

## **PART 1 – SERVICES OF THE ENGINEER/ARCHITECT**

### **PHASE I – PROGRAM DEVELOPMENT AND BID DOCUMENTS**

- A. We will prepare construction documents including drawings, and specifications based upon the Association's approved Scope of Work of repairing as many #2 Rated Balconies (per the Balcony Evaluation Report prepared by Postl-Yore and Associates, Inc. in 2010) as possible with the Association's budgeted amount. The documents will be prepared in such a manner as to allow the Association's chosen contractor to submit itemized pricing for the repairs.

### **PHASE II – CONSTRUCTION ADMINISTRATION**

(Tasks completed during Phase II will be at the direction of the Board. The following are typical tasks completed by the on-site Architect / Engineer during repair and maintenance programs. Before beginning this phase of the project we would expect to clarify with the Board our administrative role and determine which tasks best fit the needs of both the project and the Association.)

- B. We will prepare contract documents for agreement between owner and contractor, review contractor submittals, aid in the contractor's application for permit, if necessary, and facilitate any pre-construction or on-site meetings prior to the beginning of the work.
- C. We will perform periodic observations of the progress and quality of the repair work to determine in general if it is being performed in a manner indicating that when completed the repair work will be in conformance with the contract documents.
- D. We will maintain documentation of exact quantities of repair items and unit costs on a per unit/balcony basis.
- E. We will review contractor pay requests, make recommendations for interim and final payouts, and assist the contractor and Association with close-out documents.
- F. We will be available, at all times during the construction phase, to meet with the Management/Board to review work progress and to answer any questions. If necessary this can include attendance at regular progress meetings.

All of our services will be performed under the supervision of an Illinois Registered Engineer/Architect. While no repair program can guaranty complete elimination of all problems, we have had success in dealing with similar issues at many other buildings, in our 35 years of professional service. Our experience with similar balcony evaluation and repair work includes projects with the 600 East Condominium Association, 555 Cornelia CA, 2 Atrium Way, Lake Park Plaza, the Renaissance Condominium Association, and 120 North Lakeview Condominium Association.

## PART 2 – PAYMENTS TO THE ENGINEER/ARCHITECT

Our fees for the above services are based upon our understanding of the Association's needs for the project as defined in this proposal. If services beyond this scope of work are required appropriate compensation can be decided upon at that time:

**Phase I -** For preparation of the bid documents, specifications, and assistance during the contractor pricing submittal process: A fee of Three Thousand Six Hundred Twenty dollars, (\$3,620.00)

**Phase II -** For services relating to the Construction Administration and project management; it is typical to run billing for the actual hours expended in accordance with the attached rate schedule. Since we, as Engineers and Architects, do not have any control over the means, methods, or scheduling by contractors of materials, manufacturing, or labor required, in addition to the effects of market conditions on competitive bidding, it is difficult to quote a fixed cost for this Phase of the project. We understand that the price for our Phase I and II services and all completed repair work pricing is budgeted for an amount of One Hundred Fifty Thousand dollars, (\$150,000)

Invoices are submitted monthly based upon the percent completion of services at the time of billing and are due and payable upon receipt. Each request for payment shall include a statement of work completed at the time of payment request submittal. Invoices remaining unpaid for thirty days earn interest at the rate of one and one-half percent per month from the date of invoice. If collection proceedings are required to collect unpaid invoices we shall be entitled to reimbursement for collection costs, including court costs and reasonable attorneys' fees.

Any additional services requested by the Board or attendance at any Board Meetings beyond those included above will be billed in accordance with the attached hourly rate schedule. The terms and conditions printed on the rate schedule are included as part of this proposal. Additional services will only be performed upon written authorization from the Board.

Should the services that we provide under this agreement result in our involvement in any legal proceedings, whether by request or subpoena, we shall be entitled to reimbursement by the Board for our time and expenses, in accordance with our then effective rate schedule, incurred in the preparation for and/or attendance at any consultations with attorneys, depositions, or court appearances regardless of whether it is the Board or any other third party who requests our involvement or serves a subpoena.

*This proposal is valid for sixty (60) days.*

We are prepared to begin work immediately upon receipt of your acceptance of this proposal. We appreciate this opportunity to again be of service to The Dana Point Condominium Association and look forward to working together on this project.

## PART 3 – STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed.

2. **CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Client. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. PYA will promptly provide Client with an amendment to this Agreement to recognize such change.

3. **SAFETY.** PYA has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, PYA specifically disclaims any authority or responsibility for general job site safety and safety of persons other than PYA employees.

4. **DELAYS.** If events beyond the control of Client or PYA, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay.

In the event PYA is delayed by Client and such delay exceeds 30 days, PYA shall be entitled to an extension of time equal to the delay.

5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. Client shall pay PYA for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by PYA is supplied for the general guidance of the Client only. Since PYA has no control over competitive bidding or market conditions, PYA cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.

7. **RELATIONSHIP WITH CONTRACTORS.** PYA shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors, but PYA specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by Client's contractors.

8. **CONSTRUCTION REVIEW.** For projects involving construction, Client acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost.

9. **INSURANCE.** PYA will maintain insurance coverage for Professional Comprehensive General, Automobile, and Worker's Compensation in amounts in accordance with legal, and PYA's business, requirements. Certificates evidencing such coverage will be provided to Client upon request. For projects involving construction, Client agrees to require its construction contractor, if any, to include PYA as an additional insured on its policies relating to the Project. PYA's coverage's referenced above shall, in such case, be excess over contractor's primary coverage.

10. **INDEMNITIES.** To the fullest extent permitted by law, PYA and Client each agree to defend, indemnify and hold harmless the other, their agents, employees and representatives from and against any legal liability for all claims made, losses, damages and expenses incurred arising from their work relative to the Project by reason of injury or death to persons or damage to tangible property to the extent caused by their willful misconduct, or negligent acts, errors, or omissions. In the event such claims, losses, damages, and/or expenses are caused by the joint or concurrent willful misconduct or the concurrent negligence of PYA and Client, such liability shall be borne by each party in proportion to its own willful misconduct or negligence.

11. **LIMITATIONS OF LIABILITY.** No employee or agent of PYA shall have individual liability to Client.

Client agrees that, to the fullest extent permitted by law, PYA's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, PYA's negligence, errors, omissions, strict liability, or breach of contract shall not exceed the proceeds available from the insurance maintained by PYA under this Agreement. If Client desires a limit of liability greater than that provided above, Client and PYA shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to PYA for assumption of such additional risk.

12. **ACCESS.** Client shall provide PYA safe access to any premises necessary for PYA to provide the Services.

13. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by PYA for the specific purpose intended, shall be at the Client's risk. Client agrees to defend, indemnify, and hold harmless PYA from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by Client or others acting through Client.

14. **AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

15. **ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this agreement cannot be assigned by either party without written permission of the other party. This agreement shall be binding upon and inure to the benefit of any permitted assigns.

16. **PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

17. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

18. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit, of, any third party, including Client's contractors, if any.

19. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or enforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

20. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

**RATE SCHEDULE**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$170.00
Project Manager	\$130.00
Senior Architect/Engineer	\$120.00
Senior Designer	\$98.00
Architect/Engineer	\$96.00
Designer/Draftsman	\$85.00
Senior Field Technician	\$98.00
Field Technician	\$85.00
Cadd Drafting Technician	\$75.00
Administrative/Clerical	\$48.00

Expenses, such as blueprints, copying charges, and consultants' fees are billed at 1.15 times our cost.

Invoices are due and payable upon receipt. Invoices remaining unpaid for 30 days earn interest at the rate of one and one-half percent per month from the date of invoice. If collection proceedings are required to collect unpaid invoices we shall be entitled to reimbursement for collection costs, including court costs and reasonable attorneys' fees.

This Rate Schedule is subject to annual review and increase not to exceed 10% per classification in any calendar year.

Our reports, specifications, drawings, and other documents are intended to be used solely in connection with our services to the Client and may not be disclosed, used, or relied upon by any third party without our prior written consent. Any additional services requested beyond those specifically included in our proposal will be charged according to this Schedule. Client agrees to provide reasonable and timely access and information as necessary for us to perform our work. Client is advised that construction observation services are an integral part of this proposal and our design. We accept no liability for design unless we also provide the related construction observation services.

We warrant that we will use reasonable professional care. We make no other warranty, express or implied. Client agrees that our maximum liability for any reason will be the lesser of \$50,000 or the amount of fees actually paid under this agreement. Our proposal letter and this Schedule represent the complete agreement, and may only be changed in writing, signed by both parties.

Revised December 1<sup>st</sup> 2011

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES****Project Description:**

The "Project" shall consist of the Professional Engineering Services in accordance with your request dated April 1, 2013. We propose to provide the services as set forth in the following proposal for the purpose of repair and/or replacement of the balconies at Dana Point Condominium Association.

This Agreement is by and between:

Dana Point Condominium Association

and

Postl – Yore and Associates, Inc.

(Client)

1519 East Central Road  
Arlington Heights, Illinois 60005

(Engineer / Architect)

2100 Golf Road, Suite 230  
Rolling Meadows, Illinois 60008

Who agree as follows:

The Dana Point Condominium Association hereby engages Postl – Yore and Associates, Inc., to perform the services set forth in Part I and Postl – Yore and Associates, Inc., agrees to perform the Services for the compensation set forth in Part II. Postl – Yore and Associates, Inc. shall be authorized to commence the Services upon execution of this Agreement. The Dana Point Condominium Association and Postl – Yore and Associates, Inc., agree that this signature page, together with Parts I-III and the attachments referred to therein, constitute the entire agreement between them relating to the Project.

Postl – Yore and Associates, Inc., hereby certifies that they are not barred from making an offer to Contract as a result of a violation of Section 33E-3 or 33E-4 of Chapter 38 of the Illinois Revised Statutes.

IN WITNESS WHEREOF the parties hereto have made and executed this AGREEMENT.

**APPROVED FOR DANA POINT  
CONDOMINIUM ASSOCIATION**

**APPROVED FOR  
POSTL-YORE AND ASSOC. INC.**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

## ADDENDUM A

In consideration of the mutual covenants and promises of the parties hereunder, this Addendum A, shall be incorporated into and made a part of the Agreement For Professional Services relating to balcony repairs in 2013, including Parts I-III (the "Agreement") between Postl-Yore and Associates, Inc. ("Postl-Yore") and Dana Point Condominium Association (the "Association". To the extent there is any inconsistency between this Addendum and any part of the Agreement, this Addendum shall control.

The Agreement is modified as follows:

- I. The Agreement at Part 2 entitled "Payments to the Engineer/Architect" shall be modified so that the fourth paragraph shall read as follows (strikeout are words deleted, underline are words added):

Invoices are submitted monthly based upon the percent of completion of services at the time of billing and are due and payable upon receipt. Each request for payment shall include a statement of the work completed at the time of payment request submitted. All applications for payment shall be accompanied by applicable Postl-Yore's waivers of mechanic's lien for the full amount of the payment. All waivers and affidavits shall conform to the requirements of the Illinois Mechanics' Lien Act and meet the approval of the Association, prior to any release of any payment. Invoices remaining unpaid for thirty days bear interest at the rate of seven percent per annum ~~one and one-half percent per month~~ from the date of the invoice. No interest shall accrue on disputed amounts ultimately found not to be due. Disputed amounts ultimately found to be due shall bear interest at said rate from the date of the invoice. ~~If collection proceedings are required to collect unpaid invoices we shall be entitled to reimbursement for collection costs, including court costs and reasonable attorneys' fees.~~

- II. The Agreement, at Part 3 entitled "Standard Terms and Conditions," is hereby modified by adding the following to Paragraph 9:

Notwithstanding anything in this paragraph, the limits of the amount of PYA's insurance shall be reasonably satisfactory to the Association. PYA shall provide Certificates of all insurance to the Association prior to performing any work, and shall submit new Certificates upon any renewal or change in any policy so that proof of continuous coverage is provided to the Association at all times throughout.

- III. The Agreement is modified at Part 3, entitled "Standard Terms and Conditions" by deleting Paragraph 11 in its entirety.

- IV. The Agreement at the "Rate Schedule" is hereby modified by deleting the second paragraph regarding invoicing, in its entirety, so that all invoicing and payments shall be performed and governed in accordance with the Agreement, Part 2 entitled "Payments To The Engineer/Architect."
- VI. The Agreement at the "Rate Schedule," at the last paragraph, shall be modified to read as follows (strikeout are words deleted, underline are words added):

We warrant that we will use reasonable professional care. ~~We make no other warranty, express or implied. Client agrees that our maximum liability for any reason will be the lesser of \$50,000.00 or the amount of fees actually paid under this agreement.~~ Our proposal letter and this Schedule and any signed Addendum represent the complete agreement, and may only be changed in writing, signed by both parties.

DANA POINT CONDOMINIUM  
ASSOCIATION (Client):

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

POSTL-YORE AND ASSSOC., INC.

By:  \_\_\_\_\_

Title: President

Date: 5/8/13