

BLU54, LLC PROFESSIONAL SERVICES TERMS AND CONDITIONS (“TERMS AND CONDITIONS”)

1. ACCEPTANCE. In connection with the construction of the Project (as described in Purchase Order), for Owner (identified in Purchase Order), pursuant to the Contract Documents for the Project, Consultant agrees to perform for BLU54 the services, including all things necessary or incidental for complete performance of those services, described in the Purchase Order (“Services”) upon the terms and conditions stated herein and in the Purchase Order (these “Terms and Conditions”), and will become a binding contract upon acceptance either by Consultant’s acknowledgement or performance in whole or in part. In the event of a conflict between these Terms and Conditions and the Purchase Order, the terms included on the face of the Purchase Order shall govern. No additional or different terms contained in any Consultant invoice, quote, proposal, sales order or other document required or provided by Consultant will be binding on BLU54 and BLU54 rejects such additional or different terms.

2. CHANGES.

The Services performed shall be in strict accord with the Purchase Order and these Terms and Conditions, unless modifications thereto are set forth in writing and signed by authorized representatives of both Mortenson and Consultant. However, if requested by Mortenson, Consultant shall, within ten (10) calendar days, submit a reasonable price quotation for proposed changes and if accepted by Mortenson, perform the changes without delay. Consultant agrees to perform the Services in accordance with all applicable legal requirements.

3. PROSECUTION OF SERVICES.

To the extent included within Consultant’s Services, Consultant shall provide architectural, engineering, and other professional Services in a manner consistent with applicable state licensing laws. Consultant agrees that such Services shall be provided through qualified, licensed professionals who are either (i) employed by Consultant or (ii) procured by Consultant from qualified, licensed sub-consultants. Consultant shall advise BLU54 of options which may be utilized in performance of the Services, including type, sequence, and scheduling of the Services.

The standard of care for any design professional services performed by Consultant and its sub-consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

Consultant will, at its own cost, revise any deliverable or design submission to correct any of its negligent errors, mistakes or omissions. Consultant shall also, if requested by BLU54 or if required by the Contract Documents, design to a fixed budget and, at its own cost, make such revisions as are required to achieve such budget. Such revisions shall be performed timely and so as not to jeopardize the schedule.

4. DELIVERY.

BLU54 and Consultant mutually agree that time is of importance with respect to the dates and times set forth in the schedule and Contract Documents. Consultant shall perform the Services as expeditiously as is consistent with professional skill and care and the orderly progress of the project. Each party agrees to provide the other party with information in a timely fashion and in the form and manner as reasonably required. If Consultant’s performance of the Services is delayed for any reason so as to impact the schedule, Consultant shall promptly notify BLU54 in writing of the cause(s) of such delay within sufficient time to permit BLU54 to provide timely notice to General Contractor and Owner in accordance with the Owner Agreement. If the delay is due to any act, neglect, or omission on the part of Consultant, sub-consultants, or anyone for whom they are responsible, Consultant shall, subject to any limitations contained herein, compensate and indemnify BLU54 for all costs, damages, and expenses arising from such delay. If the delay is caused by BLU54, the Consultant’s compensation and schedule shall be adjusted to compensate Consultant for the effects, if any, of the delay, subject to any limitations contained herein.

5. CONTRACTUAL RELATIONSHIP. In performing the Services under this Agreement, Consultant shall operate as, and have the status of, an independent contractor and shall not act as or be an agent or employee of BLU54. As an independent contractor, Consultant will be solely responsible for determining the means and methods for performing the Services.

6. COMPENSATION AND PAYMENT.

As full consideration for performance of the Services, BLU54 agrees to pay Consultant as provided for in the Purchase Order. If a Not to Exceed Amount is specified in the Purchase Order then notwithstanding any other provision of this Agreement, absent a separate written agreement to the contrary, the Not to Exceed Amount shall not be exceeded and BLU54 shall not be liable for Services or other costs or expenses in excess thereof. On or about the 25th day of each month, Consultant shall submit invoices to BLU54 indicating the Services performed during the preceding month and the charges therefor.

Within thirty (60) calendar days after receipt of an invoice, BLU54 shall pay Consultant the full amount of the invoice. BLU54 shall be entitled to a 2% discount on the invoiced amount for Services if BLU54 pays Consultant the full amount of such invoice within 10 days of the applicable date in the preceding sentence. BLU54 shall be entitled to a 1% discount on the invoiced amount for such Services if BLU54 pays Consultant the full amount of such invoice within 20 days of the applicable date in the preceding sentence. However, if BLU54 objects to all or any portion of any invoice, it shall notify Consultant within ten (10) calendar days from date of receipt of invoice of its objection and both parties shall immediately make every effort to settle the disputed portion of the invoice prior to the date that payment is due. In the event the settlement of a disputed portion of an invoice is not reached by the date that payment is due, BLU54 will pay only that portion of the invoice that is not in dispute.

When required by BLU54 and as a prerequisite to payment, Consultant shall provide, in a form satisfactory to BLU54, partial lien or payment claim waivers and affidavits from Consultant and its sub-consultants for completed work and Services. Such waivers may be made conditional upon payment.

7. INSURANCE. Prior to commencing performance of the Services, Consultant shall procure, and maintain the following minimum insurance coverages and limits of liability.

Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 general aggregate applicable on a per project basis \$2,000,000 products/completed operations aggregate
Automobile Liability	\$1,000,000 each accident
Professional Liability (if required)	\$2,000,000 each claim/aggregate

Workers' Compensation and Employer's Liability - For any employee, owner or principal of the Consultant who shall be at the site of the project, workers' compensation coverage shall be provided whether or not required by statute. If the project is located, and/or Consultant's principal place of business is, in the state of Illinois, coverage must be amended such that the Consultant and its insurer agree to waive any protection afforded under statute, law, ordinance or common law rights that cap the employer's liability to the amount of workers' compensation benefits it has paid or will pay on behalf of its employee. For Services

to projects in those states where Workers' Compensation insurance is provided through a state fund and Employer's Liability coverage is not available, "stop gap" coverage shall be provided through either the Commercial General Liability policy or another state's Workers' Compensation policy.

Commercial General Liability - Insurance required under this Paragraph shall provide coverage on an occurrence form no less broad than the ISO Form CG 00 01 or equivalent and shall include coverage for Products/Completed Operations, renewed and maintained for four (4) years after delivery of the Services or such longer period as BLU54 may require in a Purchase Order. The general aggregate limit shall be per project.

Automobile Liability - Insurance required under this Paragraph shall include coverage for all owned, hired and non-owned automobiles.

Professional Liability - If Consultant's Services require any design or engineering services, including that required to meet a performance specification, Consultant shall procure and pay for, or shall cause to be procured and paid for, Professional Liability/Errors & Omissions insurance with limits as indicated above. Such coverage shall be continuously maintained for four (4) years after delivery of the Services or such longer period as BLU54 may require in a Purchase Order.

Employer's Liability, Commercial General Liability and Automobile Liability insurance required herein may be arranged under single policies, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy that is as materially broad as the underlying policy. To the greatest extent allowed by law, Consultant shall endorse all policies required herein, except (if required) Professional Liability, to add BLU54, LLC, the owner of the project, and such other parties as BLU54 is required to name as additional insureds on BLU54's insurance, as "additional insureds", with respect to but not limited to liability arising out of operations performed for BLU54 or the owner of the project by or for Consultant. This insurance shall be primary and noncontributory to any insurance maintained by BLU54, the owner of the project, or others required to be included as additional insureds. Consultant shall maintain insurance with carriers authorized to do business in the state in which the Project is located and having a current A.M. Best rating of not less than A minus (A-), unless a different A.M. Best rating is accepted by BLU54 in writing. Evidence of this insurance shall be filed with BLU54 prior to commencing any work hereunder. Certificates shall be provided not less than ten (10) days prior to the expiration date of any of the required policies. BLU54 shall not be obligated to review, nor shall receipt of the same, relieve Consultant of complying with the insurance requirements listed herein, nor shall it be deemed a waiver of BLU54's right to enforce the terms of Consultant's obligations hereunder. Consultant shall provide written notice of cancellation or non-renewal to BLU54, within (30) days of notification of the same.

8. INDEMNITY AND CONSEQUENTIAL DAMAGES. To the fullest extent permitted by the state law of the location of the Project, Consultant shall defend and indemnify BLU54, General Contractor and Owner, and their agents and employees, and all others whom BLU54 is obligated to defend and indemnify by the Contract Documents for the applicable Project (collectively, the "Indemnitees"), from and against all claims, damages, losses, and expenses arising out of or resulting from the Services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, including claims for which BLU54, General Contractor or Owner, or any other person or entity indemnified hereunder, may be or may be claimed to be liable and reasonable legal fees and disbursements paid or incurred to defend any such claims or to enforce the provisions of this paragraph. Consultant's obligations under this paragraph, however, shall exclude liability for such damages or injury caused by the sole fault of a person or entity indemnified hereunder, and Consultant's obligations under this paragraph for rendering or failing to render professional services shall be limited to the extent that such claim, damage, loss or expense is caused by the negligent act, error, mistake or omission of Consultant, its officers and employees, its subconsultants, or anyone for whom Consultant is legally liable. Consultant shall procure, maintain and pay for such professional liability insurance, commercial general liability insurance, including completed operations and contractual liability coverage and such employer's liability insurance as will insure the provisions of this Agreement and all other contractual indemnities assumed by Consultant

in this Agreement to the fullest extent insurable, but not less than the coverages and limits specified in this Agreement.

In any claims against BLU54, General Contractor or Owner, or any of their agents or employees, or any other person or entity indemnified under this Agreement, by any employee of Consultant, its subconsultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or its subconsultants under workers' compensation acts, disability benefit acts or other employee benefit acts.

NEITHER BLU54 NOR CONSULTANT SHALL BE LIABLE TO THE OTHER FOR THE OTHER'S CONSEQUENTIAL, SPECIAL, INDIRECT, OR SPECULATIVE DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING. Notwithstanding the foregoing sentence, BLU54 shall be entitled to recover against Consultant (i) any liquidated or consequential damages that Owner may assess against BLU54 which are attributable to Consultant, even though both parties recognize that such liquidated damages may include some damages that might otherwise be deemed to be consequential, and (ii) any amounts paid to third-parties for which Consultant is liable to BLU54, even if the amounts paid to third-parties include consequential or incidental damages.

9. ASSIGNMENT. Neither this Agreement nor any monies due or to become due hereunder shall be assignable without the prior written consent of BLU54. Any assignment without prior written consent shall be of no effect and shall vest no right in the assignee against BLU54. BLU54's consent to any assignment shall not relieve Consultant of any of its obligations under this Agreement and Consultant shall remain as fully responsible for the defaults, acts, and omissions of its assignees and all persons directly or indirectly employed by them as it is for its own defaults, acts, and omissions, and those of its own officers, agents, and employees.

10. TERMINATION. BLU54 shall have the right to terminate this Agreement, in whole or in part, with or without cause, by providing Consultant five (5) days' written notice of termination. Upon expiration of the five (5) days, this Agreement will terminate and Consultant shall be paid the amount earned or reimbursable to it hereunder to the time specified in the notice of termination, including all reasonable costs incurred by Consultant in connection with discontinuing the Services referenced herein. Consultant shall have no further claim against BLU54 with respect to such termination.

This Agreement may be terminated by Consultant, with or without cause, upon thirty (30) days' written notice to BLU54. Upon expiration of the thirty (30) days, this Agreement will terminate and Consultant shall be paid the amount earned hereunder to the date of termination. Consultant shall have no further claim against BLU54 with respect to such termination.

11. TAXES AND PERMITS. Consultant agrees to pay and comply with and hold BLU54 harmless against the payment of all contributions, premiums, or taxes of whatever nature, including any interest or penalties, which may be payable by it under any federal, state, or local laws arising out of performance of Services pursuant to this Agreement. Consultant shall obtain and pay for all permits, licenses, fees, and certificates of inspection which may be necessary for the prosecution and completion of its duties and obligations hereunder, and shall arrange for any applicable inspections and approvals by public officials.

12. LAWS, REGULATIONS, AND ORDINANCES. Consultant agrees to be bound by, and at its own cost, comply with all federal, state, and local laws, codes, ordinances, regulations, and licensing requirements applicable to performance of its duties and obligations hereunder.

13. DISPUTE RESOLUTION. Any dispute arising between BLU54 and Consultant under this Agreement, including breach thereof, that involves the Owner of the Project, shall be decided in the manner provided for in

the Contract Documents, and Consultant agrees to the dispute resolution method specified in such Contract Documents.

Any dispute arising between BLU54 and Consultant under the Agreement, including breach and interpretation thereof, that does not involve the Owner, shall be decided by arbitration in accordance with the then current Construction Industry Arbitration Rules of the American Arbitration Association, unless the Parties mutually agree otherwise. Arbitration proceedings shall be held in Minneapolis, Minnesota. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

14. CONFIDENTIALITY. In the course of performance of the Services, BLU54 may provide access to certain Proprietary Information. Proprietary Information refers to any information that is not generally known outside of BLU54 that relates to the current or reasonably foreseeable business of BLU54, and which BLU54 has expressly or implicitly protected from unrestricted use by persons not associated with BLU54. All the materials provided by BLU54 to Consultant in connection with the Services are expressly denominated as Proprietary Information. Consultant agrees not to divulge or use any Proprietary Information for its own or another's benefit, either during or after the term of association with BLU54 and shall not accept any compensation, tangible or intangible, for work which would involve the use or disclosure of Proprietary Information. All documents or other tangible property relating in any way to BLU54, which are conceived or generated by Consultant from BLU54 or Owner information or come into Consultant's possession as a result of Consultant's association with BLU54, shall be and remain the exclusive property of BLU54. All such tangible property shall be returned to BLU54 upon the termination of the relationship between BLU54 and Consultant, or at such earlier time as may be requested by BLU54. Proprietary Information shall not be deemed to

include information which is or becomes part of the public domain through no fault of the Consultant or is subsequently received by Consultant from a third party who is not prohibited from transmitting such information by a contractual, legal, fiduciary or other obligation.

15. OWNERSHIP OF INSTRUMENTS OF SERVICE AND DATA. All reports, drawings, data sheets, recommendations, photographs, computer print-outs, design criteria, calculations, designs, electronic data and information and materials of a similar nature specific to the Services ("Work Product") are and shall be the property of BLU54, and BLU54 shall have the right without limitation, to access and use all such Work Product. All materials and information that are the property of BLU54 and all copies or duplications thereof shall be delivered to BLU54 by Consultant, if requested by BLU54, upon completion of the Services. Consultant may retain electronic data and one complete set of reproducible copies of all Work Product. Consultant shall comply with all reasonable requests of BLU54 so that BLU54 may protect and preserve all property interests herein conveyed. If applicable, Consultant accepts and agrees to Owner's ownership and property rights with respect to the Work Product contained in the Owner Agreement. Consultant will execute any assignment documents or agreements as may be required to provide BLU54 or Owner with the ownership rights described herein.

16. MISCELLANEOUS. A waiver by either Party of a breach of any provision of this Agreement shall be made only in writing and shall not affect any other or future breaches. Remedies herein are cumulative and in addition to other remedies in law or equity.

In the event any term or provision of this Agreement is deemed void or unenforceable, it shall not thereby invalidate or be construed to invalidate any other term or provision of this Agreement, which shall remain in full force and effect.