



Agreement Passive House Design Review Consulting Services (excluding QAQC services required to obtain the PHIUS+ certification)

1. Parties

This agreement is between 379 Somerville Ave, LLC (Client), and Passive House Institute US, Inc. (PHIUS), an Illinois corporation (Consultant).

2. Services to be Performed

Consultant agrees to perform services for Client as specified in the Statement of Work attached as Addendum A. Services will only be performed for **Thunder Road**.

3. Confidentiality

Consultant recognizes and acknowledges that during the course of this Agreement he/she will have access to certain information not generally known to the public, which may include without limitation, techniques; methods, processes; work in process; product specifications; trade secrets or any other proprietary or confidential matter ("Confidential Information"). Consultant recognizes and acknowledges that this Confidential Information constitutes a valuable, special and unique asset of Client. Consultant acknowledges and agrees that all such Confidential Information, is and shall remain the exclusive property of Client. Upon termination of Consultant's Agreement, final copies of the submitted project documentation shall be retained by Consultant as proof of certification eligibility for as long as the certification program exists. Client hereby permits Consultant to publish indicative certification specifications, data and photographs on the PHIUS website as required by PHIUS' certified project data base to indicate certification status of the project. Any confidential data such as mentioned above collected during the certification process shall be kept confidential except as provided by separate agreement between PHIUS and the Client.

4. Payment

Client will pay Consultant in accordance with the terms in Addendum B.

5. Terms of Payment

Client will submit base payment for certification in full to Consultant to execute the contract. If as specified in the SOW in Addendum A, it is determined that the specificities of the project or the quality of documentation submitted to Consultant require additional work from Consultant beyond the base rate fee the consultant will inform the client about the applicability of an hourly



rate from that point on. Hours will be billed on a 30 day cycle for all additionally performed services. Invoices are due upon receipt.

6. Late Fees

Late payments by Client shall be subject to late penalty fees of 1.5% per month, beginning 15 days after the due date, until the amount is paid.

7. Limited Liability

Consultant's total liability to Client under this Agreement for damages, costs and expenses shall not exceed the compensation received by Consultant under this Agreement.

NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE FOR THE OTHER'S LOST PROFITS, OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

8. Equipment and Supplies

Consultant, at Consultant's expense, will provide all equipment, tools and supplies necessary to perform the contractual services.

9. Expenses

Consultant will be responsible for all expenses required for the performance of the contractual services, except for reasonable travel and out of pocket expenses, which will be paid for by Client. Consultant shall submit an itemized statement of these expenses. For standard project certification no travel is anticipated.

10. Term of Agreement and Termination

This agreement will become effective when signed by both parties and when the base certification fee has been submitted by client in full. It will terminate on the earlier of the date Consultant completes the services required by this Agreement or the date a party terminates the Agreement as provided below. With reasonable cause, either party may terminate this Agreement effective immediately by giving written notice of termination for cause.

Reasonable cause includes:

- Material violation of this Agreement, or



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- Client's failure to pay Consultant's fees as provided in this agreement, where Consultant has demanded payment, in writing, and has not received payment at least 20 days after the date that such demand was sent to Client.

Consultant shall be entitled to full payment for services performed prior to the date this Agreement is terminated.

11. Refunds

If pursuit of certification is abandoned before any PHIUS work is done on the project's certification, the client is entitled to a refund of up to 75% of the total certification fee. However, if the client has received a first round project review from PHIUS when the refund is requested, only 25% refund is available. If two or more rounds of review have been completed, no refund is available.

12. Independent Consultant Status

The parties intend Consultant to be an independent Consultant in the performance of the services. Consultant and Client agree to the following rights consistent with an independent Consultant relationship:

- Consultant will have the right to control and determine the methods and means of performing the contractual services.
- Neither Consultant nor Consultant's employees or sub-consultants are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of Client.

13. State and Federal Taxes

Client will not:

- (a) withhold Social Security and Medicare taxes from Consultant's payments or make such tax payments on Consultant's behalf, or
- (b) withhold state or federal income tax from Consultant's payments or make state or federal unemployment contributions on Consultant's behalf.

Consultant will pay all applicable taxes related to the performance of services under this contract. This includes applicable income, Social Security, Medicare and self-employment taxes. If Consultant is required to pay any federal, state or local sales, use, property or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Client. Client shall be responsible for paying any interest or penalties incurred due to late payment or nonpayment of Client's taxes.

14. Disputes

If a dispute arises, the parties will try in good faith to settle it through mediation conducted by a mediator to be mutually selected. The parties will share the costs of the mediator equally. Each party will cooperate fully and fairly with the mediator and will attempt to reach a mutually



satisfactory compromise to the dispute. If the dispute is not resolved within 30 days after it is referred to the mediator, it will be arbitrated by an arbitrator to be mutually selected. Judgment on the arbitration award may be entered in any court that has jurisdiction over the matter. Costs of arbitration, including lawyers' fees, will be allocated by the arbitrator.

15. No Partnership

This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on the other's behalf.

16. Entire Agreement

This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings.

17. Successors and Assignees

This agreement binds and benefits the heirs, successors and assignees of the parties.

18. Notices

All notices must be in writing. A notice may be delivered to a party at the address that follows a party's signature or to a new address that a party designates in writing. A notice may be delivered:

- in person
- by certified mail, or
- by overnight courier.

19. Governing Law

This agreement will be governed by and construed in accordance with the laws of the state of Illinois.

20. Counterparts

This agreement may be signed by the parties in different counterparts and the signature pages combined will create a document binding on all parties.

21. Modification



This agreement may be modified only in a writing signed by all the parties.

22. Waiver

If one party waives any term or provision of this agreement at any time, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this agreement, that party retains the right to enforce that term or provision at a later time.

23. Severability

If any court determines that any provision of this agreement is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this agreement invalid or unenforceable and such provision shall be modified, amended or limited only to the extent necessary to render it valid and enforceable.

24. Disclaimer

The review services rendered do not constitute a building code compliance review, nor does the review represent that suggested actions will comply with the building code. The Client is advised to seek the opinion of the respective Building Department on specific building code interpretations regarding compliance matters. No warranty or assurance of the cost to purchase or install, performance, reliability, or durability of any material, equipment, or system that is a subject of this work is implied or given.



IN WITNESS WHEREOF, the parties have signed this agreement on the day and year first below written and the individuals signing hereto warrant that they have authority to sign for and on behalf of the respective parties.

ACCEPTED AND AGREED TO THIS:

CLIENT

379 Somerville Ave, LLC
[Name of Client]

379 Somerville Ave, LLC
[Name of Company]

PO Box 610312 Newton, Massachusetts 02461
[Address]

By: _____
[Handwritten Signature]

Dated: 3.22.21

379 Somerville Ave, LLC
[Name of Client],

ACCEPTED AND AGREED TO THIS:

CONSULTANT

Passive House Institute US, Inc., an Illinois Corporation
53 W. Jackson Blvd. Suite 1462
Chicago, IL 60604

By: _____
[Handwritten Signature]

Dated: 3/26/2021

Katrin Klingenberg
Executive Director



Addendum A Statement of Work

This Statement of Work (“SOW”) sets forth the description of the services provided by Consultant under this agreement.

TERM

Services will begin on the day the contract has been executed and the base design review fee has been received by PHIUS. It will continue no later than the project has been determined to be certified under PHIUS+ or found to not be certified and in the certified case the certificate “PHIUS+ Certified” has been awarded.

DESCRIPTION OF SERVICES

The delivery process is as follows for completing Pre-Certification work and for final issuance of Certificate (if approved). On behalf of the Client, the Consultant agrees to:

- (a) Check the following documentation: the plan set, drawings, passive building energy model, and the specifications in the format provided in the PHIUS+ Sample Project. If the documents are not in compliance with the provided project sample or undue hardship will be placed on the Consultant due to the submitted documents, the Consultant shall return the submitted documents to the submitter and ask for them to be adapted to the outline in the sample.
- (b) Review the plan set, drawings, specifications, and energy model for compliance with the requirements as outlined in the PHIUS+ Certification Guidebook. This includes inspection of plans and specifications for design elements that need special attention in passive building. This may include, but is not limited to such items as: exhaust dryers, exhaust hoods, double pane windows, tempered spaces, and unique objects - such as thermal shutters. Details will be looked at for potential moisture performance issues of all building assemblies and for potential thermal bridging that need more inspection. Any special or concerning conditions will be brought to the submitters/clients attention. Consultant may request further information and the submission of thermal bridge calculations or hygrothermal analysis that assure quality or performance of a specific detail. **Consultant services do not include thermal bridge and/or hygrothermal verification. If necessary, PHIUS may require verification of either of these elements by a qualified licensed professional.**
- (c) Verify that the energy model entries align with the submitted drawings and specifications. This includes specifically checking the areas and windows entries for accuracy with the dimensions, labels, and naming conventions written on the plans, as well as mechanical equipment efficiencies.
- (d) Request additional information or clarifications, when needed, from the submitter to allow the Consultant to fulfill the above duties of checking the documentation, reviewing the plan set and drawings, and verifying the model.
- (e) Complete the PHIUS+ Feedback Document based on the above descriptions of services



and return the document to the submitter. This return will be happening through the PHIUS+ project DropBox.

- (f) Await the response of the submitter and review the submitter's updates to the documentation and model. Complete the PHIUS+ Feedback Document for additional rounds of review when necessary, based on the revisions from the submitter.
- (g) Create summary comments upon completion of Pre-Certification Process. Pre-Certification is complete when the Consultant declares the drawings and model as congruent and the project design meets requirements outlined in the PHIUS+ Certification guidebook.
- (h) Consultant will verify any issues impacting PHIUS+ compliance with the Client and the submitter throughout the construction process. It is submitters/clients responsibility to update the consultant on all changes to the previously submitted documents upon which pre-certification was awarded.
- (i) Upon complete submission of all QA/QC reports of successful site visits, air-tightness testing, and ventilation commissioning, PHIUS will review final submission and 'as-built' energy model.
- (j) Once all PHIUS+ Certification Requirements are fulfilled, as outlined in the PHIUS+ Certification Guidebook, PHIUS will award final certification.
- (k) PHIUS will list and document the Client's project in PHIUS+ Database on its website.

Addendum B Payment Terms

The quoted fee for Thunder Road, with 9,765 sf iCFA is \$3,915. The project will receive the discount as a professional CPHC member of the Passive House Alliance US (PHAUS), bringing the final quoted fee to \$3,328. The hourly rate, should additional work be necessary, is \$175/hr. Professional CPHC members of Passive House Alliance US (PHAUS) receive a 15% discount on all consulting fees, up to \$600. All credit card transactions incur a 3% fee.