversy or claim arising out of this proposal or any alleged breach thereof, the parties shall participate in a mediation conducted under the auspices of a recognized neutral third-party mediation service, in a good faith effort to resolve the dispute, prior to undertaking any legal action. The selection of the mediation services shall be mutually acceptable to the parties, and the cost of the mediation services shall be borne equally by the parties. If the applicable dispute has not been resolved within ninety (90) days after beginning the mediation process, either party may abandon the mediation process and seek any rights and remedies available at law or in equity. In any legal action following unsuccessful mediation, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the other party to this proposal.