

Larson and Darby, Inc. Standard Terms and Conditions

STANDARD OF CARE

Larson and Darby, Inc.'s services shall be provided consistent with and limited to the standard of care applicable to such services. That means we will provide our services consistent with the professional skill and care ordinarily provided by architects and engineers practicing in the same or similar locality under the same or similar circumstances.

FORCE MAJEURE

Larson and Darby, Inc. shall not be responsible for delays caused by factors beyond our reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or comment on Larson and Darby, Inc.'s services or work product, or delays caused by faulty performance by the Client's or by contractors of any level. When such delays beyond our reasonable control occur, the Client agrees that Larson and Darby, Inc. or our subconsultants shall not be responsible for damages, nor shall the Design Professional be deemed in default of this Agreement.

DOCUMENTS

All reports, notes, drawings, specifications, data, calculations, and other documents prepared by Larson and Darby, Inc. (collectively referred to as "Documents") are instruments of our services that shall remain Larson and Darby, Inc.'s property. The Client agrees not to use the Documents for future additions or alterations to this Project or for other projects without Larson and Darby, Inc.'s express written consent. Any unauthorized use of the Documents will be at the Client's sole risk and without liability to Larson and Darby, Inc. or our subconsultants. Accordingly, Client shall defend, indemnify, and hold harmless Larson and Darby, Inc. or our subconsultants from and against any and all losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized use.

BILLING AND PAYMENT

Client shall pay Larson and Darby, Inc. in accordance with the rates and charges set forth in the Proposal. Larson and Darby, Inc. will submit to the Client, monthly, an invoice of services rendered, and expenses incurred during the previous period. Payment will be due upon receipt of Larson and Darby, Inc.'s invoice. In the event the Client fails to pay Larson and Darby, Inc. within thirty (30) days after invoices are rendered, the Client agrees that Larson and Darby, Inc. shall have the right to consider that event a breach of this Agreement and upon seven (7) days written notice, the duties, obligations, and responsibilities of *Larson and Darby, Inc. under this Agreement may be either suspended or terminated.*

CONSEQUENTIAL DAMAGES

Larson and Darby, Inc. and the Client waive consequential damages, including but not limited to damages for loss of profits, loss of revenues and loss of business or business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement.

Larson and Darby, Inc. will coordinate our services with those services provided by the Client and the Client's consultants. Larson and Darby, Inc. shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Client and the Client's consultants.

CONSTRUCTION ADMINISTRATION

If Construction Administration services are included in the Larson and Darby, Inc. Proposal for this project, we will advise and consult with

the Client during Construction Phase Services. Larson and Darby, Inc. shall have authority to act on behalf of the Client only to the extent provided in this Agreement. Larson and Darby, Inc. and our subconsultants shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall Larson and Darby, Inc. be responsible for the Contractor's or any Sub-Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Larson and Darby, Inc. and our subconsultants shall be responsible for our negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor, sub-contractors or of any other persons or entities performing portions of the Work.

EVALUATIONS OF THE WORK

If included in the Agreement between Larson and Darby, Inc. and the Client, we shall visit the site at set milestones appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

SUBMITTALS

Larson and Darby, Inc. and/or our subconsultants shall review, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but solely for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's sole responsibility. Larson and Darby, Inc.'s review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. Larson and Darby, Inc.'s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

COPYRIGHTS AND LICENSES

Larson and Darby, Inc. and our subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. If the Client provides prototype drawings, Larson and Darby, Inc. and our consultants shall be deemed the authors and owners of any modifications or improvements to their respective Instruments of Service.

Larson and Darby, Inc. grants to the Client a nonexclusive license to use our Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Client substantially performs its obligations under this Agreement, including prompt payment of all sums due. Larson and Darby, Inc. shall obtain similar nonexclusive licenses from our consultants consistent with this Agreement.

In the event the Client uses the Instruments of Service without retaining the authors of the Instruments of Service, the Client releases Larson and Darby, Inc. and our subconsultant(s) from all claims and causes of action arising from such uses. The Client, to the extent permitted by law, further agrees to indemnify, defend and hold harmless Larson and Darby, Inc. and our subconsultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent

Larson and Darby, Inc. Standard Terms and Conditions

such costs and expenses arise from the Client's use of the Instruments of Service under this Section.

MEDIATION

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

The Client and Larson and Darby, Inc. and our subconsultants shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties do not resolve a dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

TERMINATION OR SUSPENSION

Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

PROGRESS PAYMENTS

Larson and Darby, Inc. shall present monthly invoices for Professional Services earned and reimbursable expenses incurred, and Client shall pay the full amount thereof within thirty (30) days after presentation. Any charges held to be in dispute by the Client shall be identified in writing to Larson and Darby, Inc. within ten (10) days of presentation of Larson and Darby, Inc.'s invoice or shall be paid in full per the terms of this Agreement. The Client shall not withhold amounts from Larson and Darby, Inc.'s compensation to impose a penalty on Larson and Darby, Inc. unless we have been found liable for the amounts in a binding dispute resolution proceeding. If payment in full is not received per the terms of this Agreement, Larson and Darby, Inc. shall have the right to suspend Services and withhold all documents until payment is received and apply a one percent (1%) per month delinquency charge on the unpaid balance from the date of the invoice. Payment of such charges shall not excuse the default in payment or terminate the unperformed portion of this Agreement.

HAZARDOUS MATERIALS

Larson and Darby, Inc. shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project site. If hazardous materials are present, the Client shall be responsible to remove them from the Project site in a manner that will not adversely affect the health of any person and will comply with any applicable governmental laws and regulations. The Client shall indemnify and hold harmless Larson and Darby, Inc. and our subconsultants from any liability, loss, damage, or expense arising out of or with respect to the presence of hazardous materials on the Project site. The presence or discovery of any hazardous or toxic substance on the site shall be cause for extension of the schedule of Larson and Darby, Inc.'s services and equitable adjustment of fees for Larson and Darby, Inc. and our subconsultants as mutually agreed by the parties.

LIMITATION OF LIABILITY (Available Insurance):

Neither Larson and Darby, Inc. or our subconsultants, nor their agents, shareholders or employees shall be jointly, severally, or individually liable to the Client for an amount in excess of the proceeds of the available professional liability insurance coverage required by this

agreement by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty or negligence.

CLIENT ESTABLISHED CONTINGENCIES

The Client shall establish and periodically update the Client's budget for the Project, including (1) the budget for the Cost of the Work (2) the Client's other costs; and (3) reasonable contingencies related to all of these costs including additional services of Larson and Darby, Inc. and our other design subconsultants.

BUDGET EVALUATION and PRELIMINARY OPINION OF PROBABLE COST

Evaluations of the Client's budget for the Cost of the Work, the Larson and Darby, Inc. preliminary Opinion of the Probable Cost of the Work, and any updated Opinions of the Cost of the Work prepared by Larson and Darby, Inc. and/or our subconsultants, represent our judgment as design professionals. It is recognized, however, that neither Larson and Darby, Inc. nor the Client has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, Larson and Darby, Inc. and our subconsultants cannot and does not warrant or represent that bids or negotiated prices will not vary from the Client's budget for the Cost of the Work or from any Opinion of the Probable Cost of the Work or evaluation prepared or agreed to by Larson and Darby, Inc. and/or our Consultants.

MUTUAL INDEMNITY

Larson and Darby, Inc. and the Client each agree to indemnify the other against liability, damages, costs and expenses including reasonable attorney's fees and expenses recoverable under applicable law (collectively referred to as "Damages") that are caused to the other due to the negligence of the indemnifying party, but only to the extent of the indemnifying party's negligence. Neither Larson and Darby, Inc. nor the Client shall be required to indemnify the other to the extent Damages arise from or are caused by the indemnified party's own negligence (whether sole, concurrent, or contributory). Neither Larson and Darby, Inc. nor Client shall have a duty to provide the other an up-front defense of any claim.

DISEASE TRANSMISSION

Larson and Darby, Inc. shall have no responsibility for the transmission of any communicable disease including but not limited to COVID-19, or exposure of persons to Virus or other communicable disease discovered at the premises. Larson and Darby, Inc. cannot prevent the Client and/or the Client's Invitees from becoming exposed to, contracting, or spreading Virus or other communicable disease while utilizing Larson and Darby, Inc.'s services. It is not possible to prevent the presence of communicable disease. Therefore, if the Client chooses to utilize Larson and Darby, Inc.'s services, the Client may be exposing the Client or the Client's Invitees to and/or increasing the Client's and/or the Client's Invitees' risk of contracting or spreading communicable disease. The Client hereby releases, waives, discharges, and covenants not to sue Larson and Darby, Inc. for any and all damages, injuries, losses, liability, claims, causes of action, litigation, or demands, including but not limited to those for personal injury, sickness, or death, as well as property damages and expenses, of any nature whatsoever which may be incurred, directly or indirectly, now or in the future, in any way related to any outbreak, epidemic, pandemic or public health situation, or any communicable disease related health issue or exposure.