

# STANDARD TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN CLIENT AND ARCHITECT FOR ARCHITECTURAL / INTERIORS SERVICES (STC)

## Article 1 - Definitions and General Provisions

1.1 Parties. The terms "Client" and "Architect" include each party's authorized representatives, officers, directors, shareholders, and employees.

1.2 Project Budget. The Project Budget includes the construction budget, furniture, furnishings, equipment costs, and cost of all goods and services to be furnished by Client, Contractor, and any of their subcontractors or consultants, and contingency allowances.

1.3 Days or Time. Time periods refer to calendar days, unless otherwise stated.

## Article 2 - Architect's Services

2.1 Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

2.2 Limitations of Construction Responsibilities. Architect shall not have control over, or charge of, and shall not be responsible for, construction means, methods, schedules, or delays, or for safety precautions and programs in connection with the Work.

## Article 3 - Client's Responsibilities

3.1 Information. Client shall provide full information regarding the requirements for the Project.

3.2 Legal and Financial Information. Client shall furnish Architect with: (a) a legal description of the property; (b) the name and address of the property owner; and (c) the name and address of any construction lender(s).

3.3 Surveys. Client shall furnish surveys fully describing physical characteristics, legal limitations, and utility locations for the Project site.

3.4 Existing or Base Building Information. Upon request, Client shall provide information, drawings, specifications, and other documents that describe the existing utility services, site conditions, build-out and base building construction, and systems in or with which the Project is to be located or integrated.

3.5 Client's Consultants. When requested by Architect, or required by authorities having jurisdiction over the Project, Client shall furnish the services of geotechnical, civil, and environmental engineers and any other services required by the scope of the Project.

3.6 Tests. Client shall furnish structural, mechanical, chemical, air, and water pollution and hazardous materials tests, and other laboratory and environmental tests, inspections, and reports required by law or by authorities having jurisdiction over the Project, or reasonably requested by Architect.

3.7 Legal, Accounting, and Insurance Services. Client shall furnish all legal, accounting, and insurance counseling services as may be necessary for the Project.

3.8 Client's Services and Information. Architect shall be entitled to rely upon the accuracy and completeness of the services, information, surveys, and reports provided by Client, Contractor, or any of their subcontractors or consultants.

## Article 4 - Construction Cost

4.1 Construction Cost. The Construction Cost shall be the total cost or estimated cost to Client of all Project elements designed or specified by Architect.

4.2 Estimates. Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's Project Budget or from any cost estimate or evaluation prepared or reviewed by Architect.

4.3 Fixed Limit. No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal, or establishment of a Project Budget.

## Article 5 - Use of Architect's Documents and Data

5.1 The Drawings, Specifications, and other documents (collectively "Documents") and any computer tapes, disks, electronic data, or CAD files (collectively "Data") prepared by Architect are instruments of service and shall remain Architect's property, until such time as Client has paid all amounts to which Architect is entitled under this Agreement, after which condition precedent, all right, title and ownership interest in the Documents and Data shall transfer and accrue to Client, including all copyrights and other proprietary rights and interest, with the exception of standard constructions details or specifications included as part of the Documents or Data, the origination of which preexisted this Agreement ("Preexisting Intellectual Property"). Notwithstanding the foregoing or anything express or implied to the contrary, Architect shall hold and remain the owner of all rights, title and interest in Preexisting Intellectual Property.

5.2 Upon completion of Architect's services and payment of all amounts due Architect, Client may retain copies or reproduces of the Documents and/or Data for information and reference in connection with Client's use and occupancy of the completed Project.

5.3 Client agrees to indemnify and hold Architect harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses (including reasonable attorneys' fees and costs of defense), together with interest thereon, accruing or resulting to any persons, firms, or other legal entities, on account of any damages or losses to property or persons, including death or economic loss, arising out of the unauthorized use, re-use, transfer or modification of the Documents and/or Data.

## Article 6 - Claims and Disputes

6.1 Mediation. Claims, disputes, or other matters in question between the parties shall be subject to mediation under the auspices of a recognized professional mediation service prior to undertaking any legal action. The cost of the mediation service shall be borne equally by the parties.

6.2 Attorneys' Fees. In any proceeding following unsuccessful mediation, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees and costs of defense.

6.3 Mutual Indemnification. Architect agrees to indemnify and hold Client harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses (including reasonable attorneys' fees and costs of defense), together with interest thereon, to

the extent caused by the negligent acts, errors, or omissions of Architect, its consultants, or anyone for whose acts either of them may be legally liable. Client agrees to indemnify and hold Architect harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses (including reasonable attorneys' fees and costs of defense), together with interest thereon, to the extent caused by the negligent acts, errors, or omissions of Client, its contractors or consultants, or anyone for whose acts any of them may be legally liable. **Article 7 - Termination**

7.1 Termination by Either Party. This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement.

7.2 Failure to Make Payments. Client's failure to make payments to Architect in accordance with this Agreement shall constitute substantial nonperformance and cause for termination or suspension.

7.3 Compensation Upon Termination. In the event of termination, Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, and Termination Expenses, which shall be defined as Architect's expenses directly attributable to termination.

#### **Article 8 - Payments to Architect**

8.1 Hourly Rates. Where services are to be compensated on an hourly basis, compensation shall be based on the flat hourly rates set forth in Architect's and Architect's consultants' standard rate schedules, which are subject to periodic adjustment.

8.2 Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by Architect and Architect's consultants in the interest of the Project, including, but not limited to the following:

(a) Data communications, telecommunications, reproduction, shipping, handling, and delivery.

(b) Mileage, tolls, cab fares, and parking.

(c) Renderings, models, computer modeling, mock-ups, and photography.

(d) Sales taxes and other transactional taxes, and fees paid for securing approval of authorities having jurisdiction over the Project.

(e) Authorized out-of-town travel (business class unless upgrade is preapproved by Client), including travel time, out-of-town living expenses (business class hotel unless upgrade is preapproved by Client), and long-distance communications.

(f) Additional insurance coverage or limits requested by Client in excess of that normally provided by Architect and Architect's consultants.

8.3 Progress Payments. Progress payments for Basic and Additional Services and Reimbursable Expenses shall be due and payable upon receipt of Architect's invoices. Disputes or questions regarding an invoice or a portion of an invoice shall not be cause for withholding payment for the remaining portions due. Amounts unpaid thirty (30) days after the issue date of Architect's invoice shall be assessed a service charge of one and one-half percent (1-1/2%) per month.

8.4 Time Extensions. This Agreement anticipates that Architect's services will proceed continuously in accordance with the Project schedule. If, and to the extent that, time limits set forth in the original schedule are extended more than one-hundred and eighty (180) days beyond the dates established, Architect's compensation shall be equitably adjusted.

8.5 Change In Project Scope. If portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions.

#### **Article 9 - Miscellaneous Provisions**

9.1 Governing Law. This Agreement shall be governed by the law of the location of Architect's office identified in the Letter of Agreement.

9.2 Property Insurance Waivers. Client shall cause Architect and Architect's consultants to be named as Additional Insureds on Contractor's General Liability Policy and any property insurance purchased for the period of construction of the Project. Such insurance shall be endorsed to provide a waiver of the insurers' rights of subrogation against Architect and Architect's consultants.

9.3 Mutual Waiver of Consequential Damages. The parties hereby waive, as against each other, any claims for incidental, special, exemplary or consequential damages.

9.4 Successors and Assigns. Neither party shall assign this Agreement or any right or cause of action arising out of this Agreement or the performance of obligations hereunder without the written consent of the other.

9.5 Entire Agreement. This Agreement represents the entire and integrated agreement between Client and Architect and supersedes all prior negotiations, representations, or agreements.

9.6 Third Parties. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party.

9.7 Professional Credits. Architect shall have the right to include representations of the design of the Project, including, upon Client's approval, not to be unreasonably withheld, photographs of the exterior and interior, among Architect's professional materials, including, but not limited to, promotional materials, professional publications, and competition submissions.

9.8 Latent Conditions. In the event that the Project includes any remodeling, alteration, or rehabilitation work, Client acknowledges that certain design and technical decisions shall be made on assumptions based on available documents and visual observations of existing conditions.

9.9 Areas and Measurements. Areas and measurements provided by Architect are derived from drawing dimensions or field measurements and are not intended to be used as the basis for calculating rent or for other similar purposes.

9.10 Hazardous Materials. Client acknowledges that Architect has no expertise in, and is not being retained for the purposes of, investigating, detecting, abating, replacing, remediating, or removing any items, products, or materials containing hazardous substances.

9.11 Design/Build by Contractor. Architect and its consultants shall have no responsibility for the design, technical adequacy or accuracy, installation, or performance of any Design/Build portions of the Project.

9.12 Separate Consultants. Architect's coordination of its services with Client's and Contractor's subcontractors or consultants shall be limited to that necessary for consistency of Architect's documents with those of such subcontractors or consultants.