

ORDINANCE NO. 19-24

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT WITH C.R. ARCHITECTURE & DESIGN TO PREPARE PLANS AND
SPECIFICATIONS TO DESIGN, BID AND AWARD A CONSTRUCTION CONTRACT
FOR A FIRE TRAINING FACILITY AT 36185 DETROIT ROAD
AND DECLARING AN EMERGENCY**

WHEREAS, the Avon Fire Department seeks to provide the most realistic conditions possible for fire rescue personnel to train on so they are prepared to perform to the best of their abilities in compliance with departmental standards during any type of emergency situation; and

WHEREAS, the Mayor, the Safety Director and the Fire Chief have proposed construction of a fire training facility to be located immediately behind the current fire station at 36185 Detroit Road; and

WHEREAS, said location would allow for on-duty personnel who may be in the middle of a training exercise to quickly respond to any real-life emergency with the appropriate apparatus and equipment and minimal loss of response time; and

WHEREAS, the Administration and the Avon Fire Chief have thoroughly vetted several design/build architects capable of creating a set of plans and specifications for such a facility and have decided to employ C.R. Architecture & Design (hereinafter "CR"); and

WHEREAS, Safety Committee and Finance Committee held a joint session on February 5, 2024 and voiced no objections to moving forward with preparing plans and specifications for said training facility and City Council, having reviewed the contract for professional design services submitted by CR, finds the agreement to be in the best interests of the health, safety, and welfare of the citizens of Avon in retaining the services of a qualified professional firm to design the fire training tower project and guide the City through the bid process.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
AVON, LORAIN COUNTY, OHIO:**

Section 1 - That the Mayor is hereby authorized to execute a contract with C.R. Architecture & Design (CR) to provide professional design services in furtherance of the goal of constructing a fire training facility at 36185 Detroit Road. Said contract will include the preparation of plans and specifications to implement this design/build construction project. Said contract, in substantially the form as set forth in Exhibit A, is attached hereto and incorporated herein by this reference.

Section 2 – Payment to CR in the amount of Sixty-Two Thousand Five Hundred Fifteen Dollars and 00/100 Cents (\$62,515.00) shall be made from the Fire Department Equipment Fund No. 106 to meet the obligations incurred under the terms of this proposal. Further, the Finance Director is authorized to increase this appropriation by a reasonable amount for additional engineering and/or legal services associated with this project.

Ordinance No. 19-24 (Con't.)

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to award a contract to CR to prepare plans and specifications for the new fire training facility at the fire station located at 36185 Detroit Road; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: February 12, 2024

DATE SIGNED: February 12, 2024

By: Brian Fischer
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR February 13, 2024

BKJ
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

POSTED: February 14, 2024
Electronically and at City Hall as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 19-24, passed by the Council of said City on February 12, 2024.

IN WITNESS WHEREOF, I have on this 13th day of February, 2024, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

EXHIBIT A

ORDINANCE NO. 19-24



February 6, 2024

Fire Chief David Swope
City of Avon, Ohio Fire Department
36185 Detroit Road
Avon, OH 44011.

RE: Proposed new Training Tower.

Dear Chief Swope:

Thank you for inviting CR architecture + design (CR) to provide our proposal for professional services to the City of Avon Fire Department ("Client"). CR looks forward to partnering and collaborating with you and your team to develop a new standalone non-burn training tower associated with the existing fire station, located on Detroit Road in Avon, Ohio. Upon your review of our qualifications, we are confident you will conclude our project team has the required expertise to ensure a successful project outcome. We look forward to the opportunity to discuss our proposal with you and your team at your earliest convenience.

PROJECT UNDERSTANDING

Based upon the previous work performed by CR providing pre-design services to define the new training tower parameters, CR and its consultants will move forward with developing a package that will be used for bidding, permitting and construction. CR will provide Construction Document services while Structural, MEP, and Civil engineering will be performed as consultants to CR.

The non-burn training tower consists of 3 levels: ground floor, level 2 and a roof level with each level approx. 670 sf. The new structure will be located 10'-0" away from the south elevation of the existing fire station within the existing patio /drive lane. The exterior will consist of colored split face CMU block, open air metal grate stairs, balconies, and a variety of open fenestrations with blackout shutters. The interior will consist of exposed concrete floors, an internal metal grate scissor stair and an open flex space offering a variety of internal room layout configurations for training purposes. Repelling and standoff anchor points will be incorporated at each fenestration, an internal standpipe throughout all floors, and a single sprinkler head connected to the standpipe will be located on level 2. A chase from level 1 to level 2 will be included for future use. MEP will consist of internal floor drains and a roof sump with no heating or cooling required for the structure. Foundations will be simple spread footing foundations and slab on grade construction.

SCOPE OF SERVICES

CR proposes to provide professional services according to Attachment A – Scope of Services.

TIME SCHEDULE FOR SERVICES

START-UP TIME: 2 weeks after receipt of the executed Proposal, receipt of all Client provided items. The schedule below assumes timely Client reviews and approvals. The construction timeframe is provided as a best guess estimate based on our experience with this type of work.

I – PRE-DESIGN SERVICES: 0 weeks.

Completed during previous contracted phase

II – SCHEMATIC DESIGN PHASE SERVICES: 0 weeks.

Completed during previous contracted phase

III – DESIGN DEVELOPMENT PHASE SERVICES: 0 weeks.

Not part of basic services

IV – CONSTRUCTION DOCUMENTS PHASE SERVICES:

Construction Documents 50%	2 weeks
Client Review Meeting	1 day
Construction Documents Submission	2 weeks
Client Review Meeting	1 day
Total	4 weeks

Plus, time for Client Approval and Authorization to Proceed.

V – BIDDING OR NEGOTIATION PHASE SERVICES: 4 weeks.
Plus time for Client Review and Award on Construction Contract.

VI – CONSTRUCTION PHASE SERVICES: 4 months.

VII – POST COMPLETION SERVICES: 0 weeks.

COMPENSATION FOR PROFESSIONAL SERVICES

CR will provide professional services on a lump sum basis for the construction documents (CD) and bidding/permitting phases. Client shall pay CR a fee of \$62,515.00. Invoices shall be issued monthly based on a percent complete basis. CR will provide professional services on an estimated hourly fee basis for the construction administration (CA) phase. Client shall pay CR a fee of \$7,450.00. Invoices shall be issued monthly based on the hours completed. Changes to the scope of work including changes to previously approved documents, project schedule, project scope, or scope of services will result in additional services. The additional services will be performed at the hourly rates identified or for an agreed upon lump sum. ****Please see breakdown below of the above totals for your reference.**

BREAKDOWN OF LUMP SUM FEE BY PHASE

	CD	Bidding/Permitting	Total
Architecture	\$22,190.00	\$4,225.00	\$26,415.00
Structural	\$16,400.00	\$500.00	\$16,900.00
MEP	\$3,500.00	\$500.00	\$4,000.00
Total	\$42,090.00	\$5,225.00	\$47,315.00
Civil	\$14,700.00	\$500.00	\$15,200.00
Total	\$56,790.00	\$5,725.00	\$62,515.00

BREAKDOWN OF ESTIMATED HOURLY FEE

	CA
Architecture	\$4,450.00
Structural	\$1,000.00
MEP	\$1,000.00
Total	\$6,450.00
Civil	\$1,000.00
Total	\$7,450.00

HOURLY RATE SCHEDULE BY CLASSIFICATION

CEO	\$260
Director	\$230
Regional Market Leader	\$195
Project Manager	\$185 - \$160
Project Architect	\$150 - \$120
Designer	\$150 - \$95
Professional Support	\$110
Administrative Support	\$90
Inter/Co-Op	\$75

** CR reserves the right to annually adjust the associated Hourly Rate Schedule during the term of this agreement based on The Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982-1984=100 reference base.*

REIMBURSABLE EXPENSES

Reimbursable Expenses are expenses incurred by CR and CR's consultants that are not included in the fee. These expenses shall be billed and paid at cost plus 15%. Reimbursable Expenses include, but are not limited to, the following:

- Courier and delivery charges, including insurance and customs duty rates.
- Reproductions including photocopying, printing, and plotting will be billed in accordance with Company's standard document pricing.

- Presentation materials including mounting and lamination.
- Professional renderings and models except as included in this proposal.
- Photography and related expenses
- Transportation and travel including airfare (business class for international travel), lodging, meals, ground transportation, vehicle rental, and other transportation related expenses.
- Additional expenses over normal hourly rates for overtime work approved by the Client in advance.

EXISTING CONDITIONS

CR will make no representations regarding the suitability for reuse of the existing structures on the site and is not responsible for the condition of the existing structures.

FAST TRACK PROCESS

In the event the Client chooses to take advantage of the potential time and cost savings benefits of fast-track processes, Client acknowledges that it has been advised that the Project will be affected. Some of the effects include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated Construction Documents for permitting, bidding, and construction purposes. Client acknowledges that the Project will likely require associated coordination, design, and redesign of parts of the Project after Construction Documents are issued and the Construction Contract is executed and may require removal of work-in-place, all which events may cause an increase in the Cost of the Work and/or an extension of the Project construction schedule. Therefore, Client acknowledges the necessity of including sufficient contingencies in the budget for the Cost of the Work to account for additional costs and construction schedule extensions arising from fast-track processes.

DESIGN APPROVAL

Client shall designate a project manager as the main contact of Client for communication with CR in relation to this Project. Client shall immediately notify CR in writing of any change to the project manager and/or their contact information. Client's project manager shall have the authority to administer all aspects of this Contract on behalf of Client. Client's project manager shall attend all project meetings with CR, especially the Initial kick-off meeting, and shall ensure that any other members of Client's staff required for approvals are also in attendance at the initial kick-off meeting. Revisions to CR's design consulting documents required to accommodate comments provided by Client's staff not in attendance at the initial kickoff meeting shall be compensated as an Additional Service, unless agreed otherwise by CR.

TERMS AND CONDITIONS

CR and the Client agree to the Terms and Conditions of Attachment B.

AGREEMENT

Until the time a formal AIA B101- 2017 Standard Form of Agreement between Owner and Architect and A201-2017 General Conditions of the Contract for Construction is executed. By signing below, Client agrees to the provisions of this proposal and agrees to pay CR in accordance with those terms stated. Authorizing services described in this proposal shall be construed to mean agreement with the provisions of this proposal. If this proposal is not executed within 30 days from the issue date, CR reserves the right to review Compensation, Payment Schedule, and Staffing Commitments.

Sincerely,
Cole + Russell Architects, Inc.

Agreed to and accepted by:
City of Avon, Ohio Fire Department

Richard Tyler
public safety director

Signature

Printed Name and Title

Date

ATTACHMENTS:

Attachment A – Scope of Services
Attachment B – Terms and Conditions

ATTACHMENT A

SCOPE OF SERVICES

Proposed new Training Tower

February 6, 2024

PROJECT DELIVERY SYSTEM

CR's services, compensation, and time schedule for performance of services are based on the use of the Design/Bid/Award/Construction with one prime construction contract. Project delivery system and are subject to adjustment if another delivery system is utilized.

DESIGN SERVICES

CR proposes to provide professional services including design and documentation of the new standalone training tower. Architecture services will be performed within CR. Structural, MEP, and Civil engineering services will be provided as consultants to CR.

The scope includes:

- Design and documentation of the shell and core of the new training tower.

DESIGN SERVICES INCLUDED IN PROPOSAL

DESIGN SERVICE/CONSULTANT	IN BASE PROPOSAL	CLIENT'S CONSULTANT	EXTRA SERVICE
Architecture -CR	✓		
Site Surveys		✓	
Geotechnical Investigations, Reports, and Recommendations		✓	
Environmental Surveys, Studies, or Reports		✓	
Civil Engineer: NFW	✓		
Structural Engineer: Schaefer	✓		
Mechanical/Electrical/Plumbing Engineer: Prater	✓		
Code Consultant:			✓
Construction Cost Estimating Consultant:			✓
Acoustical/Vibration Consultant:			✓
Life Safety/Fire Protection:			✓
Lighting Consultant:			✓
Value Engineering Consultant:			✓

Notes to Above Table:

In Base Proposal: Included in Base Proposal. CR will coordinate work of consultant.

Client's Consultant: CR will coordinate with consultant retained directly by Client.

Extra Service: Consultant not included in Base Proposal but could be added upon Client's authorization.

I - SCHEMATIC DESIGN PHASE SERVICES

Completed during previous contracted phase

II - DESIGN DEVELOPMENT PHASE SERVICES

Not part of basic services

III – CONSTRUCTION DOCUMENTS PHASE SERVICES

CR will provide Construction Documents based on the approved design development submission and updated project budget. The documents will be based on AIA A201-Current Edition General Conditions with CR's modifications, and CR Master Specifications. This will include detailed requirements for construction and include drawings and specifications that establish the quality level for systems and materials.

ARCHITECTURAL DELIVERABLES

- Construction Documents
- Specifications
- Meeting minutes

STRUCTURAL DELIVERABLES

- Preparation of construction documents including plans, schedules, details, notes, etc..
- Submit for design review at 100% of completion of design documents and subsequently revise the documents as necessary to address review and coordination comments.
- Project management, correspondence, and coordination with the entire Design Team.
- Other: Coordination with Owner provided Civil Engineer for all utility connections & grading conditions.
- Specifications

MEP DELIVERABLES

- Construction Documents
- Specifications

CIVIL DELIVERABLES

- We will complete a Topographic survey of the project area in accordance with municipal requirements for site plan approval and construction plan development. Current title work will be provided by the owner for our use in completing the survey.
- Prepare a preliminary engineering site plan for site plan approval by the City of Avon (fee excludes attendance at Planning Commission meetings and City Council meetings for site plan approval).
- Prepare construction engineering plans based on the final approved site plan as prepared by our office. The plans will be in accordance with Avon requirements. Plans to include the following:
 - Title Sheet • Detailed Grading
 - Demolition Plan • Soil Erosion Control Plan
 - Site Dimensions • Water Service
 - Paving Plan
 - Storm Sewer Plan & Profile
- Specifications
- Assist owner in preparing required permits for construction (sanitary sewer permit, water main permit, soil erosion control permit, right-of-way permit, etc.), as required. All fees (permit application, inspection, utility tap, etc.) associated with the project are the owner's responsibility.

MEETINGS

- Construction documents progress meeting (up to 2) video conferences.

CONSTRUCTION PHASING

Construction documents will be produced in one package.

BIDDING DOCUMENTS

CR will assist the Client in the preparation of bidding forms and requirements.

CONDITIONS OF CONSTRUCTION CONTRACT

CR will review Client provided General Conditions and make recommendations for supplementary conditions.

IV - BIDDING OR NEGOTIATION PHASE SERVICES

Services include:

- One on site pre-bid conference
- Response to bidders' requests for clarifications
- Participation in bid opening
- Preparation of bid summary for Client review

V – CONSTRUCTION PHASE SERVICES

CR will provide Construction Phase services as set forth in AIA A201-Current Edition General Conditions, with CR's modifications.

DELIVERABLES

- As described in AIA A201-Current Edition General Conditions, with CR's modifications
- The review of shop drawing and finish submittals includes one resubmission.

MEETINGS

- Scheduled visits to the property to review the work (up to quantities in travel section below)

CONSTRUCTION PERIOD

This Scope of Services is based on a 4-month construction period to Substantial Completion, with construction commencing no later than an agreed to date between the Client and CR. Services provided after this timeframe shall be compensated as Additional Services. CR's fee is based up on 24 man-hours any time beyond can be addressed as an additional service.

VI – POST COMPLETION SERVICES

Not part of basic services

TRAVEL

Proposal includes (1) 1-Person-Trip architectural, (1) 1-Person-Trip structural, (0) 1-Person-Trip MEP, (0) 1-Person-Trip civil to project location during the Construction Administration phase. All other meetings will be by video conferencing. (1) 1-Person-Trip architectural for punch list review.

PROJECT COST ESTIMATES

This Scope of Services does not include estimates of construction cost. CR will provide documents for others to prepare cost estimates. We recommend that the Client engage a professional Cost Estimator or General Contractor familiar with current local construction industry prices that can, on behalf of the Client, test the cost of the design at the end of the various design phases. While we will endeavor to provide our design services for the project to meet the budgetary requirements set forth by the Client, it is to be recognized that neither the Client nor CR has control over the cost of labor, materials or equipment, over the General Contractor's methods of determining bid prices, or over the current competitive bidding, market, or negotiating conditions. CR shall be entitled to rely upon the accuracy and completeness of cost estimates prepared by others. This Scope of Services is not based on a fixed limit of construction cost unless CR is permitted to include contingencies and determine project scope, systems, and materials to be included in construction documents.

QUALIFICATIONS

The following items are qualifications to the proposal outlined above.

- CR, at its option, will utilize REVIT software for drawings. For Specifications and Finish Schedules, CR may use any or all of the following software: Excel, Word, Studio Designer, or InDesign.

ADDITIONAL SERVICES

The following items are services that are additional to the proposal outlined above. These services will only be provided if requested by the Client and will be billed at the hourly rates noted herein.

Architectural

- Dimensional Survey of Existing Field Conditions.
- Existing Conditions Survey.
- Demolition documents.
- Change Orders, Change Directives or revisions to the design and construction documents after previous Client approvals.
- Value engineering and modification to design and construction documents and specifications requiring preparation of design and construction documents for alternate pricing or re-pricing.
- Preparation of Construction Documents for Alternates.
- Additional submission packages exceeding the number specified in our basic services.
- Detailed Cost Analysis or Quantity Survey of the Project.
- Attendance at multiple Pre-Bid Conferences.
- Field visits and Construction Phase Services or providing scheduled periodic representation in the field during construction beyond that stipulated in our basic services.
- Substantial Completion Inspections in excess of one inspection.
- Final Completion Inspections in excess of one inspection.

- Services in connection with the activities of separate construction contractors.
- Professional services due to default of the Client's consultants, other design professionals, General Contractor or by major defects in the work.
- Submissions for Government approval other than for building permit.
- Review and approval of proposed alternates or substitutes.
- Coordination and review of the Client's other consultants' drawings and specifications requiring adjustments and modifications to CR's documents.
- Multiple Reviews of Shop Drawings and Submittals beyond those stipulated in our basic services.
- Building Commissioning Services.
- Renderings and Models beyond those stipulated in our basic services.
- Electronic Modeling (walkthroughs and fly-bys).
- Wind Analysis.
- Life Cycle Analysis.
- Record Drawings prepared from the General Contractor's as-built drawings upon completion of project.
- Meeting time beyond that stipulated in our basic services.
- Pre-design
- Schematic Design
- Design Development
- LEED
- Entitlements or city presentation meetings

Structural

- The fee assumes the structural components of the primary structural system are designed ONE time only. Any redesign required at no fault of Schaefer (once designed), will require an ASO to modify/redesign the affected primary structural elements.
- Seismic Design Category will be classified as "B" or better.
- No roof top mechanical equipment.
- All egress above grade will use metal stairs designed by a steel supplier.
- No egress between existing fire station and new tower.
- No modifications to the existing fire station building.
- Tower foundations will be standard shallow spread footings at minimal frost depth.
- Tower will not be designed for expansion.
- Calculation package not included.
- Design of fixes for errors or omissions by the construction team.
- Re-design or re-drawing of any portion of the building due to unforeseen conditions in the field.
- Re-design or re-drawings of any portion of the building due to construction bids being over budget.
- Special inspections during construction.
- Shop Drawing review time is for ONE review per submittal for generally accepted quality submittal. If drawings are or need to be resubmitted for a second or additional reviews, an Additional Service Order will be required to complete secondary/multiple review(s).
- All ASO's will require written approval from Owner prior to work commencing on respective ASO.
- Lump sum compensation is necessarily based upon the structural engineering consultant's understanding of the intended size, complexity, and site location of the buildings as depicted by the information provided via email dated 11/13/2023.

Civil

- Environmental Surveys
- Right-of-way Improvements
- Off-Site Utility Design
- Landscape Plan
- ALTA Survey / Boundary Survey / Set Property Corners
- Construction Inspection
- As-Built Survey

CLIENT'S RESPONSIBILITIES

Prior to commencement of the work, the Client shall furnish to CR full information as to their design requirements, operational standards and guidelines, preliminary program, project schedule, total budget broken down for all areas, and all such information which shall be pertinent to the creation and carrying out of the project's design intent.

The Client shall designate a single representative authorized to act in the Client's behalf who shall make decisions with respect to the project. The Client, or such authorized representative, shall examine the design documents submitted by CR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the process of CR's design services.

CR shall provide information and specifications for products and their manufacturer, sufficient to convey design intent. However, CR will not bear any liability, should the Client choose to have the product made by a third party. It is the sole responsibility of the Client not to infringe on any copyright, trademark or design-right of the original manufacturer specified.

Client warrants that in transmitting existing documents prepared by other designers or design professionals, or any other information, Client is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

END OF SCOPE OF SERVICES

ATTACHMENT B

TERMS AND CONDITIONS

Proposed new Training Tower

February 6, 2024

STANDARD OF CARE

Company shall perform its services consistent with the professional skill and care ordinarily provided by design professionals performing similar services as those of Company under this Agreement and practicing in the same or similar locality under the same or similar circumstances. Company shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

DESIGN CONTINGENCY

The Client acknowledges that additional costs may result due to the imperfect nature of the design and construction process and that the final design cost and/or construction cost of the project may exceed the design budget and/or construction budget. The Client should prepare and plan for clarification and modifications which may impact both the cost and schedule of the project. Therefore, Client agrees to set aside a reserve in the amount of five percent (5%) of the Cost of the Work (as defined in AIA Documents B101-2017 and B103-2017) as a design contingency to be used, as needed, to pay for any such increased costs and changes. Client agrees to make no claim against Company for any increased cost within this contingency amount. If costs due to changes resulting from design errors, omissions, inconsistencies, or incompleteness exceed the contingency, then Company shall be responsible for such costs incurred by Client but only to the extent caused by Company's negligent performance. Cost increases as a result of Client requests made after Construction Documents are issued for permit, changes in governmental agency requirements after previous approval, or unforeseen conditions are not costs due to errors, omissions or inconsistencies. In no event shall Company be responsible for direct costs that Client would have incurred in the construction contract but for Company's error or omission.

PAYMENT FOR SERVICES PROVIDED

Unless otherwise provided in this Agreement, compensation for Services and Expenses shall be due and payable within 30 days of invoice date. Company will invoice the Client on a monthly basis. Invoices over 45 days will be charged interest at the lesser of 1.5% per month or the maximum rate allowed by applicable law. If unpaid invoices become more than 45 days overdue, Company may, upon 7 days written notice to the Client, stop work until payment is received. In the event of non-payment, Client shall reimburse Company for any attorney fees incurred to collect the unpaid receivables. All fees and reimbursable expenses charged by Company to Client are exclusive of any applicable local taxes.

COMPANY INSURANCE

Company will maintain commercial general liability, automobile liability, workers compensation and employee liability insurance reasonably necessary in connection with Company's performance of its services, and professional liability insurance with a coverage limit of not less than \$2 million per claim and annual aggregate while providing services for this Project and for three years thereafter.

CERTIFICATES

Company shall execute certificates and consents reasonably required to facilitate assignment to a lender, provided such do not require knowledge, services or responsibilities beyond the scope of this Agreement or which would result in Company assuming risks or liabilities beyond those otherwise assumed by Company under this Agreement.

LIMITATION OF LIABILITY; WAIVER OF CONSEQUENTIAL DAMAGES

Company's total liability to the Client for damages related to this Project shall not exceed Company's total fees for this Project. Company and Client mutually waive all consequential damages arising out of the Project. This mutual waiver includes, but is not limited to, (i) damages incurred by the Owner for rental expense, liquidated damages, and loss of use income, profit and business, and (ii) damages incurred by Company for overhead and compensation of employees, loss of business and reputation, and loss of profit.

INDEMNIFICATION

~~Each party agrees, to the fullest extent permitted by law, to indemnify and hold harmless the other party and its officers, directors and employees, against all damages, liabilities or costs, including reasonable attorneys' fees and other legal costs, where recoverable under applicable law, to the extent caused by the indemnifying party's negligent acts, errors or omissions and those of its consultants or anyone for whom it is legally liable. The parties expressly agree that this indemnity provision does not include, and in no event shall either party be required to assume, under this indemnity provision or otherwise, any obligation or duty to defend the other against any claims, causes of action, demands, or lawsuits in connection with matters encompassed by this indemnity provision.~~

USE OF COMPANY'S DOCUMENTS

Documents prepared by Company for this Project are intended for use solely with respect to this Project and Company shall retain all rights, including ownership and copyright. Provided Client remains current in its payment obligations to Company, Client is granted a non-exclusive license to use, copy and reproduce documents in connection with the construction, repair, maintenance, use and occupancy of, and publicity for, this Project. Other uses shall be negotiated separately. Company reserves the right to photograph the Project and to be identified as designers of the Project in all Project marketing materials.

If the Client, or anyone for whom the Client is contractually responsible, makes or permits to be made any changes to the construction documents prepared by the Architect and its sub-consultants without obtaining the Architect's prior written consent, the Client shall assume full responsibility for the consequences of the unauthorized changes, waives any claim against the Architect and its sub-consultants, and releases the Architect and its sub-consultants from any liability arising directly or indirectly from such changes. The Architect shall not be liable to the Client for any incidental, indirect or consequential damages related to the project or this Agreement, which shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages incurred by the Client.

ELECTRONIC FILES

Client authorizes Company to distribute electronic files of Project to constructors and designers related directly to Project at Company's normal fees for such distribution.

CLAIMS AND DISPUTES

The Client shall promptly report to the Architect any known or suspected defects in the Architect's services. The Client agrees to impose a similar requirement on all others under Client's control and shall require all subcontracts at any level to contain a similar requirement. Failure by the Client or those for whom Client is responsible to notify the Architect shall relieve the Architect of the costs of remedying the defect above the sum the remedy would have cost if prompt notification was given when the defect was first discovered.

Any claim, dispute or other matter in question arising out of or related to this Agreement or Project shall be subject to non-binding mediation as a condition precedent to commencing any legal action or lawsuit.

This Agreement is to be governed by and construed in accordance with the laws of Ohio, without regard to its conflict of law principles. Any action brought under this Agreement shall be brought only in a court of competent jurisdiction located in Hamilton Lorain County, Ohio. The parties' consent to the exclusive jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them.

ADDITIONAL SERVICES

Company and its consultants will provide additional services when requested by the Client on a Lump Sum basis as mutually agreed by the Client and Company or, in the absence thereof, on an hourly basis, either according to the Hourly Rate Schedule included in this Agreement or, in the absence thereof, at Company's then current standard hourly billing rates. Directed changes to items previously approved will be considered Additional Services.

MISCELLANEOUS

For purposes of this Agreement, Company is an independent contractor. Nothing in this Agreement shall be construed as creating an employer-employee relationship, an agency relationship, or a fiduciary relationship between Company and the Client, or as creating a partnership, a joint venture, a corporation, or any other manner of business association or corporate entity of any kind among the Parties.

The Client shall provide and timely supplement the Architect with all agreements, which may relate to or affect the project's programming, design, construction and/or administration prior to the Architect beginning any professional service, or at the time an agreement becomes available.

Client agrees that any self-performed work will not interfere with the Architect's services or affect the Architect's standard of care. The Client shall timely coordinate all self-performed work to allow the Architect's services to proceed

as agreed. Client's failure to coordinate its work, timely act, and/or timely disclose all material information related to the project may constitute substantial non-performance under this Agreement. During the Construction Phase the Client acknowledges and agrees to accept all Client directed/ performed deviations from the Contract Documents, as noted by the Architect. Further the Client agrees to indemnify and hold Architect harmless for any claim, damage, or expense resulting from these deviations.

The Client shall cooperate fully with the Architect, to proceed with the project on the basis of trust and good faith, and to perform its responsibilities, obligations and work in a manner that allows the Architect to timely and efficiently perform its services.

Company has no responsibility (1) for detection or removal of hazardous substances; (2) for construction site safety and means and methods of construction used by the contractor; (3) to provide any service not approved by Company and set forth in writing. Company shall be entitled to rely upon the accuracy and completeness of all information provided by the Client. This Agreement is the entire agreement between the Client and Company and supersedes all prior negotiations, proposals and agreements. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Company.

Company shall not be required to sign and/or stamp construction documents or permit sets, or provide the Client with Company's final deliverables, until Company has received the Client's written acceptance of Company's proposal, of which these Terms and Conditions are a part, or the parties have executed another form of agreement in lieu of such proposal. The Client shall coordinate Company's duties and responsibilities set forth in the contract for construction with Company's services set forth in these Terms and Conditions. The Client shall provide Company a copy of the executed agreement between the Client and contractor.

ASSIGNMENT

Neither Company nor Client shall assign this agreement without written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, Company has the right to assign this agreement to an affiliate of Company without the consent of the Client.

TERMINATION AND SUSPENSION

Time limits established by this Agreement shall not, except for reasonable cause, be exceeded by the Client or Company. Reasonable cause shall expressly include, but is not limited to: a pandemic or other similarly serious illness, disease, epidemic, or public health issue, and any orders, advisories, restrictions or directives of any public or governmental agencies or officials with respect thereto that impact the Client's or Company's ability to perform its obligations under this Agreement; and any unavoidable cause beyond Company's control. In the case of reasonable cause, the affected party's time for performance shall be equitably adjusted and Company's compensation shall be equitably adjusted.

Either party may terminate this Agreement at any time with or without cause by written notice. Termination shall be effective 7 days after date of notice. Upon termination, all invoices presented by Company for Services and Expenses for periods prior to the date of termination shall become immediately due and payable. Failure of Client to make payments to Company under this Agreement shall be cause for suspension and termination. In the event of a suspension of Services, Company shall have no liability for any damages to Client incurred because of such suspension.

If the Client suspends the Project, Company shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Company shall be compensated for expenses incurred in the interruption and resumption of Company's services. Company's fees for the remaining services and the time schedules shall be equitably adjusted. If the Client suspends the Project for more than 90 cumulative days for reasons other than the fault of Company, Company may terminate this Agreement by giving not less than seven days' written notice.

If the services covered by this Agreement have not been completed within six months (6) months of the date hereof, through no fault of Company, extension of Company's services beyond that time shall be considered an additional service.

END OF TERMS AND CONDITIONS