



DAVID BIXLER & ASSOCIATES STRUCTURAL ENGINEERING
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PROFESSIONAL ENGINEERING SERVICES

FEE AGREEMENT

VIA EMAIL ONLY

David Bosak Sr. AIA, LEED AP
Bo Arch
20118 N. 67th Ave. Ste. 300 #610
Glendale, AZ 85308

**RE: Higley USD HTA Classroom
DBAA Proposal No. 16.235**

Dear Mr. Bosak:

This Agreement (the "Agreement") is entered into this 10th day of October, 2016, by and between David Bixler and Associates, PLLC, an Arizona professional limited liability company ("DBAA") and the aforementioned client ("Bo Arch"). DBAA is licensed to provide structural engineering services in the state of Arizona and the Client desires DBAA's services for this project. DBAA is willing to provide the structural engineering services for the Project, all upon the terms and conditions set forth in this Agreement.

DESCRIPTION OF PROJECT:

This project consists of the structural drawings and calculations for the replacement of four A/C replacements, and all EFs serving all of the restrooms at Higley School. There will also be a site visit for a structural analysis of the roof.

AGREEMENT

1. **Scope of Work.** DBAA will provide drafting and engineering services for the Project. The scope of work for the Project is listed on Exhibit "A".

2. Basis of Compensation.

a. DBAA will be compensated as follows for services described in the scope of work:

1. Site visit, engineering and drawings required to replace four mech units on the existing classroom:

- **Construction Documents: \$2,000**
- **Construction Administration: \$500**

2. Site visit and report to inspect and provide recommendations for some cracking in the cmu walls of the gymnasium building:

- **Report: \$1,500**

3. Design documents to complete the recommended repairs:

- **Construction Documents/Administration: \$2,500 (estimated*)**

*Final amount won't be known until we determine what the problem is and how to fix it

4. Structural Special Inspections not included in this Proposal.

b. For additional services of the consultant, not included in our Scope of Work, our fee will be based on time and materials expended and charged at our standard hourly rates. Our Standard Hourly Rates are as follows:

Principal	\$125/hr.	Senior CAD	\$65/hr.
Associate/Project Manager	\$100/hr.	Junior CAD (<4 years)	\$50/hr.
Senior Engineer	\$ 85/hr.	Inspector	\$70/hr.
Junior Engineer	\$ 65/hr.	Administration	\$40/hr.

3. **Contract Documents.** Client will furnish DBAA with one complete set of contract documents at the completion of the Project.

4. **Proposal.** The unsigned version of this Agreement will serve as DBAA's proposal for the Project, which is valid for a 90-day period from the date of this Agreement. Once signed by both parties, this Agreement will constitute the binding contract of the parties. DBAA will not perform any services until a signed copy of this Agreement is returned and signed by DBAA.

5. **Terms and Conditions.** Please carefully review the Terms and Conditions attached as Exhibit “B”, which are part of this Agreement and incorporated herein by reference.

DAVID BIXLER & ASSOCIATES, PLLC

By: *W. David Bixler*

W. DAVID BIXLER, P.E., S.E., Manager

BO ARCH

By: _____

DAVID BOSAK, SR., AIA, LEED AP



DAVID
BIXLER
& ASSOCIATES

EXHIBIT “A”

PROJECT

1. **Scope of Work.** Provide engineering, CAD services, review of your drawings for structural items, and Construction Administration.

Construction Administration is to include shop drawing review, responses to valid requests for information (RFI) and interpretation of drawings.

Value engineering, repairs and contractor options are not part of this scope of work, and may require additional services.

EXHIBIT “B”

TERMS AND CONDITIONS

1. **Fee.** The total fee, except stated lump sum, will be understood to be an opinion of probable cost, based upon the Scope of Work, and will not be exceeded by more than ten percent, without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates will be those that prevail at the time services are rendered. If the project is suspended or abandoned for more than 60 days, the fee will be proportionate to the services performed.

2. **Changes and Additional Services.** If DBAA is required to perform any services in addition to those described in this Agreement, whether by reason of substantial changes ordered by the Client, or for any reason beyond DBAA’s reasonable control, DBAA will be entitled to receive payment for the additional services in accordance with the hourly rates provided for additional services under this Agreement. DBAA will not be obligated to perform these additional services until it receives authorization in writing from the Client.

3. **Billings/Payments.** Invoice will be considered PAST DUE if not paid within 30 days after the invoice date and DBAA may, without waiving any claim or right against Client, and without liability whatsoever to Client, suspend the performance of the service. Retainers will be credited on the final invoice. A service charge will be charged at 1.5% (or the legal rate, whichever is less) per month on the unpaid balance outstanding after 90 days. In the event any portion of an account remains unpaid 120 days after billing, the Client will pay cost of collection, including reasonable attorneys’ fees.

4. **Access to Site.** Unless otherwise stated, DBAA will have access to the site for activities necessary for the performance of the services. DBAA will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

5. **Hidden Conditions and Hazardous Materials.** A structural condition is hidden if concealed by existing finishes or if it cannot be investigated by reasonable visual observation. If DBAA has reason to believe that such a condition may exist, DBAA will notify the Client who

will authorize and pay for all costs associated with the investigation of such a condition and, if necessary, all costs necessary to correct the condition. If (i) the Client fails to authorize the investigation or correction after due notification, or (ii) DBAA has no reason to believe that a condition exists, then the Client will be responsible for all risks associated with this condition, and DBAA will not be responsible for the existing condition nor any resulting damages to persons or property. DBAA will have no responsibility for the discovery, presence, handling, removal, or disposal or exposure of persons to hazardous materials of any form.

6. Indemnifications. The Client will indemnify and hold harmless DBAA and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorneys' fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except DBAA) or anyone for whose acts any of them may be liable. This indemnification will include any claim, damage or losses due to the presence of hazardous materials.

7. Risk Allocation. In recognition of the relative risks, rewards and benefits of the Project to both the Client and DBAA, the risks have been allocated so that the Client agrees that, to the fullest extent permitted by law, DBAA 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, will not exceed the total amount of \$50,000 or five times the amount of DBAA's fee (whichever is less). It is intended that this limitation apply to any and all liability or cause of action however alleged or arising unless otherwise prohibited by law.

8. Termination of Services. This agreement may be terminated upon seven calendar days written notice by either party should the other substantially fail to perform in accordance with the terms of this agreement. In the event of termination, the Client will pay DBAA for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

9. Ownership of Documents. All documents produced by DBAA under this agreement will remain the property of DBAA and may not be used by the Client for any other endeavor without the express written consent of DBAA, which consent may be granted or withheld as determined by Bixler in its sole and absolute discretion.

10. Dispute Resolution. Any dispute, controversy or claim (including without limitation tort claims, requests for provisional remedies or other interim relief, and issues as to arbitrability of any matter) arising out of or relating to this Agreement, or the breach thereof, that cannot be settled through negotiation will be settled (i) first, by the parties trying in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA") (such mediation session to be held in Phoenix, Arizona and to commence within 15 days of the appointment of the mediator by the AAA), and (ii) if the dispute, controversy or claim cannot be settled by mediation, then by arbitration administered by the AAA under its Commercial Arbitration Rules (such arbitration to be held in Phoenix, Arizona before a single arbitrator and to commence within 15 days of the appointment of the arbitrator by the AAA), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

11. Governing Law. This Agreement and all amendments will be governed by the laws of the State of Arizona.

12. Exhibits. All Exhibits to this Agreement are incorporated by reference.

13. Counterparts. This Agreement may be signed in one or more counterparts and all counterparts will constitute one and the same instrument.

14. Assignment. Neither party to this Agreement may transfer or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due), without the prior written consent of the other party.

15. Waivers. No act, failure or delay by any party will constitute a waiver of any of its rights and remedies. Each party will retain the right to enforce any provision of this Agreement.

16. Force Majeure. Neither party will be liable for delays or failure to meet its obligations under this Agreement due to causes beyond the party's reasonable control, provided the non-performing party promptly notifies the other party of the nonperformance and takes all reasonable steps to recommence performance promptly.

17. Attorneys' Fees. If any arbitration proceeding or action is brought to recover any amount under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party will be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which will be fixed by the arbitrators or by the court, and will be made a part of any award or judgment rendered.

18. Representation by Counsel. Each of the parties has been represented by or has had the opportunity to be represented by legal counsel of his own choice in negotiating this Agreement. This Agreement has been negotiated among the parties and if there is any ambiguity, no presumption construing the Agreement against a party will be imposed because this Agreement was prepared by counsel for one party or the other.