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Windham, ME 04062  
(207) 892-0983

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## **An Agreement between Client and Structural Engineer for Special Inspection Services**

Based on the Council of American Structural Engineers document 4-2008

December 7, 2011

Phoenix Property Management  
**Attn: Aaron Bateman**  
PO Box 759  
Saco, ME 04072

Reference: New Building for Phoenix Property Management  
Hutchins Drive, Portland, ME  
P2011-34

Dear: Aaron

We are pleased to propose the following Agreement for providing special inspection services on the above referenced project.

### **DESCRIPTION OF PROJECT**

The Project consists of:

- A 7000 square foot pre-manufactured metal building.
- A 2400 square foot salt storage shed.
- And a 200 foot long (approx..) retaining wall.

### **SCOPE OF SERVICES**

The services to be provided are described in the Scope of Special Inspection Services (Exhibit A) and the Terms and Conditions (Exhibit B). The services are based on Drawings prepared by Ted Greenlaw, CORLE, and Attar Engineering, Inc and the Draft Statement of Special Inspections dated December 6, 2011. It is our understanding that Phoenix Property Management will engage the services of a testing lab to perform field testing and inspection services under a separate contract.

Special Inspections for other disciplines not itemized in Exhibit A may be required, but are not included in this Agreement.

### **COMPENSATION**

Compensation for our services will be a fee calculated on an hourly rate basis per our current hourly rates as indicated below. Fees for outside consultants will be billed at a cost plus 10% in addition to the fee. At this time we estimate the total fee to be between \$1500.00 and \$2000.00. This total fee shall be understood to be an estimate and is based on a construction time of three (3) months. If Basic Services have not been completed within this time, through no fault of the Structural Special Inspector, the amounts of compensation set forth in this Agreement shall be equitably adjusted.

Reimbursable expenses will be billed at cost plus 10% in addition to the fee.

Our current hourly rate for engineering services is \$100.00 per hour. This rate is effective through the last day of December 2012.

Additional Services will be charged at our standard hourly rates or billed at a mutually agreed upon fee.

This Letter of Agreement, and Exhibits A and B hereto, constitute the entire Agreement between the parties. Please examine these documents and sign and return one copy to me.

We are looking forward to working with you on this Project.

Respectfully,  
M<sup>2</sup> Structural Engineering, P.C.



Matthew J. Miller, P.E.  
President

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Accepted by:

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(Signature)

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(Date)

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(Printed Name)

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(Title)

## **EXHIBIT A – Scope of Special Inspection Services**

This is an exhibit attached to and made part of the Agreement dated December 7, 2011, between

Phoenix Property Management and M<sup>2</sup> Structural Engineering, P.C.  
Client Structural Engineer (Special Inspector, SI)

### **BASIC SERVICES**

M<sup>2</sup> Structural Engineering, P.C. will provide WORK consisting of:

1. Site visits as required during foundation construction for general conformance with the contract documents and to review concrete placement.
2. Review concrete inspection field reports by the Testing Agency, as necessary, for work performed by ACI or ICC certified inspectors to verify concrete reinforcing work performed was in accordance with contract documents.
3. Review of concrete inspection field reports provided the Testing Agency for work performed by ACI or ICC certified inspectors to verify concrete placement work was in accordance with contract documents.
4. Review of concrete inspection field reports provided by the Testing Agency for work performed by ACI or ICC certified inspectors to verify bolts installed in concrete prior to and during placement. Reports shall indicate conformance of bolt position, embedment and concrete placement and consolidation around bolts.
5. Review of laboratory test reports for concrete test cylinders.
6. Site visits as required during, and one (1) site visit following structural steel erection to verify framing details are in conformance with Construction Documents.
7. Review of submittals required by the Statement of Special Inspections prepared by the Structural Engineer of Record and will include:
  - a. Review of AISC or IAS Certification documentation from Structural Steel fabricator.
  - b. Review of Structural Steel or Metal Building fabricator's "Certificate of Compliance."
  - c. Review of required Welder's Certificate submittals.
  - d. Review of material verification submittals.
8. Review of field reports, by others, for the inspection of field bolted and field welded connections.
9. Preparation and distribution of Non-Conformance reports as required.
10. Preparation and distribution of Interim Special Inspection Reports as required by the Structural Engineer of Record and/or Building Official.
11. Preparation of Final Report of Special Inspections.

### **EXCLUDED SERVICES**

Services not included above are excluded from the WORK.

### **SERVICES BY OTHERS**

The following services are to be provided by others or may be provided by M<sup>2</sup> Structural Engineering, P.C. as an additional service. For the purposes of this Agreement, the following are not included as part of M<sup>2</sup> Structural Engineering, P.C.'s WORK:

1. Review of soils and placement of fill as required by the Statement of Special Inspections.
2. Field inspection of Bolted and/or Welded steel connections.
3. Inspection of welding of reinforcing steel.
4. On site review of fabricator(s) shop(s), if required.
5. Special inspections of cold-formed steel framing.

## **EXHIBIT B - Terms and Conditions**

This is an exhibit attached to and made part of the Agreement dated December 7, 2011, between

Phoenix Property Management and M<sup>2</sup> Structural Engineering, P.C.  
Client Structural Engineer (Special Inspector, SI)

### **Section 1 - General**

#### **1.1 This Agreement**

- 1.1.1 These Terms and Conditions along with the Letter Agreement and Exhibit A form the Agreement as if they were part of one and the same document.
- 1.1.2 The Letter Agreement and Exhibit A may modify the applicability of these Terms and Conditions. Such limitation shall take precedence over provisions of this Exhibit.

#### **1.2 General obligations of the Special Inspector and the Client**

- 1.2.1 The Special Inspector (SI) shall perform Special Inspection Services as specified in Exhibit A and detailed in these Terms and Conditions. In rendering these services, the SI shall apply the skill and care ordinarily exercised at the same time and locale by structural engineers performing special inspection services.
- 1.2.2 The SI makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with SI's Services.
- 1.2.3 The Client shall provide to the SI a complete set of Documents, signed and sealed by the Licensed Design Professional and approved by the Building Official, and applicable approved shop drawings and related documents, including the construction schedule.
- 1.2.4 The Client shall direct the Contractor to notify the SI of the Contractor's progress so the SI will have at least 24 hours notice prior to performance of work that will require inspection or testing.
- 1.2.5 The Client and SI shall each designate a person to act with authority on their behalf with respect to all aspects of the project.
- 1.2.6 The SI shall notify the Contractor of their presence and responsibilities at the job site.
- 1.2.7 The SI shall submit to the Building Official all required reports.

#### **1.3 Definitions**

- 1.3.1 **Special Inspector (SI)** is the licensed individual or firm that implements the special inspection program for the project.
- 1.3.2 **Testing Laboratory** is an agency or firm qualified to perform field and laboratory tests to determine the characteristics and quality of building materials and workmanship.

- 1.3.3 **Contract Documents** are the Engineering and Architectural Drawings and Specifications issued for construction, plus clarification drawings, addenda, approved change orders and contractor designed elements.
- 1.3.4 **Inspection** is visual observations and materials testing to determine that the work is in substantial conformance with the requirements of the Contract Documents.
- 1.3.5 **Reimbursable Expenses** are expenses incurred directly or indirectly in connection with the project such as, but not limited to, transportation, meals or lodging for travel, long distance telephone calls and facsimile transmissions, overnight deliveries, courier services, professional service sales taxes, the cost of reproductions beyond those normally required for coordination and information purposes, and the cost of outside professional services.
- 1.3.6 **Shop Drawings** are those drawings prepared by or on behalf of the Contractor, based upon the Contract Documents that have been reviewed by and bear the review stamp of the appropriate design professionals.

## Section 2 - Services

- 2.1 Services include those designated in the Scope of Special Inspection Services and further detailed below. Some inspection and testing duties may be performed by Testing Laboratories or other professionals.
- 2.2 Unless otherwise stated in the Agreement, the SI will provide the following services, as applicable to the project:
  - 2.2.1 Administrative Services:
    - 2.2.1.1 The SI shall keep records of all inspections related to Exhibit A.
    - 2.2.1.2 The SI shall review inspection and materials testing reports and bring identified discrepancies to the attention of the Building Official, the Prime Design Professional, Structural Engineer of Record, Client and Contractor.
    - 2.2.1.3 The SI shall distribute reports to the Building Official, the Prime Design Professional, Structural Engineer of Record, Client and Contractor. Reports will be submitted as required by the Building Official and the Prime Design Professional.
  - 2.2.2 Certificates of Compliance Review:
    - 2.2.2.1 Certificates of Compliance shall be reviewed for conformance with the standards specified in the Contract Documents. Identified discrepancies shall be brought to the attention of the Building Official, the Prime Design Professional, Structural Engineer of Record, Client and Contractor.
  - 2.2.3 Field Inspection:
    - 2.2.3.1 The SI shall make site visits to inspect work designated in the Scope of Special

Inspection Services (Exhibit A).

2.2.3.2 The SI shall prepare a report following each site visit.

2.2.3.3 The SI shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor or safety precautions and programs incident to the work of the Contractor.

2.2.3.4 The SI shall not be responsible for the failure of the Contractor to perform the construction work in accordance with the Contract Documents.

2.2.3.5 The SI shall not have the authority to stop work on the project.

2.2.4 Material Testing:

2.2.4.1 The SI shall review reports to determine if the Testing Laboratory(s) has verified conformance of the reported item of work with the Contract Documents.

2.2.4.2 The SI shall bring identified discrepancies to the attention of the Building Official, Prime Design Professional, Structural Engineer of Record, Client and Contractor.

### **Section 3 - Fees and Payments**

#### **3.1 Fees and Other Compensation**

3.1.1 Services and Reimbursable Expenses are as stated in the Letter Agreement.

#### **3.2 Payments on Account**

3.2.1 Invoices for SI's services shall be submitted on a monthly basis. Invoices are payable when rendered and shall be considered past due if not paid within 60 days of the invoice date.

3.2.2 Retainers, if applicable to this project, shall be credited to the final invoice.

3.2.3 Inquiries or questions concerning the substance or content of any invoice shall be made to the SI in writing within 10 days of receipt of the invoice. A failure to notify the SI within this period shall constitute an acknowledgement that the service has been provided and payment is due.

#### **3.3 Late Payments**

3.3.1 A service charge will be charged at the rate of 1.5% (18% true annual rate) per month or the maximum allowable by law on the then outstanding balance of past due accounts. In the event any portion of the account remains unpaid 60 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

3.3.2 In the event that any portion of an account remains unpaid 30 days after billing, the SI may, without waiving any claim or right against the Client, and without liability

whatsoever to the Client, suspend or terminate the performance of all services.

## **Section 4 - Insurance, Indemnification & Risk Allocation**

### **4.1 Insurance**

- 4.1.1 The SI shall secure and endeavor to maintain professional liability insurance, commercial general liability insurance, and automobile liability insurance to protect the SI from claims for negligence, bodily injury, death, or property damage which may arise out of the performance of the SI's services under this Agreement. The SI shall, if requested in writing, provide certificates of insurance to the Client.

### **4.2 Indemnifications**

- 4.2.1 The SI and the Client mutually agree to indemnify and hold each other harmless from any damages and losses arising from their own negligent acts, errors or omissions in their performance under this Agreement, to the extent that each party is responsible for such damages and losses on a comparative basis of fault.

### **4.3 Risk Allocation**

- 4.3.1 In recognition of the relative risks, rewards and benefits of the Project to both the Client and the SI, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the SI's total liability to the Client 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 \$25,000 or the SI's fee, whichever is greater. Such causes include, but are not limited to, the SI's negligent act, errors, omissions, strict liability, breach of contract, breach of express or implied warranty, or any other theory of legal liability. This limitation of liability shall apply to the Structural Engineer of Record and its officers, members, directors, partners, agents, employees, and subconsultants.

## **Section 5 – Miscellaneous Provisions**

### **5.1 Termination, Successors and Assigns**

- 5.1.1 This Agreement may be terminated upon 10 days written notice by either party should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the SI for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.
- 5.1.2 The Client and SI each binds themselves, 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.
- 5.1.3 Neither the Client nor the SI 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, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. 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 SI from employing such independent consultants, associates and subcontractors as deemed appropriate to assist in the performance of services hereunder.

- 5.1.4 The SI and Client agree that the services performed by the SI to this Agreement are solely for the benefit of the Client and are not intended by either the SI or the Client to benefit any other person or entity. To the extent that any other person or entity is benefited by the services performed by the SI 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 Agreement.

## **5.2 Dispute Resolution**

- 5.2.1 The SI and Client agree to negotiate any claim(s) or dispute(s) arising out of or related to the agreement between them in good faith prior to exercising any other provision of this Agreement.
- 5.2.2 If a claim or dispute between the SI and Client cannot be settled within 30 days by good faith negotiations the SI and Client agree to submit it to mediation in accordance with the mediation rules of the American Arbitration Association.
- 5.2.3 If the claim or dispute cannot be settled by good faith negotiations or mediation then either party may exercise their rights under law.
- 5.2.4 In no event shall a claim or dispute be made or sustained if it would be barred by the applicable statute of limitations.

## **5.3 Governing Laws**

- 5.3.1 This Agreement shall be governed by the laws of the principal place of business of the SI.