

Terms & Conditions

1. The Agreement

1.1 The Agreement between the Client, as identified on the face side of this Agreement, and Foresight Services, Inc. ("Foresight") consists of the face side of this Agreement (the "Face Side"), these Terms and Conditions, and any attachments to this Agreement signed or initialed by the parties. The parties may subsequently modify this Agreement, but only by a writing signed by the parties. All such documents, including signed modifications, are considered the contract documents.

2. Scope of Services

2.1 Foresight shall perform the preliminary services as identified on the Face Side and arrange for the preparation of the construction documents and construction work required by the contract documents (collectively the "Services") using its experience, training and best skills in the industry.

2.2 Neither Foresight nor any of its employees is licensed to perform architectural, engineering or land surveying services ("A/E" services). Nothing in the contract documents shall be construed to require Foresight or any of its employees to perform A/E services. Insofar as the contract documents specifically permit the performance of A/E services, Foresight is authorized to engage Formation Architects, Inc. or, at Foresight's selection, a licensed individual or A/E firm to perform such services.

2.3 If the Client is a licensed architect or engineer, the Client agrees that any drawings and specifications prepared for the Client will be produced under the Client's supervision and will be sealed by the Client when required by law.

3. Foresight's Responsibilities

3.1 Foresight shall designate a representative who shall serve as its project representative.

3.2 Foresight shall be responsible for the negligent acts or omissions of Foresight's agents and employees occurring within the scope of the Services. Foresight shall not be responsible for the negligent acts or omissions of any other person or firm.

3.3 Foresight shall properly perform and complete the Services.

3.4 While Foresight's policy is to inform the Client of any condition at the Client's property coming to the attention of Foresight's representative that appear to create a danger or hazard, Foresight and its agents and employees have no duty or responsibility to the Client or others to notify the Client or others, or to rectify or recommend rectifying, a condition not caused by Foresight which is or which is believed to be dangerous or hazardous, including (a) any condition involving asbestos-containing material, PCBs, other hazardous substances as so recognized under federal or state law, mold, or bacteria, or (b) any other condition that may create a risk of harm to one or more persons or the risk of damage to property.

3.5 If the Services include infrared scanning without expressly requiring verification by core testing, Foresight makes no warranty or representation regarding the infrared scanning results. Foresight is in no way responsible for the infrared scanning detecting areas of heat loss attributable to a cause other than wet insulation.

4. Client's Responsibilities

4.1 Client shall designate a representative who shall serve as its project representative.

4.2 Client shall be responsible to arrange adequate access to permit Foresight to fully perform its scope of Services at the project site.

4.3 Client shall promptly provide Foresight all available information concerning the construction, maintenance and repair of those project improvements involved in Foresight's performance of Services.

4.4 For Foresight's performance of Services, Client shall timely pay Foresight either the Lump Sum amount or the T & R amount as indicated on the Face Side.

5. Definitions of Price Terms

5.1 "Lump Sum" means the fixed price for the Services, and covers Foresight's estimated amounts for Direct Personnel Expense, travel, long distance communications, reproductions, postage & handling of documents, services of Foresight's sub-consultants and subcontractors (but only where Foresight reasonably contemplates engaging such a sub-consultant or subcontractor), insurance premiums allocable to the project, and overhead & profit. The Lump Sum price does not cover any changes in the basic scope of Services or any overtime services, and in the event of any such change or overtime services, the Lump Sum price shall be equitably adjusted.

5.2 "Time & Reimbursement Expense" or "T & R" means the amount equal to: (a) the standard Hourly Billing Rates as published by Foresight multiplied by the hours of Services performed by the respective Foresight personnel, plus (b) the Reimbursable Charges.

5.3 "Reimbursable Charges" means the actual costs incurred by Foresight in connection with the performance of the Services (exclusive of amounts of regular time wages and wage-related insurance and taxes paid to those Foresight personnel covered by the Hourly Billing Rates), including without limitation amounts paid for: (a) out-of-town travel and related expenses, (b) transportation, (c) long distance communications, (d) reproductions, (e) postage & handling of documents, (f) services of sub-consultants and subcontractors to Foresight, and (g) overtime work; provided, however, that no sub-consultant or subcontractor shall be employed and no overtime work shall be performed without Client's consent, as confirmed in writing by Foresight to the Client. Client's consent shall not be unreasonably withheld.

6. Amounts Due to Foresight

6.1 Foresight may render invoices on a monthly basis. The Client shall pay the amount due under a Foresight invoice within 15 days of the invoice date.

6.2 To the extent each invoice amount is not timely paid in full, interest shall accrue at the lesser of: (a) 1.5% per month, or (b) the maximum lawful rate.

6.3 In addition to the amount remaining due plus interest per the above, Foresight shall be entitled to recover its reasonable attorneys' fees and collection costs if Foresight authorizes a collection firm or attorneys to collect the amounts remaining due.

7. Insurance

7.1 Foresight maintains workers' compensation, employer's liability, commercial general liability, automobile liability, and professional liability insurance.

8. Claims/Arbitration

8.1 Client shall notify Foresight in writing within ten (10) days of learning of any condition that reflects the possibility that Foresight did not properly perform any of its Services or that Foresight may otherwise be liable to Client. The notice from Client to Foresight shall give the particulars giving rise to the possible claim, and Foresight shall then be afforded a reasonable opportunity to investigate. The failure to satisfy this claim notice requirement shall constitute a waiver of the claim.

8.2 Subject to the foregoing, every claim and dispute between Client and Foresight arising out of or relating to the Services, the contract documents or the project shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The award shall be enforceable in any court of competent jurisdiction. The arbitration locale shall be St. Louis, Missouri, unless Foresight requests that the locale be the project site.

9. Miscellaneous Provisions

9.1 This Agreement, when signed by Foresight and not the Client, shall be deemed a Foresight proposal. The proposal price terms are subject to increase if not accepted by Client within 30 days of the proposal date. Client's authorization to Foresight to commence the Services shall be treated as Client's acceptance of this proposal.

9.2 Any roof evaluation or survey report, whether prepared or to be prepared by Foresight, is based on the limited investigation permitted and on the accuracy of information furnished by Client. A roof evaluation or survey report may be based on assumptions with respect to information furnished by Client as to latent or hidden conditions, and Foresight is not liable if any of those assumptions are ultimately invalid. A roof evaluation report is a preliminary tool for purposes of budgeting and making general recommendations; it is subject to change as further information is obtained.

9.3 Foresight's performance period shall be extended due to adverse weather conditions and other events and occurrences beyond Foresight's reasonable control.

9.4 This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with the contract documents through no fault of the party initiating the termination.

9.5 Foresight's maximum total liability for all breaches of the contract documents, for negligence, or for any other breaches of duty shall be that portion of the price for Foresight's Services allocable to the preliminary services, except that to the extent the claims are covered by Foresight-maintained insurance, Foresight's maximum liability for such claims shall be the limits of liability under the applicable Foresight-maintained insurance policy.

9.6 The contract documents represent the entire and integrated agreement for this project, and supersede all prior representations or agreements, whether oral or written.