



New Avenue Inc.

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THE NEW AVENUE DESIGN AGREEMENT

New Avenue is a network of architects, designers and builders who use a shared online platform to manage projects and deliver the best custom residential projects.

Our mission is to maximize the benefit our homes create for our clients, their families and their communities.

- Our database of project schedules and budgets supports each design/build team as they provide clients the high quality they deserve with professionalism and a personal touch. Only proven pros are invited to join our network. 100% of the architects and contractors who use the New Avenue system to successfully complete a project select to stay active in our network.
- Our system streamlines the design/build process by providing:
 - Education: Collective knowledge defines goals and sets expectations.
 - Collaboration: A project page allows the entire team to share one dialogue.
 - Clear Proposal Communication: Design proposals and construction bids are integrated all in one simple system.
 - Budget Validation: New Avenue validates proposals, timelines and invoices with data from hundreds of active projects and thousands of transactions.

Design Professionals and owners can use New Avenue to manage any residential project for free. You start by creating a private online Project Page. This page facilitates communication between the owner, architect and builder. The Project Page is a place to save your ideas and conversations to one place that the entire team can reference, allowing you and the 40-60 other people that are involved in a typical project to work more efficiently. Improved communication increases productivity, makes the design-build process more fun and protects you from the confusion and pain that is all too common in remodels and new home construction.

With this agreement you can sign up for New Avenue's service and manage any portion of the design, permitting or construction process. When it is time to start construction, we provide a standard construction agreement that you can sign with one of our partner general contractors.

READ THIS ENTIRE AGREEMENT. A DESIGN/BUILD PROJECT IS A SIGNIFICANT COMMITMENT AND INVESTMENT.



NEW AVENUE DESIGN/BUILD AGREEMENT

The following sets forth the terms and conditions of the Design and Construction Administration Agreement (the “*Agreement*”) entered into by and between the “*Client*” and New Avenue, Inc., a Delaware corporation.

RECITALS

- a. Client is the sole fee title owner of the property and desires to design and build a custom project (the “*Building*”) on said Property (the “*Project*”).
- b. New Avenue is a corporation that streamlines the design/build process for custom residential design and construction projects such as new homes, remodels, additions, accessory dwellings and accessory structures. New Avenue administers the sale of the services of numerous trades and professionals, including, but not limited to designers, architects, general contractors, engineers and surveyors.
- c. Client wishes to use a New Avenue online Project Page in order to retain a design professional and/or general contractor and to facilitate the project administration and coordination of site research, design services, zoning permits, building permits and construction of the Project by administering all contracts and payments related to the design and construction of the Project.
- d. New Avenue will accept the relationship of trust and confidence established with the Client by this Agreement and covenants with the Client to furnish the best skill and judgment in its position as contract administrator of a Design Professional’s and General Contractor’s work.

IN CONSIDERATION OF THE FOREGOING RECITALS AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Services: New Avenue shall provide the following services consistent with the interests of the Client:

(a) Online Collaboration & Private Project Page: New Avenue shall provide access to a private online project page (**the “Project Page”**) on newavenuehomes.com to facilitate communication and collaboration between the various service professionals involved in the Project. The Project Page is a unique product that records design proposals, meeting notes, local planning and zoning research reports, design ideas, architectural designs, requests for additional service fees, construction bids, change order requests, all payment requests and any information from Client meetings.

(b) Custom Design and Building by Sub-Consultants: New Avenue shall qualify, retain and oversee vendors who will design, permit and construct the Building for the Client. These vendors include, but are not limited to, architects, designers, engineers and general contractors and they are individually referred to as **“Sub-Consultant”** and collectively as **“Sub-Consultants”**. Architects, designers, and engineers are Sub-Consultants that are specifically referred to as **“Design Professionals or New Avenue’s Design Professional”** in this Agreement. New Avenue employees will not directly perform the work performed by such Sub-Consultants.

(i) Design Proposals by New Avenue Design Professionals: Upon request, New Avenue shall introduce a Design Professional who will meet with Client and review Client’s ideas and goals for the Project. This initial meeting typically occurs in the Client’s home. Following the initial meeting, Design Professional shall post a Design Proposal to the New Avenue Project Page. The Design Proposal shall include an estimate of the total hours of design, architectural, consulting and engineering services. Client may accept the Design Proposal from one or more Design Professionals and each Design Professional will agree to the terms set forth in this agreement. This Design Professional will coordinate other Sub-Consultants including but not limited to surveyors, geotechnical engineers, structural engineers, civil engineering, energy efficiency, HERS, and energy efficiency calculations.

(ii) Design Proposals by Out of Network Designers: Client may invite any design professional, architect or contractor to submit a Design Proposal **“Design Proposal”** or Construction Bid **“Construction Bid”** for the Project. There is no fee for using the New Avenue system to do so. The process for doing so is described during the online sign up process.

(iii) Construction Bid Management: New Avenue’s system provides a single process for requesting and submitting all construction bids provided by general contractors. The process for soliciting bids is described in Section 1(f)(viii) **“Bidding”** below.

(c) Project Administration and Billing Services: New Avenue’s budget management system will process all invoices and payments using the budget template on the private online Project Page at newavenuehomes.com. Design Professional shall submit payment requests using New Avenue’s form titled Timesheet – Invoice (**a “Timesheet – Invoice”**) on the Project Page. General Contractor shall submit payment requests using New Avenue’s form titled GC Payment Request (**a “GC Payment Request”**) on the project page. All invoices will be submitted on the Project Page and Client shall approve the invoices by clicking an “approve” button on each invoice. All invoices and budgets can be downloaded to PDF for record keeping. New Avenue uses paperless checks for all invoicing. By completing Exhibit C, Client can sign

up for New Avenue secure payment processing.

(d) Client understands that there is an inherent risk in any real estate development project and the initial deposit paid is for the rendering of the services described in the Design Proposal.

(e) The Services shall be delivered in the following five phases:

(i) **Getting Started - Pre-Design:** New Avenue charges a \$250 fee for an initial meeting (the “**Design Session**”) with a Design Professional in your home. There is no obligation to continue beyond this meeting. During the meeting the Design Professional shall review and discuss the following:

Goals and Ideas: Homeowner’s answers to the online questionnaire

Design ideas: Homeowner and architect’s ideas saved to the Project Page

Roadmap: The 300 design/build steps in the project Roadmap

Permit risks: Preliminary discussion of the permitting process

Design Proposal: To be posted to the Project Page after the meeting

If Client accepts the Design Proposal New Avenue shall charge a deposit of 10% of the total Design Proposal (the “**Deposit**”). This deposit request will be posted to the Project Page and must be approved and paid by Client prior to the start of Phase I Program Development & Due Diligence. The deposit is held on account with New Avenue and will be applied toward project billing at the end of phase IV Construction Documents. Any deposit amount that exceeds billable work will be refunded to Client.

(ii) **Phase I, Program Development & Due Diligence:** Upon Client’s acceptance of the Design Proposal and payment of the Deposit, the Design Professional shall conduct research into the site conditions, project goals, zoning and permitting requirements for the Client’s Project. This work will include meetings and/or phone calls with the appropriate municipal planning departments. Design Professional shall work with Client to record and define Client’s preferences and needs. The Design Professional shall communicate the findings by reviewing and completing the following deliverables and forms on the Project Page:

Planning Research Form: Includes an approximate maximum building footprint, a maximum building height, setbacks and easements, other zoning requirements and overlays.

Permit Cost Schedule Form: Includes a preliminary summary of all permits and permit fees

Suitability: Summary thoughts of the suitability of the Property for Project

Estimated Budget: Includes all design, engineering, permitting and construction costs for the entire project.

Design Professional and Client shall review the budget and Client shall confirm that this is acceptable.

If Design Professional determines that a project is not feasible, New Avenue will refund Client less the amount due for Design Professional’s research. Amount owed is based on Design Professional’s hourly rate and the initial feasibility report is not to exceed six (6) hours of research.

(iii) **Phase II, Schematic Design:** Upon Client’s acceptance of the Phase I deliverables, Design Professional shall create schematic design documents for Client’s review and approval. The documents shall establish the conceptual design of the project and,

amongst other things, floor plans, elevations, sketches, furniture size & placement (including chairs, couch, kitchen appliances, table for eating with chairs) layout of the interior rooms such as bathroom(s), loft, bedroom(s), kitchen and living area, coat closet, bedroom closets, storage areas, and other preliminary plans. Additionally, this phase may include building investigation to determine foundation, framing, insulation and similar existing conditions and as-built drawings as determined necessary by the Design Professional. This phase includes a maximum of three designs and up to three minor revisions to those designs. Each design is referred to as Scheme A, Scheme B, and Scheme C, as applicable. Design Professional will review each revision with Client. If requested by Client, additional iterations after Scheme C will be charged hourly at approximately eight hours per revision and Design Professional will request an approval for any additional work before beginning. This phase will include verification of city and/or county requirements, planning and design-review requirements, including homeowner associations, as required, setbacks, easements and ordinances prior to presentation of Scheme A to the Client. Design Professional will save the final schematic design to the Project Page in order for Client to comment on and approve. A survey by a civil engineer is required as part of this Phase unless there are no new exterior walls being created. The Design Professional shall coordinate the surveyor and provide quotes for the Client to accept.

(i) A New Avenue certified contractor will provide an updated budget based on New Avenue's database of completed projects. Design Professional and Client shall review the budget and Client shall confirm that this is acceptable. Design Professional shall confirm that the design and construction costs will not exceed 120% of this budget. Acceptance by both parties must be communicated in writing on the Project Page. This budget is not a guarantee of construction costs but is exclusively limited to requirement that the Design Professional will provide up to 20 hours of work to update the design at no charge if the final design is unable to achieve this accepted budget.

(ii) Zoning and planning drawings, documents, and permit applications will be completed by Design Professional and submitted to the necessary offices or departments by Design Professional as part of this Phase if such permits are required. City permit fees will be billed to Client at cost.

(iv) **Phase III, Design Development:** During this phase, a detailed scope and appearance of the Project shall be established which shall include the selection of materials and Design Professional shall make any other design decisions and material selections necessary to complete the overall design of the Project. In order to move as quickly as possible, Phase III work will often occur while Planning approval is pending and Planning approval will be obtained during this Phase III. Additional design development documents shall include, but are not limited to, door, window, flooring, tile, fixture, appliance and finish schedules, interior elevations, cross-sections, material specifications and key construction details, as needed. Design Professional will evaluate and review the construction scope, elements, details, methods and means with the Client to ensure that the final elements meet the Project's objectives. Design Professional is responsible for managing the selection of finishes to meet the budget communicated at the end of Phase II or updating the budget accordingly and communicating cost increases to Client. During this review between Design Professional and Client, Design Professional will request Client's approval via New Avenue Project Page for any changes and/or developments and Client must accept these changes for them to take effect.

(v) **Phase IV, Construction Documentation:** Upon Client's approval of the design development as outlined above and established during Phase II & III, Design Professional shall prepare final construction documents, specifications and all documents required for submittal for a building permit for the city and/or county in which the Project is located, as well as homeowner association documentation and building permits, as required. a.

The Design Professional has discretion to determine what degree of detail is required; however, the construction documents shall be detailed to a level that New Avenue determines is required for a “bid set”. Plans will include as-built drawings, site plans, demolition plans, floor plans, cross-sections, engineering, interior and exterior elevations, details, outline specifications and finish schedules, as required. Design Professional will post construction documents as a single file in PDF format with a file size that is no larger than 10MB to the Client’s online Project Page. Design Professional shall also respond to questions and comments from the city plan checker and will bill hourly for this work. As determined by the jurisdiction’s policies or by Client request, either the Design Professional, General Contractor or Client will submit Building Permit applications.

Construction Documents: The Construction Documents (the “*Construction Documents*”) are prepared as instruments of service and are intended for use by the Client to complete the proposed Project and are to be suitable for permit applications to the local building authorities. By entering into this Agreement, Client understands the nature and intended use of the Construction Documents and agrees to hold Design Professional and New Avenue harmless from any and all claims resulting from any errors or omissions contained in the Construction Documents or any costs incurred by Client or by anyone else to whom Client might provide the Construction Documents (“*Client’s Third Party*”), regardless of the purpose for which Client or Client’s Third Party intends to use or uses the construction documents, including for purposes of estimates or implementation, but only if such claims arise in a project in which New Avenue was not engaged by Client at the time such claims arose.

Engineering and Other Sub-Consultants: The Design Professional shall determine which reports are required as part of the Project. Such reports include but are not limited to: Arborist Report; Hazardous Materials Report; Wetland and Riparian Resource Study and/or Report; Geotechnical Report; Light Study; Noise Study; Plan Survey; and other similar type reports, surveys and/or studies. All engineering and sub-consultant services shall be provided by a professional that is properly licensed in the state in which the Project is located. These reports may occur under an independent contract between Client and the Sub-Consultant and this will be determined by the Design Professional.

Means and Methods of Construction: Irrespective of any other term in this Agreement, the Design Professional shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties’ errors or omissions; or for another parties’ failure to complete their work or services in accordance with the Design Professional’s documents.

(vi) **Phase V, Construction Administration – Bidding:** Either one or two certified New Avenue contractors will provide fixed price construction bids to construct the Building. One New Avenue contractor and one Client introduced contractor is the standard. Client may introduce as many contractors as desired. Client shall review bids received and New Avenue shall assist Client in selecting a contractor. Client may choose any bid provided, including a bid from a General Contractor that is outside of New Avenue’s network of Contractors. New Avenue’s relationship with certain contractors in no way obligates Client to select a New Avenue contractor to construct the Building. A final budget, based upon the final construction documents, will be submitted for Client approval on the Project Page at this time.

(vii) This Agreement is not a construction contract and Client is under no obligation to build the Building or select a construction bid received under section 1(f)(iii) above. New Avenue will provide a separate construction agreement for Construction of the Building in the form of the New Avenue Construction Agreement (the “*Construction Agreement*”) that is provided during the bidding process. The Construction Agreement will be between the Client and a licensed general contractor and is outside the scope of this Agreement.

If a construction bid is not selected and Client decides not to move forward with constructing the Building, New Avenue and Design Professional shall have no further obligations under this Agreement.

(viii) **Phase V, Construction Administration – Progress Billing:** New Avenue further covenants to perform the following services in an expeditious and economical manner consistent with the interests of the Client: (i) Provide a fixed price Construction Agreement for Client and general contractor, (ii) determine the percentage of work completed by the general contractor and any Sub-Consultants, (iii) process payments for work that is completed and satisfactory, (iv) provide analysis of the cost of change orders and record keeping of such, and (v) Store all work-related correspondence to the Client via the Project Page, whether by subcontractors, general contractor, municipalities or design professionals, including but not limited to, preliminary notices filed by supplier and subcontractors and ‘correction notices’ issued by city inspectors. New Avenue requests that Client forward any lien notices, pre-lien notices, or insurance certificates received to New Avenue.

Design Professional will be responsible for providing or clarifying all construction details to field personnel. Such services are billed hourly by the Design Professional.

The parties acknowledge and agree that New Avenue shall have no responsibility to perform any construction on the Project. New Avenue assumes full responsibility for payment of all amounts due to Design Professional and General Contractor of all monies paid to New Avenue by Client.

(ix) Client understands that during construction unknown and/or unforeseen existing conditions may be discovered, including, but not limited to, hidden or inadequate wiring and plumbing, rot, decay or other undesirable existing site and structural conditions. Design Professional shall address solutions for these conditions, as required, and New Avenue will manage the approval process for any resulting change orders as specified in the Construction Agreement.

(f) Client Supplied Items: Client may purchase materials, appliances, fixtures and similar items directly from retailers. There is no markup or fee for doing so.

(g) Client Interference: An equitable adjustment to the Design Professional, General Contractor or New Avenue’s Fee (as defined in Section 3(a) below) shall be made if direction or interference by Client leads to increased costs and delays in the performance of the Services. This adjustment will be reasonably determined by New Avenue and will be based on the hourly fee schedule attached hereto as Exhibit A.

(h) Changes: Client and Sub Consultants may mutually agree at any time to modify the scope of the Services provided under this Agreement pursuant to a written change order, which shall be executed by both Parties (either an “**Add Service**” for additional design professional work or a “**Change Order**” for a modification by the general contractor). Any increases in fees and costs and any corresponding increases in time associated therewith shall be set forth in the Add Service or Change Order.

Additional services include, but are not limited to, the following:

(i) Perspectives and renderings, other than those covered by the design services agreed upon by Client and Design Professional under the Design/Build Agreement and prepared upon Client’s request.

(ii) Fees paid for Sub Consultants performing functions outside the design services pursuant to this Agreement when Client or New Avenue requests such services.

(iii) Additional services performed by Design Professional, which have been authorized by Client, shall be paid for on an hourly rate basis. These fees are in addition to Design Professional's fee as set forth in Section 1(e)(i) above and are subject to change after one year from the Effective Date. Such additional services shall include, but not be limited to: (a) the preparation of additional studies, reports and/or drawings required because of criteria changes by Client or due to the Property, (b) changes in governmental policies, (c) attendance and/or preparation of special reports, meetings, hearings, etc., (d) contractor defaults or major workmanship defects, (e) and other services similar to those set forth in the design services and not otherwise covered by this Agreement.

(iv) Coordinating with consultants that are not specified in the Design/Build Agreement and contracted directly to the Client.

(i) Standards of Service:

(i) Sub-Consultant's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. Sub-Consultants shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

(ii) Design Professional and General Contractors shall endeavor to promptly communicate by responding to all phone calls and emails within one business day. New Avenue cannot require that all Sub-Consultants meet the same timeliness but will request that they do so and will assist Client in resolving any issues regarding responsiveness among Sub-Consultants.

(iii) Sub-Consultants will not exceed the hours and fees of design, architectural, consulting and engineering work quoted for each phase in the Design Proposal without prior written approval that is obtained through an Additional Service Request that is approved by the Client on the Project Page. Any time spent in excess of the quoted amount shall be billed on an hourly rate as set forth in Rate Schedule provided in the Design Proposal. Any such hourly charges are hereafter referred to as "**Hourly Consultant's Fees**". Design Professional shall provide New Avenue and Client with written notice when Sub-Consultants have reached eighty percent (80%) of the maximum hourly amount quoted for each phase.

(iv) Client understands that the Design Professional's estimate for the time to complete the services set forth in section 1(f) above is based on experience completing previous projects and that Client's Project will vary from this estimate. Further, Client acknowledges that adverse site conditions or independent direction from Client may lead to increased costs and delays in the performance of the Services and specifically may result in your Project exceeding any time frame set forth in Section 1.

(v) In that design is a dynamic, collaborative process, New Avenue asks to be informed by the Client as to whether-or-not Client is receiving value for the dollars being spent on the Project. At the beginning of each phase of the project Design Professional shall request approval from the Client to begin the next phase. Absent written approval to continue to the next phase, Client is under no obligation to continue with the Project. Design Professional will proceed only as far as the Client directs him or her to do so, which means that the Client will control the costs of the services being rendered.

(vi) Any construction costs estimates or budgets provided by a New Avenue Contractor to Client during the design phases of the Building shall be preliminary and shall be estimates only and shall not guarantee, or represent to guarantee, the actual costs of

construction. Actual construction costs shall be determined through the bid selected to construct the Building as set forth in Section 1(e)(vi) above.

(vii) In the event a dispute occurs with Design Professional or General Contractor, New Avenue will assist Clients by providing analysis of the issues, informing all parties of the best practices for resolving the disputed issue and informing all parties of costs for comparable work in other New Avenue projects.

(viii) Design Professional shall provide Clients with physical and electronic copies of the Construction Documents (which Client may retain pursuant to the provisions contained in this Agreement) as outlined and established during Phases I, II, III and IV of this Project. Electronic copies shall be posted to the Project Page upon the completion of each Phase or more frequently if requested.

2. Term

This Agreement shall commence on the Effective Date and shall continue until all the rights and obligations under this Agreement have been met or until terminated in accordance with Section 8 below.

3. Compensation

Design Services are billed hourly. Construction budgets are all fixed priced budgets. There is no way to precisely quote the costs of Design Services, but, for all phases of the design process and based on past experience, the Client should expect to spend an amount between approximately eight to fifteen percent (8%–15%) of the costs of construction on Design Services, with ten percent (10%) being the average.

(a) Client understands that Design Proposal amounts are estimated fees based on historical averages and Design Professional will submit billable hours via New Avenue's online invoicing system. A Design Proposal submitted by a Design Professional or a Construction Bid submitted by a General Contractor must be accepted by Client before any work begins and Client incurs any payment responsibility.

(b) Client understands that the timeframes noted in table 1 are estimates based on past projects and not actual figures for a specific project.

(c) The Design Deposit for Phase I shall be paid on the Effective Date and shall become non-refundable at midnight on the third business day after the Effective Date.

4. Reimbursable Expenses

New Avenue's Sub-Consultants shall be reimbursed for certain administrative expenses, sub-consultant fees and all permit expenses incurred in rendering the Services under Section 1. All these expenses shall be due upon receipt.

The terms Administrative Expenses, Permit Expenses and Sub-Consultant Fees are defined as follows and are collectively referred to as "***Reimbursable Expenses***":

(a) "***Administrative Expenses***" include, but are not limited to, reproductions, printing and duplication, deliveries, messenger and overnight mail service, travel necessary to complete the Services (excluding normal commuting to and from the location of the Property), and any other special expenditure authorized by the Client.

(i) Administrative Expenses shall not exceed \$500 absent the express written consent of the Client.

(b) **“Permit Expenses”** shall be defined as including any and all Federal, State or municipal fees or costs paid by New Avenue or Sub-Consultant in the processing of approvals necessary to construct the Building.

(i) Permit Expenses shall be the actual fees and costs paid by New Avenue or Sub-Consultant as evidenced by governmental receipts provided to Client.

(c) **“Sub-Consultant Fees”** shall be defined as fees incurred by Sub-Consultants in the preparation of documents needed to process building permit applications for the Project. Whether the Project will incur these Sub-Consultant Fees depends on the characteristics of the Property, the proposed Building and the Project. Sub-Consultant Fees include the costs associated with the preparation of the following specialized reports, documents and/or surveys, which could be required as part of the Project: Arborist Report; Hazardous Materials Report; Wetland and Riparian Resource Study and/or Report; Geotechnical Report; Light Study; Noise Study; Plan Survey; and other similar type reports, surveys and/or studies.

(i) Client shall reimburse New Avenue for any Sub-Consultant Fees for any amounts billed to New Avenue or Sub-Consultant to cover costs associated with managing and covering the costs of said fees and facilitating the preparation of the specialized reports, documents, and/or surveys.

5. Payment of Fees and Reimbursable Expenses

(a) Sub-consultants agree to bill exclusively through New Avenue’s Budget forms. Client agrees not to pay any Sub-consultants directly as doing so would interfere with New Avenue’s ability to effectively administer the Project. Such circumvention typically leads to increased costs for the Client and additional corrective management by New Avenue, the Design Professional or the Contractor.

(i) If Design Professional has a preferred subconsultant, such as a civil engineer, then Design Professional may refer them to be hired directly by the homeowner. Any contracts, proposals, and invoices to the homeowner and the subconsultant should be uploaded and posted on the Project Page timeline. The Design Professional or Contractor will update the project budget with an Add Service or Change Order Request to account for these services as directly paid for by the homeowner.

(b) All Hourly Sub-Consultant Fees and Reimbursable Expenses shall be billed bi-weekly or monthly and due and payable upon receipt. Interest shall be charged at the lower of ten percent (10%) per annum or the maximum permissible under applicable law from the date of invoicing for amounts outstanding more than sixty (60) days.

6. Nature of New Avenue’s Relationship to Client

(a) State and Federal Taxes - Client will not withhold any monies for any state, local or federal taxing authorities from compensation earned by New Avenue pursuant to this Agreement.

(b) Fringe Benefits - New Avenue and New Avenue's agents shall receive no fringe benefits under this Agreement whatsoever, and accordingly, shall receive no insurance benefits, disability income, vacation, holiday pay, sick pay, or any other benefits

(c) Insurance Coverage

(i) New Avenue shall secure and maintain commercial general liability insurance, including personal injury, in the amount of \$2,000,000 per occurrence and \$4,000,000 total.

(ii) Client shall, prior to commencement of the Services, secure and maintain property insurance in an amount at least equal to the full replacement value of the improvements located on the Property from an insurer authorized to do business in the state in which the Project is located. Such property insurance shall name Client as the "Named Insured" thereunder. The property insurance shall be maintained until the Services have been completed and final payment has been made as provided in this Agreement. The property insurance shall be provided on a "special form" or "all-risk" policy of insurance which shall insure against the perils of fire and any other physical loss or damage, including, but not limited to, coverage for theft, vandalism, malicious mischief, collapse and debris removal (including demolition occasioned by enforcement of any applicable legal requirements). The property insurance will also cover offsite and transit exposures.

(iii) If Client does not purchase the insurance required to be maintained by Client under this Agreement, New Avenue may, but shall not be obligated to, obtain any such insurance that will protect the interests of New Avenue and any Sub-Consultants, and by appropriate Change Order (as defined in Section 1(i) above) the costs borne thereof shall be charged to Client. Further, Client agrees that if a Change Order becomes necessary pursuant to the preceding sentence, Client's signature will not be required for the Change Order to be effective. If New Avenue is damaged by the failure of Client to purchase or maintain its required insurance, Client shall bear all costs and expenses attributable thereto.

(iv) Prior to the commencement of any Services, Client, Design Professional and General Contractor shall post new certificates of insurance evidencing the insurance coverage required by this Section 6(c) on the Project Page. The policy shall contain a provision establishing that it will not be cancelled unless thirty (30) days prior written notice has been given to New Avenue.

(v) At Client's option, Client may secure insurance to insure Client against loss of use of Client's property due to fire or other hazards, however caused. If Client purchases such insurance then Client waives all rights of action against New Avenue for loss of use of Client's property, including consequential losses due to fire or other hazards, however caused.

(vi) Client waives all rights against New Avenue and any of its Sub-Consultants for damages caused by perils (and to the extent of insurance of such perils) covered

by property insurance obtained, or required to be obtained, by Client pursuant to this Agreement or other property insurance applicable to the Services. Policies for any such insurance shall provide for waiver of subrogation by endorsement if an endorsement is required.

(d) Hours - The time devoted by New Avenue to the performance of the Services shall be left to the sole discretion of New Avenue. New Avenue shall not be required to work any specified hours or specified days, but any such hours shall be reasonable to complete the tasks at hand without causing a nuisance to Client or Client's neighbors.

7. Indemnification

Each party to this Agreement shall indemnify and hold the other party to this Agreement and such party's directors, officers, employees, shareholders, counsel, representatives, accountants and auditors harmless from and against any and all claims, damages, obligations, deficiencies, costs, penalties, liabilities, actions, losses, interest and expenses (including reasonable attorneys' fees) arising from, based upon, attributable to, resulting from or relating to any (i) misrepresentations or breach of any warranty, representations or covenants herein by the indemnifying party, or (ii) grossly negligent, fraudulent, or malicious action taken by, or omission of, such indemnifying party. Section 7 shall survive the termination of this Agreement.

8. Gross Negligence

Any design flaw resulting from gross negligence of Design Professional shall be remedied directly by the Design Professional, including, but not limited to, updating drawings, updating and reissuing permits, and payment for the costs of affiliated construction Change Orders. Gross negligence is considered unrestrained disregard of consequences, where ordinary care is not taken in circumstances where, as a result, injury or grave damage is likely. Section 8 shall survive the termination of this Agreement.

9. Termination

(a) Termination Without Cause

(i) Either Client or New Avenue, in their sole discretion, may terminate this Agreement for any reason whatsoever at any time upon no less than ten (10) business days' prior written notice to the other party.

(ii) Termination of the Agreement by Client without cause shall not give rise to any claim against Client for damages for any breach of this Agreement; provided, however, that Client shall promptly pay New Avenue for all fees and reasonable Reimbursable Expenses incurred by New Avenue and Sub-Consultants as of the date the Agreement was terminated, within ten (10) days following any such termination (calculated on an hourly basis in accordance with the Rate Schedule attached hereto as Exhibit A).

(b) Termination for Cause

Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate immediately as follows:

(i) Upon the dissolution, liquidation, or bankruptcy of Client, whether voluntary or involuntary;

(ii) Upon New Avenue's or Client's failure to cure their material breach of this Agreement within thirty (30) days following such party's receipt of written notice thereof from the other party; and

(iii) Upon Client's failure to make any monetary payments required under the terms of this Agreement within thirty (30) days after receipt of an invoice or statement thereof.

10. Documents

(a) Building-Specific

Work product (otherwise known as instruments of service), including those in electronic form, prepared by the Sub-Consultants are for use solely with respect to this Project. This includes but is not limited to PDF, CAD, DWG, Sketchup, Revit and other design files. New Avenue and Sub-Consultants, as applicable, shall be deemed the authors of their respective instruments of service (as described in this Section 10) and shall retain all common law, statutory and other reserved rights, including copyrights. Design Professional will provide copies of these files to New Avenue and Client upon request pending the Client signs a form that releases Design Professional from any liability relating to these files or the design.

(b) Nonexclusive License

Upon the execution of this Agreement, Client receives a nonexclusive license to reproduce documents or deliverables prepared by any Sub-Consultant solely for purposes of constructing, using and maintaining the Project; provided, however, that Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Any termination of this Agreement prior to completion of any given Phase (as described herein) shall terminate this license for any work performed during the incomplete Phase however the license for work from completed Phases shall remain. Upon such termination, Client shall refrain from making further reproductions of any such documents or deliverables pertaining to the incomplete phase and shall return to New Avenue, within seven (7) days, all originals and reproductions in Client's possession or control.

(c) License Restrictions

Except for the licenses granted in Section 9(b) above, no other license or right shall be deemed granted or implied under this Agreement. Client shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to any party other than a future owner of the Property without the prior written agreement of New Avenue, which may be withheld for any reason whatsoever. Client shall not use the documents, if any, for any future purposes other than for construction of the Building for this Project, unless Client obtains the prior written agreement of New Avenue and Design Professional, which may be withheld for any reason whatsoever. Any unauthorized use of the documents, if any, shall be at Client's sole risk and without liability to New Avenue and/or any Sub-Consultants.

(d) New Avenue's Rights

New Avenue shall have the unrestricted right to continue using all materials in connection with the Project upon termination or expiration of this Agreement. New Avenue shall not be liable for Client's use of such materials.

(e) Survival

Section 10 shall survive the termination of this Agreement.

11. Rights and Remedies Upon Breach

(a) Legal Relief

Except as otherwise set forth herein, if Client or New Avenue breaches or threatens to breach any Section of this Agreement, Client or New Avenue will have the right to seek any and all remedies to which Client or New Avenue are entitled under applicable law, each of which shall be independent of the other and severally enforceable, and all of which shall be in addition to, and not in lieu of, any other rights and remedies available to Client or New Avenue under law or in equity. No action or failure to act by Client or New Avenue shall constitute a waiver of any right or duty afforded to Client or New Avenue under this Agreement, nor shall any such action or failure to act constitute an approval of, or acquiescence with, any breach, except as may be specifically agreed in writing or specified in this Agreement.

(b) Equitable Relief

If Client breaches, or threatens to breach Sections 9 or 10 of this Agreement, New Avenue will have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which shall be in addition to, and not in lieu of, any other rights and remedies available to Client under law or in equity:

(i) Specific Performance

The right and remedy to have this Agreement specifically enforced by any court of competent jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to New Avenue and that money damages will not provide an adequate remedy to New Avenue.

(ii) Injunctive Relief

The right and remedy to apply to any court of law or equity having jurisdiction for injunctive relief (without the posting of a bond or other security), it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to New Avenue and that money damages will not provide an adequate remedy to New Avenue.

(iii) Accounting

The right and remedy to require Client to account for and pay over to New Avenue all compensation, profits, monies, accruals, increments or other benefits derived or received by Client as a result of the transactions constituting a breach of any provisions of this Agreement.

(iv) Costs

The right and remedy to recover all damages, court costs and reasonable attorneys' fees incurred by New Avenue in enforcing the provisions of this Section 11(b).

12. Entire Agreement; Interpretation

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings relating to the subject matter hereof, whether written or otherwise. This Agreement may be amended or modified only by a written instrument executed by New Avenue and Client.

13. Waiver

Any failure to exercise or delay in exercising any right, power or privilege herein contained, or any failure or delay at any time to require the other party's performance of any obligation under this Agreement, shall not affect the right to subsequently exercise that right, power or privilege, or to require performance of that obligation. A waiver of any of the provisions of this Agreement shall not be deemed, nor shall it constitute, a waiver of any other provision, whether or not similar, and nor shall any waiver constitute a continuing waiver.

14. Assignment; Binding Effect

This Agreement shall inure to the benefit of, and be enforceable by, Client and New Avenue and their successors and assigns. This Agreement is not assignable by either Client or New Avenue without the express written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

15. Severability

If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, it shall be deemed separable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement, and the rights and obligations of the parties shall be enforced to the fullest extent possible.

16. Governing Law

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

17. Arbitration of Disputes(a) Procedure

Other than with respect to a breach or threatened breach by Client of Sections 9 or 10 herein, any controversy or claim arising out of or relating to this Agreement or the breach thereof, or otherwise related to New Avenue's relationship to Client, shall be settled by arbitration in San Francisco, CA, before a retired judge associated with JAMS Endispute, or other mutually agreeable alternative dispute resolutions service, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party in any action to compel arbitration shall be entitled to reimbursement for its costs and reasonable attorney's fees incurred in enforcing this Section 17.

(b) NOTICE

BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THE ARBITRATION

I HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

18. Attorneys’ Fees; Costs

If any action at law or in equity (including any arbitration) is brought to enforce or interpret the terms of this Agreement or any obligation owing hereunder, the prevailing party shall be entitled to reasonable attorneys’ fees and all costs and expenses of suit or arbitration.

19. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. No Presumption

This Agreement has been reviewed by the signatories and their counsel, if any. There shall be no construction of any provision against New Avenue because this Agreement was drafted by New Avenue, and the parties waive any statute or rule of law to such effect.

21. Marketing & Referral Fees

Client acknowledges and understands that New Avenue has established certain business relationships with various service providers and contractors. Such relationships may, at times, involve the payment of marketing fees by such contractors and builders to New Avenue. As additional consideration for New Avenue’s performance of the Services hereunder, Client hereby agrees that any fees paid to New Avenue by a contractor or builder that is subsequently retained by Client to complete the Project shall not constitute a breach of any term or condition contained in this Agreement. Moreover, Client does not object to the payment of any such referral fee to New Avenue. Section 22 shall survive the termination of this Agreement.

22. Limitation of Liability

UNLESS CAUSED BY NEW AVENUE’S NEGLIGENCE OR MISCONDUCT, CLIENT HEREBY EXPRESSLY WAIVES, AND NEW AVENUE SHALL NOT BE LIABLE TO CLIENT FOR, ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEW AVENUE’S AND SUB CONSULTANT’S MAXIMUM LIABILITY TO CLIENT UNDER THIS AGREEMENT, WITH THE EXCEPTION OF ANY INDEMNITY OBLIGATIONS HEREUNDER AND AS OTHERWISE PROVIDED HEREIN, SHALL BE LIMITED, IN THE AGGREGATE, TO NEW AVENUE’S FEE.

TABLE 1
TYPICAL SCHEDULE
(21 MONTHS)

Schedule	Work to be Performed
1 month	Phase I Program Development
3-4 months	Phase II Schematic Design A survey by a civil engineer is required as part of this Phase. Survey ranges from \$1,500 - \$5,000 depending on site.
4 months	Phase III Design Development: 1 month plus 2-4 month waiting period for city to approve planning permit.
4-5 months (1 month plus 3 month waiting period for city to approve building permit)	Phase IV Construction Documentation Engineering: an engineering firm will be enlisted to complete any structural engineering that is required. We estimate the engineering costs to be between \$2,800 and \$4,500.
6 months – 8 months	Phase V Construction Administration & Project Management,

EXHIBIT A
EXAMPLE RATE SCHEDULE
UPDATED RATES WILL BE QUOTED IN YOUR DESIGN PROPOSALS

TITLE	HOURLY RATE
Project Executive	\$350
Partner Architect/Designer	\$120-\$240
Senior Designer, Project Manager or Project Engineer	\$140
Intermediate Staff	\$100
Technical Staff/Draftsperson	\$85

EXHIBIT B
VISITS, MARKETING AND EVENTS

New Avenue would like the ability to use the Project for marketing purposes.

The table below sets forth the marketing options for this Project. New Avenue will consult the Client before making any arrangements for events or other substantive efforts. Client may reject any or all options.

ITEM	OK
Complete a post project survey to help us improve the experience for future Clients.	
Job signage – allow the posting of one New Avenue sign.	
Allow visits with potential Clients during construction.	
With permission, allow New Avenue to host an open house or houses at certain times during the Project.	
Allow New Avenue’s professional photographer to take job photos and use them for marketing purposes.	

EXHIBIT C
ACH PAPERLESS PAYMENT PROCESSING REQUEST

New Avenue Inc.

ID Number: 80-0425072

"I (we) hereby authorize New Avenue Inc., hereinafter called New Avenue to initiate debit entries to my (our) Checking/Savings accounts at the depository financial institution named below, hereafter called Depository, and to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of the U.S. law."

Routing Number _____

Account Number _____

Rules Regarding Debits:

Only invoices that are delivered to Depository and electronically approved by the Depository are to be debited from my (our) account.

This authorization is to remain in full force and effect until New Avenue has received written notification from me (or either of us) of its termination in such time and in such manner as to afford New Avenue and DEPOSITORY a reasonable opportunity to act on it.

Name(s) _____

Date _____

Signature(s) _____