

DAMMON ENGINEERING, INC.

dammonengineering.com

ARCHITECTS

ENGINEERS

CONSULTING

DESIGN

STUDIES

EXPERT WITNESS

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February 8, 2012

Mr. Stephen G. Hill
454 Brookridge Circle
Cordova, TN 39018

Re: Cumberland Phase II
Tyler, Texas

Mr. Hill:

Dammon Engineering is pleased to offer the following proposal for the Mechanical, Electrical & Plumbing design of your above referenced proposed apartment buildings to be located in Tyler, Texas.

The project consists of 4 apartment buildings with an approximately 5,000 s.f., one story Activities Building

Our proposed scope of services will include the Mechanical, Electrical & Plumbing Engineering design *only*, with limited Construction Administration including review of all shop drawings submittals pertinent to the Mechanical, Electrical and/or Plumbing design and assistance in interpreting and clarifying construction documents pertinent to the Mechanical, Electrical and/or Plumbing design as necessary.

Our proposed fee for the above work is \$39,500.00 (Thirty Nine Thousand Five Hundred Dollars), as follows:

1. Mechanical Design	\$12,500.00
2. Electrical Design	\$12,500.00
3. Plumbing Design	\$12,500.00
4. Construction Administration	<u>\$2,000.00</u>
TOTAL:	\$39,500.00

Our Construction Administration fee *does not include* site visits or inspections. Individual site visits as requested by the owner will be billed at a cost of \$1,000.00 per day plus travel expenses.

Reimbursable expenses will accrue and be invoiced only upon prior written consent of the Architect. Such expenses will be invoiced at a multiple of 1.07 times the expenses incurred by the Consultant, the Consultant's employees and consultants in the interest of the Project.

Our proposed fee is based on information provided to Dammon Engineering as outlined above. Any changes in Scope of Work will result in revision(s) to our proposal and fee.

If this proposal is accepted, we require a deposit in the amount of \$3,950.00 upon execution of this document. We then propose to invoice at 50% design completion, 100% design completion and monthly during construction. Monthly invoices will be submitted based on the percent of construction completion. Payment will be due within 15 days of design completion invoices and within 30 days for monthly Construction Period invoices. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the legal rate prevailing at the principal place of business of the Consultant.

Please refer to the attached terms and conditions for additional requirements. If this proposal and the attached terms and conditions are acceptable to you, please sign and return a copy of each for our records. Please feel free to contact us if you have any additional questions or require any additional information. We look forward to working with you on this project.

Sincerely,



Charles K. Dammon, VP
Dammon Engineering, Inc.

Accepted by: _____
Mr. Stephen G. Hill

_____ Date

TERMS & CONDITIONS

OWNER'S RESPONSIBILITIES

The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Consultant shall be entitled to rely on the accuracy and completeness thereof.

The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

USE OF CONSULTANT'S DOCUMENTS

The documents prepared by the Consultant for this Project are instruments of the Consultant's service for use solely with respect to this Project and, unless otherwise provided, the Consultant shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Consultant's documents for the Owner's information, reference and use in connection with the Project. The Consultant's documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Consultant is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Consultant.

ARBITRATION

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Consultant and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

TERMINATION OR SUSPENSION

This Agreement may be terminated by either party 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.

If the Owner fails to make payment when due the Consultant for services and expenses, the Consultant may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.4.

Termination Expenses shall be computed as a percentage of the compensation earned to the time of termination, as follows:

1. For services provided on the basis of a multiple of Direct Personnel Expense, 20 percent of the total Direct Personnel Expense incurred to the time of termination; and
2. For services provided on the basis of a stipulated sum, 10 percent of the stipulated sum earned to the time of termination.

MISCELLANEOUS PROVISIONS

Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Consultant.

Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date payment is due the Consultant pursuant to Section 8.4.

The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Consultant shall assign this Agreement without the written consent of the other.

This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

Unless otherwise provided in this Agreement, the Consultant and Consultant's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of

persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the Consultant's compensation and include expenses incurred by the Consultant and Consultant's employees and consultants in the interest of the Project for:

1. expense of transportation and living expenses in connection with out-of-town travel authorized by the Owner;
2. long-distance communications;
3. fees paid for securing approval of authorities having jurisdiction over the Project;
4. reproductions;
5. postage and handling of documents;
6. expense of overtime work requiring higher than regular rates, if authorized by the Owner;
7. renderings and models requested by the Owner;
8. expense of additional coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Consultant and the Consultant's consultants; and
9. Expense of computer-aided design and drafting equipment time when used in connection with the Project.

Reimbursable expenses shall only accrue with prior written approval of Owner.

PAYMENTS ON ACCOUNT OF THE CONSULTANT'S SERVICES

Payments on account of the Consultant's services and for Reimbursable Expenses shall be made monthly upon presentation of the Consultant's statement of services rendered or as otherwise provided in this Agreement.

An initial payment as set forth in the written proposal is the minimum payment under this Agreement.

CONSULTANT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

Accepted by: _____ Mr. Stephen G. Hill

_____ Date