
**SPRINGBORO BRANCH LIBRARY EXPANSION PROJECT
FRANKLIN-SPRINGBORO PUBLIC LIBRARY
WARREN COUNTY, OHIO
125 PARK LANE
SPRINGBORO, OHIO 45066**

**REQUEST FOR QUALIFICATIONS
OF A CRITERIA ARCHITECT**

OVERVIEW:

The Board of Library Trustees of the Franklin Public Library, dba the Franklin-Springboro Public Library (hereinafter the “Library”) is currently interested in receiving Statements of Qualifications (“SOQ”) from Registered Architects or Architectural Firms licensed in the State of Ohio who are interested in serving as the Criteria Architect (“CA”) on the Project, as described below.

The Library plans to use the Design-Build project delivery method through a Design-Build Contract with a Design-Build Firm. Prior to seeking qualifications of Design-Build Firms, the Library is seeking qualifications from Architects to serve as CA on the Project. The CA will assist in the selection of a Design-Build Firm and perform the Scope of Services generally outlined below and in detail in Exhibit B, “Criteria Architect’s Scope of Services for a Design-Build Project” (attached).

PROJECT DESCRIPTION:

The Library intends to expand and/or remodel the existing Springboro branch located at 125 Park Lane, Springboro, Ohio 45066, by constructing a remodel and expansion of the existing branch. The project must be completed by March 2023. The Library intends to stay open to the public during construction.

PROJECT BUDGET:

\$3.5 million is the Total Project Budget, to include all professional services; criteria architect fee; consultants as required; Design-Build Contract with Guaranteed Maximum Price (“GMP”); technology; furniture; fixtures & equipment (FF&E).

PROJECT SCHEDULE:

January 2023 – Substantial completion

March 2023 - Final Completion of Project, must be ready for occupancy and grand opening spring of 2023. “Project” is all inclusive of major construction, finishing, technology, FF&E, etc.

The Respondents shall include in their SOQs a preliminary Project Schedule defining major milestones for the Design-Build process.

SELECTION PROCESS:

The Library will form an Evaluation Committee (“Committee”) to review the SOQs from Respondents and rank the Respondents. The Committee will evaluate and rank Respondents’ SOQs based on the Qualifications discussed within this RFQ. The Committee reserves the right to interview individual Respondents regarding their Qualifications at any time during the selection and ranking process.

The ranking of Respondents and final CA recommendations will be presented to the Library for approval prior to entering into a Contract. The Library will attempt to negotiate a Contract with the Respondent considered best qualified, and, if unsuccessful, the Library will attempt to negotiate a Contract with the Respondent deemed next best qualified, and so on, until either a Contract is successfully negotiated, or, in the opinion of the Library, it is not in the best interests of the Library to negotiate with any other Respondents.

The Library reserves the right to terminate any or all negotiations and receive additional Qualifications from other interested firms or terminate the Design-Build process and use an alternative project delivery method.

The Library shall have no liability for the costs and expenses incurred by the Respondents in responding to the RFQ, responses to clarification requests and re-submittals, potential interviews, and subsequent negotiations. Each Respondent that enters into the procurement process shall prepare the required materials and submittals and attend meetings and interviews at its own expense and with the express understanding that they cannot make any claim whatsoever for reimbursement from the Library for the costs and expenses associated with the process.

The Library reserves all rights to terminate and/or modify this procurement process as well as make follow up inquiries after evaluating responses to this RFQ.

PRELIMINARY PROJECT PROGRAM:

The project has tentatively been identified as follows:

Remodel and expansion of the existing one-story structure. The new construction will include a new children’s area; staff facilities and offices, including separate staff entrance and exit; 4-6 study rooms; a dedicated makers space; additional meeting and conference rooms; a centralized tech area; a new or remodeled circulation desk; and possible additional parking and drive through. The exterior finish will match that of the existing structure.

SCOPE OF SERVICES:

The CA shall be retained by the Library to assist in finalizing the project programming, prepare conceptual plans and outline specifications, develop the design criteria, and to serve as the Owner’s Representative; and provide, during the design-build process, other design and construction administration services on behalf of the Library, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package. (ORC 153.65 (I) defines Criteria Architect).

The Library may require additional services during the course of the Project and as determined by the Owner. The SOQ shall detail the full range of services offered by the CA and their associated costs.

The terms and conditions for which CA services shall be contracted are attached as Exhibit A.

For detailed information please refer to Exhibit B, “Criteria Architect’s Scope of Services for Design-Build Project” (attached).

The minimum stage submission requirements are attached as Exhibit C.

FEES:

Respondents shall include their proposed fees for the CA’s professional services based upon the information provided in this RFQ. The fee structure presented shall be broken down into basic services and additional services.

The CA fee for this Project shall include all services necessary for proper completion of the CA Basic Services for the successful completion of the Project. Additional Services fees shall be provided for other Services that may be requested.

QUALIFICATIONS:

To properly assess each Respondent’s qualifications for this Project, the Committee requests that each Respondent respond with the following information in the order that it is presented below. Responses must be limited to the experience of those individuals that will have primary responsibility for the Project.

1. The SOQ shall include a description of the Respondent, i.e., the form of business structure (corporation, partnership, joint venture, etc.) that is responding and will serve as the CA for the Project. The SOQ shall identify the portions of the work that will be undertaken directly by the Respondent and what portions of the work will require outside consultants, if any. The Library will have the sole right to approve any outside consultants. At a minimum, the SOQ shall identify the key members of the team assigned to the Project and their respective roles. Changes to the Respondent’s proposed team, including key employees, will not be allowed during the course of the Project except for in extenuating circumstances. Any changes to the proposed team must have prior approval of the Library.

2. The history, ownership, organization, and background of the Respondent shall be provided, including the name and business address of each partner, officer, and/or stockholder (where applicable) who owns five percent or more of the shares.
3. Competence to perform the required CA services, as indicated by the technical training, education, and professional experience of the firm's key personnel, especially that of the employees within the firm who would be assigned to perform the services.
4. Past performance of the firm with respect to the role of CA in a Design-Build project, including: preparation of a Design-Build Request for Qualifications (RFQ) and Request for Proposals (RFP); assistance with the Design-Build Team selection process; development of the Design Criteria and Schematic Design; construction administration services; and specification compliance verification.

Design-Build RFQ and RFP documents and resultant contracts will be provided for the project by the Library and approved as to form by the Warren County Prosecutor's Office. The role of the CA will be to edit and add to this existing set of documents as required to make them project-specific. The CA is therefore not required to develop new documents as described above as part of the scope of services.

5. Ability of the firm in terms of its workload and availability of qualified key personnel, equipment, and facilities to perform the required CA services competently and in a timely manner;
6. Respondents to the RFQ shall demonstrate an ability to perform the required services by providing their technical qualifications. The SOQ shall be catered to this individual Project, as described, and illustrate the Respondent's capabilities. The Committee will give consideration to experience related to design and construction of similar Projects in type, scope, and budget. The Respondents shall illustrate their Technical Qualifications as outlined below:
 - a. Design-Build and/or other alternative contracting experience – The Respondent shall provide its individual member and collective experience in Design-Build, and other development of facilities through alternative contracting methods. Describe in greater detail projects most similar to this Project.
 - b. Design Experience – The Respondent shall provide its building, space, and design experience as it relates to the design and construction of libraries.
 - c. Construction Experience – In this section of the SOQ, the Respondent shall describe its experience in coordinating with the Owner and Contractor during construction.
 - d. Relevant Project Experience – The Respondent shall provide a list of up to five directly relevant Projects completed within the past five years that the Respondent has been involved with as a designer or CA. A brief description of these selected Projects shall be provided, including the history of operation,

current status, and a description of the Respondent's specific involvement in these Projects.

- e. Key Project Staff – The Respondent shall provide the qualifications of all key staff assigned to the Project. Information shall include length of time practicing in the profession, familiarity with the design parameters detailed in this RFQ, design-build experience, and proposed Project leadership. Full Resumes of key personnel shall be included and attached. Along with the above information, Respondent must provide all professional licenses and/or certifications of registration required to fully perform the Project.
 - f. References – Respondent shall provide a minimum of five Project references that can be contacted by the Committee. References should have relevance to the services being proposed on this Project and include the project name, company, address, and direct contact information.
 - g. Legal – In this section, the Respondent shall disclose all claims that have been made against it on projects in the past five years and the reason(s) for each.
- 7. Federal ID number and proof of liability insurance;
 - 8. Any other information or documentation the firm believes is relevant and necessary or would like to have considered by the Committee.

CONFLICT OF INTEREST:

The CA or any related CA Firm for this project shall not provide any Design-Build services pursuant to the Design-Build Contract issued to the Design-Build Firm selected for this project. (ORC 153.694).

EVALUATION CRITERIA:

The criteria the Committee will use to evaluate the SOQ's include, but are not limited to, the following:

- 1. Demonstrated ability to meet Owner's programmed Project vision, scope, budget and schedule.
- 2. Competence to perform the required CA services as indicated by the technical training, education, and experience of the CA's key personnel assigned to the project.
- 3. Previous experience compatible with the proposed Project.
- 4. Relevant past work of proposed consultants, if any.
- 5. Past performance of the CA as reflected by the evaluation of previous clients with respect to such factors as design quality, creativity, cost control, scheduling, quality of work, administration, and communication.
- 6. Qualifications and experience of individuals directly involved with the project.
- 7. Respondent's previous experience (number of projects, size of projects, relevance of projects) when working with its proposed consultants.
- 8. Outline specification writing credentials and experience.
- 9. Proximity of prospective CA to the project site.

10. Ability of the CA in terms of workload and availability of qualified personnel, equipment, and facilities to perform the required professional services competently and expeditiously.
11. Other qualifications that are consistent with the scope and needs of the Project.

SUBMITTAL INSTRUCTIONS:

Five Copies of each SOQ submission must be printed, bound, signed by a principal of the firm and delivered to Martha Bush, Director, Franklin-Springboro Public Library, 44 E. 4th Street, Franklin, Ohio 45005, no later than 4:00 P.M., Friday, October 22, 2021. Statements of Qualifications received after this time will not be accepted.

Questions regarding the RFQ may be directed to Martha Bush via email at bushma@fspl.org.

Exhibit B - Criteria Architect's Scope of Services for a Design-Build Project Professional Services Agreement

ARTICLE 1 - CRITERIA ARCHITECT'S BASIC SERVICES

1.1 General

1.1.1 Basic Services to be provided by the Criteria Architect shall consist of the activities and stages set forth in Article 2 through Article 5 of this Exhibit B.

1.2 Criteria Architect's Relationship to the Contractor

1.2.1 The Criteria Architect is authorized to disapprove or reject Defective Work. The Criteria Architect shall immediately notify the Owner any time the Criteria Architect disapproves or rejects an item of Work.

1.2.2 The Criteria Architect is not responsible for design or construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

1.2.3 The Criteria Architect's review and approval of the Work and any information the Contractor submits to the Criteria Architect is for the sole purpose of determining whether the Work and information are generally consistent with the Contract's intent, and will not relieve the Contractor of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

1.3 Limitation of Criteria Architect's Authority

1.3.1 Under no circumstances is the Criteria Architect authorized to:

- 1.3.1.1 bind the Owner to any authorizations under, modifications of, or amendments to any contract;
- 1.3.1.2 accept any defective or non-conforming services, Work, or vendor-furnished items;
- 1.3.1.3 make any settlements on behalf of the Owner; or
- 1.3.1.4 assume any responsibilities of the Contractor, Consultants, or Subcontractors.

ARTICLE 2 - CONCEPT AND DESIGN CRITERIA STAGE

2.1 Organizational Meeting

2.1.1 Commencement.

2.1.1.1 The Criteria Architect's Services will begin on the date set forth in a notice that the Owner will issue to the Criteria Architect.

2.1.1.2 Unless the Owner agrees otherwise in writing, the Criteria Architect's Services will begin with an organizational meeting between the Owner and the Criteria Architect.

2.1.2 During the organizational meeting, the attendees will:

- 2.1.2.1 review the responsibilities of each of the Owner's key personnel involved in the Project;
- 2.1.2.2 review the scope of the Criteria Architect's Services;
- 2.1.2.3 review and establish lines of communication between the Owner and the Criteria Architect;
- 2.1.2.4 develop a list of the Owner's Project-stakeholder representatives to be involved in the Concept and Design Criteria Stage to inform the development of the Concept and Design Criteria Documents; and
- 2.1.2.5 review the then-available information and documents which reflect the Owner's requirements and objectives for the Project including Project Schedule and Construction Budget requirements and objectives.

2.1.3 Within 5 days after the organizational meeting is adjourned, the Criteria Architect shall prepare and submit to the Contracting Authority and the Owner:

2.1.3.1 detailed minutes of the organizational meeting; and

2.1.3.2 a proposed Project Schedule reflecting the performance of the Criteria Architect's Services and the progression of the Project through award of the Contract to the Contractor.

- .1 The Owner and the Criteria Architect will promptly thereafter consult with one another as necessary to reach agreement on the initial Project Schedule, which shall be used as the basis for moving forward with the Project subject to revision.

2.2 General Requirements

2.2.1 In addition to performing those Services required to comply with **Sections 2.3 and 2.4**, during the Concept and Design Criteria Stage, the Criteria Architect shall:

2.2.1.1 identify the building type, necessity or feasibility of relocating utilities, layout for building and parking, and research, analyze, and document relevant information specific to the same;

2.2.1.2 meet and otherwise work with the Owner and others with an interest in the Project to establish goals and objectives for the Project;

2.2.1.3 gather, analyze, and document information relevant to the identified Project goals and objectives;

2.2.1.4 identify and evaluate strategies to achieve the identified Project goals and objectives;

2.2.1.5 advise the Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

2.2.1.6 meet with the Owner at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Concept and Design Criteria Stage of the Project;

2.2.1.7 identify and analyze issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;

2.2.1.8 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;

2.2.1.9 notify the Owner of the need for the professional services of any Separate Consultants required for the Project; and

2.2.1.10 review and provide recommendations concerning Site use and improvements and alternative approaches to selection of materials, building systems, and equipment.

2.3 Criteria Architect's Concept and Design Criteria Submission

2.3.1 At the completion of the Concept and Design Criteria Stage, the Criteria Architect shall submit the provisional Concept and Design Criteria Documents to the Owner.

2.3.2 The provisional Concept and Design Criteria Documents shall be in the form of a written report, conceptual drawings, and/or conceptual specifications. At a minimum, the Concept and Design Criteria Documents shall include:

2.3.2.1 an executive summary of the Concept and Design Criteria Documents;

2.3.2.2 building type information including: **(1)** the types of functions included in the building type, **(2)** the space criteria for those functions, **(3)** typical relationships of spaces for those functions, **(4)** typical site requirements for the building type **(5)** technical, mechanical, electrical, security, or other issues unique to the building type, and **(8)** unique data specific to the particular project;

2.3.2.3 a narrative description of the Project's goals and objectives such as: **(1)** the role of the Project in the achievement of the Owner's overall organizational objectives and goals; **(2)** Project form and image goals such as aesthetics, relationship to the site, adjacent areas, and neighbors including any historic, cultural,

- and/or context implications; (3) function goals including identification of all major building functions and occupancy requirements; (4) economic goals including total Project Budget, Construction Budget, factors related to initial costs versus long-range operating and maintenance costs, level of quality desired; and (5) schedule goals including desired dates for commencement of construction and for Final Completion;
- 2.3.2.4** a description of space requirements, including a listing of the desired spaces and an identification of each space's basic criteria such as occupancy requirements, dimensions, proportions, ceiling heights, and service, equipment, storage, utility, access, flexibility, configuration, security, adjacency, aesthetic, and other requirements;
- 2.3.2.5** a description of planning and design criteria such as workstation, office/room standards, clustering and layout, parking layout criteria; circulation criteria; applicable space-planning modules; dimensional criteria; building systems interface criteria; envelope criteria; accessibility requirements; and a description of performance criteria applicable to building components such as envelope, structure, interior construction, and mechanical, electrical, and plumbing systems, etc. as may be required;
- 2.3.2.6** a description of site development and design criteria including zoning, design guidelines, deed restrictions and requirements, utility availability, topography, built features, etc.;
- 2.3.2.7** a conceptual site plan and conceptual building plans illustrating the Project's scale and the relationship of Project components to one another and the relationship of the Project to surrounding properties;
- 2.3.2.8** if not noted on the drawings, conceptual specifications reflecting preliminary selections of materials, building systems, and/or equipment;
- 2.3.2.9** a preliminary estimate of Construction Cost using area, volume or similar conceptual estimating techniques;
- 2.3.2.10** a preliminary Project Schedule reflecting the design and construction of the Project through Owner occupancy;
- 2.3.2.11** an identification of Applicable Law.

2.4 Concept and Design Criteria Documents Review

- 2.4.1** The Owner and the Criteria Architect shall meet to review the provisional Concept and Design Criteria Documents and to reach agreement on any Owner-authorized adjustments to the Concept and Design Criteria Documents, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Concept and Design Criteria Documents.
- 2.4.2** Unless the Owner agrees otherwise in writing, within 5 business days after the review meeting, the Criteria Architect shall revise the provisional Concept and Design Criteria Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner. When the Owner approves of the revised Concept and Design Criteria Document, the revised provisional Concept and Design Criteria Documents shall become the Final Concept and Design Criteria Documents.

ARTICLE 3 - BEST VALUE SELECTION STAGE

3.1 Commencement

- 3.1.1** Unless the Contracting Authority directs otherwise in writing, the Best Value Selection Stage will begin upon completion of the activities described under **Section 2.4**.

3.2 General Requirements

3.2.1 In addition to performing those Services required to comply with **Sections 3.3 through 3.6**, during the Best Value Selection Stage, the Criteria Architect shall:

3.2.1.1 meet with the Owner at intervals acceptable to the Owner, to review documents and other information which depict the current status of the Best Value Selection Stage;

3.2.1.2 develop the interest of design-build firms in the Project, including specifically those design-build firms (if any) the Owner asks the Criteria Architect to contact;

3.3 Preliminary Activities

3.3.1 The Criteria Architect shall schedule, conduct, and participate in meetings with the Contracting Authority and the Owner:

3.3.1.1 to identify design-builder qualifications criteria required for the Project and to determine how those criteria will be evaluated in the qualifications phase of the selection;

3.3.1.2 to identify the performance criteria and pricing criteria required for the Project and to determine how they will be evaluated and weighted in the request for proposal phase of the selection;

3.3.1.3 to identify and document any minimum or mandatory technical requirements for the project;

3.3.1.4 to establish a process for maintaining records of decisions made at all stages of the selection process; and

3.3.1.5 if applicable, to determine the amount of any stipend to be paid to the non-selected short-listed design-build firms for a responsive pricing and technical proposal.

3.4 Request for Qualifications

3.4.1 In consultation with the Owner, the Criteria Architect shall **(1)** assist with publishing the advertisement, **(2)** prepare the Request for Qualifications and related clarifications, and **(3)** receive the Statements of Qualifications.

3.4.2 The Criteria Architect shall support the Evaluation Committee in its evaluation of the Statements of Qualifications by advising the Evaluation Committee on technical issues, however, the Criteria Architect shall not participate as a voting member of the Evaluation Committee unless an employee of the public authority.

3.5 Request for Proposals

3.5.1 In consultation with the Owner, the Criteria Architect shall **(1)** prepare and issue the Request for Proposals and related clarifications, **(2)** participate in pre-proposal meetings, and **(3)** receive the Proposals, **(4)** provide relevant AIA Design Build Contract Forms [or a DBIA equivalent] to Owner to be reviewed and modified.

3.5.2 The Criteria Architect shall support the Evaluation Committee in its evaluation of the Proposals by attending proposer interviews and advising the Evaluation Committee on pricing and/or technical issues, but the Criteria Architect shall not participate in the ranking of the Proposals.

3.5.2.1 If the Proposals include GMP Proposals, the Criteria Architect shall assist the Evaluation Committee in its comparative analysis and normalization of the GMP Proposals, which Services include the Criteria Architect's detailed review and analysis of the proposed GMP Documents as described under **Section 4.4**.

3.6 Contract Award and Negotiation

3.6.1 The Criteria Architect shall assist the Owner with the award and negotiation of the Contract by advising the Owner on pricing and technical issues.

ARTICLE 4 - PRECONSTRUCTION STAGES

4.1 Commencement

4.1.1 Unless the Owner directs otherwise in writing, the Criteria Architect's Services during the Project's Preconstruction Stages will begin upon completion of the activities described under **Section 3.6**.

4.1.2 The Criteria Architect shall attend and participate in the organizational meeting described in the Contract.

4.2 General Requirements

4.2.1 During the Preconstruction Stages, the Criteria Architect shall:

4.2.1.1 issue clarifications and interpretations of the Final Concept and Design Criteria Documents;

4.2.1.2 advise the Owner and the Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

4.2.1.3 meet with the Owner and the Contractor at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Preconstruction Stages;

4.2.1.4 notify the Owner of the need for and assist the Owner with obtaining the professional services of any Separate Consultants required for the Project; and

4.2.1.5 at the request of the Owner:

- 1 identify and analyze issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;
- 2 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions;
- 3 review Contractor submittals (in addition to the submittals described under **Section 4.3**) for acceptability and conformance with the Final Concept and Design Criteria Documents, Construction Budget, or Project Schedule;
- 4 evaluate and provide recommendations to the Owner concerning contemplated modifications of the Final Concept and Design Criteria Documents;
- 5 evaluate and provide recommendations to the Owner concerning disputes with the Contractor; and
- 6 review and provide recommendations to the Owner concerning the Contractor's invoices for Preconstruction Services.

4.3 Submittal Reviews

4.3.1 The Criteria Architect shall receive from the Owner and promptly review a copy of the Contractor's submissions at the end of each of the Preconstruction Stages.

4.3.2 Within 7 days after receiving a Contractor submission, the Criteria Architect shall review and analyze it in detail and submit a report to the Owner through which the Criteria Architect shall individually address each of the following topics at a minimum:

4.3.2.1 whether the Work described in the submission appears consistent with the Final Concept and Design Criteria Documents;

4.3.2.2 whether the Work described in the submission appears consistent with the Construction Budget; and

4.3.2.3 whether the Work described in the submission appears consistent with the Project Schedule.

4.3.3 If the Criteria Architect finds that the Work described in the submission appears inconsistent with the Final Concept and Design Criteria Documents, Construction Budget, or Project Schedule, the Criteria Architect shall also describe and identify in writing specific examples of the inconsistencies.

4.3.4 At the Owner request, the Criteria Architect shall meet with the Owner and the Contractor to review the Criteria Architect's report.

4.3.5 At the Owner's request, the Criteria Architect shall assist the Owner with the negotiation of the Contractor's GMP Amendment.

4.4 GMP Proposal and Amendment

4.4.1 The Criteria Architect shall receive from the Owner and promptly review a copy of the Contractor's GMP Proposal.

4.4.2 Within 7 days after receiving a copy of the Contractor's GMP Proposal, the Criteria Architect shall review and analyze it in detail and submit a written report to the Owner through which the Criteria Architect shall individually address each of the following topics at a minimum as appropriate for the Stage in the Project when the Contractor submits the GMP Proposal:

4.4.2.1 clarity of the GMP Proposal;

4.4.2.2 completeness of the GMP Proposal;

4.4.2.3 coordination of the documents comprising the GMP Proposal;

4.4.2.4 whether the Work described in the GMP Proposal appears consistent with the Final Concept and Design Criteria Documents;

4.4.2.5 whether the Work described in the GMP Proposal appears consistent with the Construction Budget; and

4.4.2.6 whether the Work described in the GMP Proposal appears consistent with the Project Schedule.

4.4.3 If it is the Criteria Architect's opinion that the clarity, completeness, or coordination of the Contractor's GMP Proposal is deficient, the Criteria Architect shall also describe and identify in its report specific examples of the deficiencies. If the Criteria Architect finds that the Work described in the Contractor's GMP Proposal appears inconsistent with the Final Concept and Design Criteria Documents, Construction Budget, or Project Schedule, the Criteria Architect shall also describe and identify in its report specific examples of the inconsistencies.

4.4.4 At the Owner's request, the Criteria Architect shall meet with the Owner and the Contractor to review the Criteria Architect's report.

4.4.5 At the Owner's request, the Criteria Architect shall assist the Owner with the negotiation of the Contractor's GMP Amendment.

ARTICLE 5 - CONSTRUCTION AND CLOSEOUT

5.1 Commencement

5.1.1 Unless the Owner directs otherwise in writing, the Criteria Architect's Services during Construction and Closeout will commence with the Owner's issuance of the Notice to Proceed to the Contractor and will terminate upon Final Acceptance of the Project.

5.2 General Requirements

5.2.1 During the Construction and Closeout, the Criteria Architect shall:

5.2.1.1 advise the Owner and the Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

5.2.1.2 meet with the Owner and the Contractor at intervals acceptable to the Owner, to review the current status of the Project;

5.2.1.3 notify the Owner of the need for and assist the Owner with obtaining the professional services of Separate Consultants which may be required for the Project; and

5.2.1.4 at the request of the Owner:

- .1 identify and analyze issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;
- .2 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions;
- .3 review Contractor submittals including Drawings, Specifications, and Action Items for acceptability and conformance with the GMP Documents;
- .4 visit the Site to observe the Work, attend meetings, and determine in general if the Work is proceeding in accordance with the GMP Documents and the Project Schedule;
- .5 evaluate and provide recommendations to the Owner concerning Modifications and Claims;
- .6 advise the Owner as to the necessity of special inspections, tests, or approvals, and review the associated results;
- .7 review and provide recommendations to the Owner concerning the Contractor's DB Payment Requests;
- .8 review and provide recommendations to the Owner concerning the Contractor's closeout documentation.

5.3 Differing Site Condition Investigation

5.3.1 Promptly after receiving notice of a Differing Site Condition from the Contractor, the Criteria Architect shall investigate to determine whether the Contractor has encountered a Differing Site Condition.

5.3.2 The Criteria Architect shall give written notice of its determination to the Owner and the Contractor within 10 days after completing the investigation.

ARTICLE 6 - ADDITIONAL SERVICES

6.1 General

6.1.1 Services Not Included in Basic Services.

6.1.1.1 The Criteria Architect shall provide the services listed in **Sections 6.2** through **6.4** as Additional Services only when identified in the Agreement Form and approved in writing by the Owner.

6.1.1.2 The Fee for the Additional Services listed in **Sections 6.2** through **6.4** shall be paid as provided in the Agreement Form, in addition to payment for the Basic Services; however, the Criteria Architect shall not be compensated for any of the Additional Services listed in **Sections 6.2** through **6.4** made necessary by any act or omission of the Criteria Architect or any of the Criteria Architect's Consultants.

6.1.1.3 Unless waived by the Owner in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

6.2 Schematic Design Stage Services

6.2.1 Commencement.

6.2.1.1 Unless the Owner directs otherwise in writing, the Schematic Design Stage will begin upon completion of the activities described under **Section 2.4**.

6.2.2 General Requirements.

6.2.2.1 In addition to performing those Services required during the Schematic Design Stage, the Criteria Architect shall:

- .1 advise the Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- .2 meet with the Owner at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Schematic Design Stage of the Project;
- .3 further evaluate and refine the Final Concept and Design Criteria Documents;
- .4 identify all issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;
- .5 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
- .6 notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project; and
- .7 assist the Owner with filing documents required for the approvals of governmental authorities with jurisdiction over the Project.

6.2.3 Criteria A/E's Schematic Design Submission.

6.2.3.1 At the completion of the Schematic Design Stage, the Criteria Architect shall submit the provisional Schematic Design Documents to the Owner.

6.2.3.2 The provisional Schematic Design Documents shall include:

- .1 a conceptual site plan and preliminary building plans and elevations illustrating the Project's scale and the relationship of Project components to one another and the relationship of the Project to surrounding properties;
- .2 if not noted on the drawings, a written description of preliminary selections of major building systems and construction materials;
- .3 an estimate of Construction Cost using area, volume or similar conceptual estimating techniques;
- .4 cost evaluations of alternative building systems and construction materials;
- .5 an identification of any unresolved issues related to compliance with Applicable Law;
- .6 a written description of all modifications of the Final Concept and Design Criteria Documents;
- .7 if agreed in writing by the Owner, the Criteria Architect will develop study models, perspective sketches, electronic modeling, or combinations of those media; and
- .8 all other documents and information required under the Minimum Stage Submission Requirements attached as an exhibit to the Agreement Form.

6.2.4 Schematic Design Documents Review.

6.2.4.1 The Owner, and the Criteria Architect shall meet to review the provisional Schematic Design Documents and to reach agreement on any Owner authorized adjustments to the Final Concept and Design Criteria Documents, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Schematic Design Documents.

6.2.4.2 Unless the Owner agrees otherwise in writing, within 5 business days after the review meeting, the Criteria Architect shall revise its Schematic Design Stage submission to reflect the adjustments and clarifications agreed upon in the review meeting and resubmit those documents to the Owner. When the Owner approves of the revised Schematic Design Stage submission and signs the related Design Review Acceptance form, the revised Schematic Design Stage submission shall become the final Schematic Design Documents.

6.3 Design Development Stage Services

6.3.1 Commencement.

6.3.1.1 Unless the Contracting Authority directs otherwise in writing, the Design Development Stage will begin upon completion of the activities described under **Section 6.2.4.**

6.3.2 General Requirements.

6.3.2.1 In addition to performing those Services required to comply with Sections 6.3.3 through 6.3.5, during the Design Development Stage, the Criteria Architect shall:

- .1 advise the Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- .2 meet with the Owner at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Design Development Stage of the Project;
- .3 further evaluate and refine the Final Concept and Design Criteria Documents;
- .4 develop estimates of the Construction Costs in increasing detail;
- .5 prepare and submit a sole-source justification letter describing any materials, products, or systems included in the Work that are only available from a single manufacturer, supplier, or contractor to the Owner for its approval in writing;
- .6 resolve all issues related to compliance with Applicable Law (except to the extent stated otherwise in writing by the Criteria Architect for necessary variances and waivers at the time of the Criteria Architect's provisional Design Development Document submission) and participate in related meetings with government authorities that have jurisdiction over the Project;
- .7 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
- .8 notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project;
- .9 assist the Owner with filing documents required for the approvals of governmental authorities with jurisdiction over the Project; and
- .10 review and provide recommendations concerning Site use and improvements and alternative approaches to selection of materials, building systems, and equipment.

6.3.3 Criteria Architect's Design Development Submission.

6.3.3.1 At the completion of the Design Development Stage, the Criteria Architect shall submit the provisional Design Development Documents to the Owner.

6.3.3.2 The provisional Design Development Documents shall include:

- .1 plans, sections, elevations, typical construction details, and equipment layouts that illustrate and describe the refinement of the Project's design and the size and character of the Project in terms of architectural, structural, mechanical, plumbing, and electrical systems, materials, and other elements as may be appropriate;
- .2 specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;
- .3 an estimate of Construction Cost;
- .4 a written description of all proposed or previously agreed upon alternates, which description may be included in the specifications rather than as a separate document;
- .5 a written description of all proposed or previously agreed upon allowances;
- .6 an identification of any unresolved issues related to compliance with Applicable Law;
- .7 a written description of all modifications of the Final Concept and Design Criteria Documents; and

- .8 all other documents and information required under the Minimum Stage Submission Requirements attached as an exhibit to the Agreement Form.

6.3.4 Design Development Documents Review.

6.3.4.1 The Owner and the Criteria Architect shall meet to review the provisional Design Development Documents and to reach agreement on any Owner-authorized adjustments to the Final Concept and Design Criteria Documents, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Design Development Documents.

6.3.4.2 Unless the Owner agrees otherwise in writing, within 5 business days after the review meeting, the Criteria Architect shall revise its Design Development Stage submission to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner. When the Owner approves of the revised Design Development Stage submission and signs the related Design Review Acceptance form, the revised Design Development Stage submission shall become the final Design Development Documents.

6.4 Miscellaneous Additional Services

6.4.1 Specialized Services. Providing specialized design and engineering services, including, but not limited to, services for acoustical analysis or design, computer services, communication consultant services, design or specification of unusual or large volumes of fixtures, furnishings, and equipment.

6.4.2 Additional On-Site Services. Providing administration or observation of construction beyond the Basic Services.

6.4.3 Extensive Change Orders. Preparing Drawings, Specifications, cost estimates, and other documents and supporting data in connection with Change Orders beyond those services to be reasonably provided as Basic Services.

6.4.4 Partnering and Scheduling Consultants. Serving as a partnering or construction scheduling consultant or providing such consulting services.

6.4.5 Perspectives, Models, Renderings. Preparing professional perspectives, physical models, or renderings, which are not otherwise useful or necessary to the Criteria Architect in providing the Basic Services required hereunder and which are provided at the prior written request of the Owner.

6.4.6 Grant Applications. Preparing applications and supporting documents for governmental grants, loans, or advances.

6.4.7 Special Studies. Providing planning services, site evaluations, environmental studies, or comparative studies of prospective sites, preparing special surveys, studies, and submissions required under Applicable Law.

6.4.8 Surveys. Providing surveying services, including land surveys and rights-of-way studies.

6.4.9 Investigation of Conditions for New Construction. Providing services for new construction to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

6.4.10 Constructability and Cost Analyses. Preparing extensive analyses of the construction feasibility of the Project or of owning and operating costs, or preparing detailed quantity surveys or inventories of material, equipment, and labor beyond those services to be reasonably provided as Basic Services.

6.4.11 Off-Site Services. Providing planning or design services for off-site utilities, which are not adjacent to the Project, building connections, or roadways.

6.4.12 Certain Revisions. Making revisions in Drawings, Specifications, or other Contract Documents at the request of the Owner when such revisions are inconsistent with written approvals or instructions previously

given or are required by the enactment or revision of Applicable Law subsequent to the preparation of such documents.

6.4.13 Replacement Work. Providing consultation and other services in connection with replacement of any Work damaged by fire, casualty, or other incident not caused by negligence of the Criteria Architect or any Consultant.

6.4.14 Contractor Default. Providing services made necessary by a Contractor's default.

6.4.15 Additional Documents. Providing more sets of Contract Documents than the number required as Basic Services.

6.4.16 Special Inspections Required by the Ohio Building Code.

6.4.16.1 The special inspections indicated in the current edition of the OBC Chapter 17 are not included as Basic Services; however, in the event such special inspections are required as a condition of the Plan Approval issued by the Building Authority having jurisdiction for the Project, the Criteria Architect may provide the special inspections and be compensated for such as Additional Services, and may provide written notice to the Contractor and the Owner of the Special Inspection to be performed.

6.4.16.2 The Criteria Architect shall not be compensated for any such Additional Services made necessary by the act or omission of the Criteria Architect or any Consultant of the Criteria Architect.

END OF DOCUMENT

Franklin Public Library | Professional Services Agreement

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ARTICLE 1 – ARCHITECT’S RESPONSIBILITIES

1.1 Nondiscrimination

1.1.1 The CA shall comply with Applicable Law regarding equal employment opportunity, including Ohio Revised Code (“ORC”) Section 153.59.

1.1.1.1 As required under ORC Section 153.59, the CA agrees to both of the following:

- .1** “in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor’s or subcontractor’s behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and”
- .2** “no contractor, subcontractor, or any person on a contractor’s or subcontractor’s behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color.”

1.2 Royalties and Patents

1.2.1 The CA shall inform the Owner if the CA is aware that a particular invention, design, process, or device specified in the Contract Documents is subject to patent rights or copyrights calling for the payment of a license fee or royalty.

1.3 Assignment of Antitrust Claims

1.3.1 Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the Owner. Therefore, the following assignment is made:

1.3.1.1 The CA hereby assigns, sells, conveys and transfers to the Owner any and all rights, title, and interest in and to any and all claims and causes of action which the CA may now have or hereafter acquire under the

antitrust laws of the United States of America or the state of Ohio, provided that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Owner pursuant to this Agreement, and except as to any claims or causes of action which result from antitrust violations commencing after the compensation is established under this Agreement, which are not passed on to the Owner by any means.

In addition, the CA warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and state antitrust claims and causes of action to the Owner, subject to the provision and exception stated above.

1.4 CA's Services

1.4.1 The CA shall provide Services for the Project, including, but not limited to, Services customarily furnished in accordance with generally accepted architectural or engineering practice, in accordance with the terms of this Agreement.

1.4.2 The CA shall provide the Services in accordance with Applicable Law, the applicable announcement issued pursuant to ORC Section 153.67 ("Announcement"), and the Owner's Standards of Design, if any.

1.4.3 The CA shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures, or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Contractor's Work on the Project.

1.4.4 The CA shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors, any of their agents or employees, or any other persons performing any Work on the Project.

1.4.5 The CA shall render decisions in connection with a Contractor's responsibilities under the Contract Documents and submit recommendations to the Owner for enforcement of the Contractor's contract as necessary.

1.4.6 The CA is the initial interpreter of all requirements of the Contract Documents.

1.4.7 All of the CA's decisions are subject to final determination by the Owner.

1.5 Standard of Care

1.5.1 The CA shall perform its Services consistent with the professional skill and care ordinarily provided by registered architects in the same or similar locality under the same or similar circumstances.

1.5.2 The CA shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.5.3 The CA shall perform its Services in accordance with the applicable rules established by its respective state board of registration, including, but not limited to, the following codes of conduct and/or ethics pursuant to the Ohio Administrative Code ("OAC"):

1.5.3.1 Registered architects: OAC Section 4703-3-07.

1.6 Construction Budget

1.6.1 The Owner shall provide written notice to the CA of any change in the Construction Budget.

1.6.2 The CA shall perform its Services so that the Project is completed within the Construction Budget.

1.6.3 The CA and Owner do not have control over the cost of labor, materials, or equipment, over Contractors' methods of determining prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the CA does not warrant or represent that competitively bid or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared, or agreed to, by the CA.

1.7 Cooperation

1.7.1 The CA shall perform the Services so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or the Work of the Contractors. The CA shall cooperate and coordinate fully with all Separate Consultants and Contractors and shall freely share all of the CA's Project-related information with them to facilitate the timely and proper performance of the Services and of the services and work of the Separate Consultants and Contractors.

1.7.2 If the CA damages the property or work of any Separate Consultant or Contractor, or by failure to perform the Services with due diligence, delays, interferes with, hinders, or disrupts the services of any Separate Consultant or the work of any Contractor who suffers additional expense and damage as a result, the CA is responsible for that damage, injury, or expense.

1.7.3 If the proper execution or results of any part of the Services depends upon work performed or services provided by the Owner, a Separate Consultant, or a Contractor, the CA shall review that other work and appropriate instruments of service, and promptly report to the Owner in writing any observed defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Services.

1.7.4 The CA shall not delay the Services on account of any claim, dispute, or action between the CA and a Separate Consultant or Contractor.

1.8 Records

1.8.1 The records of all of the CA's Direct Personnel Expenses, Reimbursable Expenses, and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner at all times and shall be maintained for 5 years after the Owner's Final Acceptance of the Project.

1.8.2 All other records kept by the CA related to the Project shall be available to the Owner at all times and shall be maintained for 5 years after the Owner's Final Acceptance of the Project.

ARTICLE 2 – OWNER'S RIGHTS AND RESPONSIBILITIES

2.1 Owner

2.1.1 The Owner shall designate an Owner's Representative, a person authorized to act on the Owner's behalf with respect to the Project to the extent provided in the Contract Documents.

2.1.2 The Owner shall furnish information and services required of it in a timely manner.

2.2 Required Actions

2.2.1 The Owner shall review, approve, or take such actions as are required of them by this Agreement, the Contract Documents, and Applicable Law in a reasonable and timely manner.

2.3 Owner's Requirements

2.3.1 The Owner shall provide, to the CA, full information regarding its requirements for the Project including, but not limited to, the Program of Requirements, design and construction standards, and work rules, which shall set forth the Owner's use, design, time, and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, and systems and Site requirements.

2.3.2 The Owner shall furnish information and services required of it in a timely manner.

2.4 Site Description

2.4.1 If reasonably requested by the CA as necessary for the Project, the Owner shall furnish a legal description and a certified land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

2.5 Notice to CA

2.5.1 If the Owner observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project or the services of the CA, prompt written notice thereof shall be given to the CA.

2.6 Legal Representation

2.6.1 The Owner shall not be responsible to provide or pay for any legal representation of the CA.

2.7 Limitation of Authority

2.7.1 The CA shall not have any authority to bind the Owner for the payment of any costs or expenses without the prior express written approval of the Owner, as applicable.

2.7.2 The CA shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and the Contract Documents.

2.7.3 The CA's authority to act on behalf of the Owner may be modified only by an amendment to this Agreement in accordance with **Section 4.3**.

ARTICLE 3 – CONSULTANTS

3.1 Consultant Services

3.1.1 The CA may provide a portion of the Services through one or more Consultants, provided, however, that the CA shall remain responsible for all of the CA's duties and obligations under this Agreement.

3.1.2 By appropriate written agreement, the CA shall require each Consultant, to the extent of the Consultant's portion of the Services, to be bound to the CA by the terms of this Agreement, and to assume toward the CA all of the obligations and responsibilities which the CA assumes toward the Owner.

3.1.2.1 The CA shall not retain any Consultant on terms inconsistent with this Agreement.

3.1.2.2 All agreements between the CA and a Consultant shall identify the Owner as the agreement's intended third-party beneficiary.

3.1.3 The CA shall obtain the Owner's written approval before engaging any Consultant not named in the Agreement. The CA shall not employ any Consultant against whom the Owner has a reasonable objection. The Owner's approval or disapproval of any Consultant, however, will not relieve the CA of the CA's full responsibility for the performance of the services.

3.1.4 The CA shall not remove any Consultant from the Project or reduce the extent of any Consultant's participation in providing the services without the Owner's prior written consent. The CA shall not permit any Consultant to replace any previously identified team member except with the Owner's prior written consent unless the Consultant ceases to employ that person. On notice from the Owner, the CA shall immediately and permanently remove from the Project any Consultant or person under a Consultant's control whose performance is not satisfactory to the Owner.

3.1.5 The Owner may communicate with any Consultant either through the CA or directly with the Consultant, but the Owner may not modify the agreement between the CA and any Consultant.

3.2 Payments by CA

3.2.1 Within 10 business days of receipt of payment made pursuant to this Agreement, the CA shall pay all portions thereof due to Consultants and to persons who provided items, the expenses of which are Reimbursable Expenses.

3.2.2 The Owner has no obligation to pay or see to the payment of money to any Consultant except as otherwise required under Applicable Law.

ARTICLE 4 – MODIFICATIONS

4.1 Compensation for Extension of Project Time

4.1.1 If the CA notifies the Owner not less than 30 days before the date for completion of the Project set in the approved Project Schedule, that the time for completion is reasonably expected to be exceeded by more than 10 percent through no fault of the CA, the CA's compensation Services to be rendered during such extended period, shall be negotiated to the mutual reasonable satisfaction of the Owner and the CA.

4.1.2 If, through such negotiation, the Owner agrees that the CA shall be paid additional compensation, an amendment to that effect shall be executed in accordance with **Section 4.3**.

4.1.3 Such amendment shall be executed before the CA renders any Services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Owner.

4.2 Compensation for Change of Scope of Project or Construction Budget

4.2.1 The Project Scope is defined by the Approved Program of Requirements, as provided in **Exhibit B**.

4.2.2 The Construction Budget is defined in the Agreement Form.

4.2.3 If the Owner, through no fault of the CA, materially change the Project Scope after the Schematic Design Stage or materially change the Construction Budget at any time after the execution of this Agreement, any necessary adjustment in the CA's compensation shall be negotiated to the mutual reasonable satisfaction of the Owner and the CA.

4.2.4 If, through such negotiation, the Owner agrees that the CA shall be paid additional compensation, an amendment to that effect shall be executed in accordance with **Section 4.3**.

4.2.5 Such amendment shall be executed before the CA renders any Services made necessary by such change in the Project Scope or the Construction Budget, unless otherwise agreed in writing by the Owner.

4.3 Amendments

4.3.1 This Agreement may be modified only by an amendment prepared by the Owner and signed by both the CA and the Owner.

4.4 Allocation Adjustments

4.4.1 Without exceeding the total compensation for this Agreement, the allocation of costs, as described in the Agreement Form, may be adjusted upon request of the CA and approval by the Owner without a formal signed amendment.

ARTICLE 5 – DISPUTE RESOLUTION

5.1 Mediation

5.1.1 The Owner and the CA may, by written agreement, submit any claims, requests, disputes, or matters in question between or among them to mediation as shall be mutually agreeable.

5.2 Notice and Filing of Requests

5.2.1 Any request by the CA for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5 percent of the Basic Fee. The CA's failure to comply with the requirements of this Section 5.2.1 shall constitute an irrevocable waiver by the CA of any request for such fees and expenses.

5.3 Substantiation of Request

5.3.1 In every written request filed pursuant to Section 5.2, the CA shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

5.4 Meeting with the Owner

5.4.1 Within 30 days after receipt of the request filed with the Owner pursuant to Section 5.2, or other period mutually agreed by the parties, the Owner shall schedule a meeting to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting.

5.4.2 The meeting scheduled by the Owner shall be attended by persons expressly and fully authorized to resolve the request on behalf of the CA.

5.5 Performance

5.5.1 The CA shall proceed with the CA's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the CA and the Owner in writing.

5.5.2 The Owner shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute.

ARTICLE 6 – COMPENSATION AND PAYMENT

6.1 Basic Fee

6.1.1 For Basic Services provided by the CA and all Consultants, the Owner shall pay the CA a Basic Fee in accordance with the amount identified in the Agreement Form.

6.1.2 A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with **Section 4.3**.

6.2 Additional Services Fee

6.2.1 The Owner shall pay the CA the Additional Services Fees for the associated Additional Services, when those Services are performed in accordance with the Agreement.

6.2.2 For Change Order work authorized by the Owner, the CA shall be compensated at the prescribed rate of the additional construction cost up to the amount of the Change Order Fee Allowance. There shall be no fees for approved Change Orders processed as a result of errors and/or omissions on the part of the CA or decreases in construction cost.

6.2.3 Except for the Additional Services and Additional Services Fee listed above, Additional Services and any Additional Services Fee shall be approved only by an amendment to this Agreement in accordance with **Section 4.3**.

6.2.3.1 For Additional Services not included in the original Agreement Form that are provided by the CA and any Consultants in accordance with **Section 4.3**, the Owner shall pay the CA Additional Services Fee in an amount negotiated to the mutual reasonable satisfaction of the Owner and the CA.

6.3 Reimbursable Expenses

6.3.1 The CA shall use its best efforts to minimize Reimbursable Expenses.

6.3.2 In all events, total Reimbursable Expenses shall not exceed the amount identified in the Agreement Form, without the prior written approval of the Owner and an amendment to this Agreement in accordance with **Section 4.3**.

6.3.3 Reimbursable Expenses shall only be permitted for the items identified in the Agreement Form and shall not exceed the respective amounts.

6.3.4 No mark-up shall be permitted on Reimbursable Expenses.

6.4 Method and Terms of Payment

6.4.1 Basic Fee.

6.4.1.1 Payment of the Basic Fee shall be made monthly in proportion to Basic Services performed in each Stage, in accordance with **Section 6.1**, and the percentages of the Basic Fee described in the Agreement Form.

6.4.1.2 The Owner may, in its sole discretion, waive the withholding of any final balance or part thereof if the CA has performed to the satisfaction of the Owner.

6.4.1.3 Payment of the last 20 percent of the Basic Fee for any Stage of the Services shall be made only after all deliverables required for the Stage have been submitted by the CA to the Owner, as applicable, in form and substance reasonably satisfactory to the Owner.

6.4.2 Additional Services Fee and Reimbursable Expenses.

6.4.2.1 Payments of the Additional Services Fee in accordance with **Section 6.2** and for Reimbursable Expenses in accordance with **Section 6.3** shall be made monthly based upon Additional Services performed or expenses incurred, as applicable, and as shown by a properly completed Professional Services Pay Request.

ARTICLE 7 – INSURANCE AND INDEMNIFICATION

7.1 CA's General Insurance Requirements

7.1.1 Throughout the performance of the Services or longer as may be described below, the CA shall obtain, pay for, and keep in force, the minimum insurance coverage described in this **Article 7**.

7.1.1.1 Each requirement of this **Article 7** applies to Consultants just as it applies to the CA.

7.1.1.2 If a Consultant's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Consultant, the CA shall submit to the Owner **(1)** a certificate of insurance evidencing the insurance the Consultant will carry without additional compensation and **(2)** if the Owner requests, a written proposal from the Consultant to provide coverage which meets the minimum coverage requirements. The Owner will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

7.1.1.3 On a case-by-case basis, the Owner and the CA may agree to adjust the below requirements for any particular Consultant.

7.1.2 Before starting the Services, upon renewal of any policy, and upon a change of any insurance carrier, the CA shall deliver to the Owner certificates evidencing that the required insurance is in force.

7.1.3 With the exception of government-controlled workers' compensation coverage:

7.1.3.1 the CA shall place the insurance with companies that **(1)** are satisfactory to the Owner, **(2)** hold an A.M. Best Rating of A-, or higher, and **(3)** are authorized to conduct business in Ohio;

7.1.3.2 if the certificate(s) of insurance is not on the ACORD 25 (2009/09 or more recent) form, it **(1)** shall provide or be endorsed to provide that coverage will not be cancelled or not renewed until at least 30- days' prior written notice (10-day notice for nonpayment of premium) has been given to the Owner, and **(2)** shall have the words "endeavor to" and "but failure to do so shall impose no obligation or liability of any kind upon insurer, its agents or representatives" and any like provisions crossed out or deleted; and

7.1.3.3 within 30 days of the Owner's request, the CA shall submit insurance-company certified copies of the policies, the policy endorsements, or both.

7.1.4 The CA shall pay all deductibles, or self-insured retentions, or both contained in the CA's policies of insurance required or provided in connection with the Project. The Owner reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the CA may use to comply with any insurance requirement.

7.1.5 The Owner does not represent that required coverage or limits are adequate to protect the CA.

7.1.6 Failure of the Owner to demand a certificate or other evidence of full compliance with the insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of the CA's obligation to maintain the required insurance.

7.1.7 The Owner may terminate the Agreement for cause on account of the CA's failure to maintain the required insurance.

7.2 CA's Minimum Coverage Requirements

7.2.1 Workers’ Compensation. The CA shall maintain workers’ compensation coverage meeting the requirements of Applicable Law.

7.2.2 Employers Liability Coverage. The CA shall maintain employer’s liability coverage with (1) an each accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000.

7.2.3 Commercial General Liability. The CA shall maintain commercial general liability (“CGL”) coverage, which provides (1) an each-occurrence limit of not less than \$1,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000.

7.2.3.1 The CGL insurance shall be written on an occurrence form, providing coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

7.2.3.2 The CA shall include the Owner as an additional insured party under the CGL policy.

7.2.3.3 The CGL policy shall be endorsed to provide that the general aggregate limit applies separately to each of the insured’s projects.

7.2.3.4 The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs, which cover the additional insured(s).

7.2.3.5 The CGL policy shall not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.

7.2.3.6 The CA shall maintain the CGL insurance in effect for no less than five years after the earlier of the termination the Agreement or Final Acceptance of all Work.

7.2.4 Business Automobile Liability. The CA shall maintain business automobile (“BA”) coverage, providing coverage with a limit of not less than \$1,000,000 each accident.

7.2.4.1 The coverage shall extend to hired and non-owned autos.

7.2.4.2 The CA shall include the Owner as an additional insured party under the BA policy.

7.2.5 Umbrella/Excess Liability. The CA may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

7.2.6 Professional Liability. The CA shall maintain professional liability (“PL”) insurance with limits not less than as identified in the following table:

Construction Budget	Each Claim	Annual Aggregate
Up to \$10,000,000	\$1,000,000	\$2,000,000
From \$10,000,000.01 to \$25,000,000	\$3,000,000	\$3,000,000
From \$25,000,000.01 to \$50,000,000	\$5,000,000	\$5,000,000
More than \$50,000,000	\$10,000,000	\$10,000,000

7.2.6.1 The PL policy shall have an effective date, which is on or before the date on which the CA first started to provide any Project-related Services.

7.2.6.2 Upon submission of the associated certificate of insurance and at each policy renewal, the CA shall advise the Owner in writing of any actual or alleged claims, which may erode the PL policy’s limits.

7.2.6.3 The CA shall maintain the PL insurance in effect for no less than five years after the earlier of the termination the Agreement or Final Acceptance of all Work.

7.2.6.4 If the Project is using the design-build project delivery system, the PL policy shall not contain any design-build exclusions.

7.3 Waivers of Subrogation

7.3.1 The Owner and the CA waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance, inland marine insurance, or builder's risk insurance applicable to the Work.

7.4 Indemnification for Injury or Damage

7.4.1 To the fullest extent permitted by Applicable Law, the CA shall indemnify, defend, and hold harmless the Indemnified Parties from and against, costs, damages, losses, fines, penalties, and expenses (including reasonable attorney fees) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to:

7.4.1.1 bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the CA or a person or entity for whom the CA may be liable;

7.4.1.2 a negligent or willful violation of Applicable Law but only to the extent attributable to the CA or a person or entity for whom the CA may be liable.

7.4.2 The CA's indemnification obligation under **Section 7.4** exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a party indemnified under **Section 7.4**. But nothing in **Section 7.4** obligates the CA to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

7.4.3 In claims against an Indemnified Party by any direct or indirect employee (or the survivor or personal representative of that employee) of the CA or a person or entity for whom the CA may be liable, the indemnification obligation under **Section 7.4** will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.4.4 The CA's indemnification obligation under **Section 7.4** will not be limited by any insurance policy provided or required in connection with the Project.

7.4.5 The CA's obligations under **Section 7.4** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.

7.4.6 The CA's indemnification obligation under **Section 7.4** will survive termination of the Agreement and Final Acceptance of the Work.

7.4.7 The Owner may deduct from the Basic Fee the claims, damages, losses, fines, penalties, and expenses for which the CA is liable under **Section 7.4**. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Basic Fee, the CA shall immediately pay the difference to the Owner.

ARTICLE 8 – SUSPENSION AND TERMINATION

8.1 Suspension of the Services

8.1.1 The Owner, without cause and without prejudice to any other right or remedy it may have, may order the CA in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period of time as the Owner may determine.

8.1.1.1 If the Owner suspends the Services under this **Section 8.1.1** and the CA complies with **Article 4**, the Basic Fee, Additional Services Fee, and Reimbursable Expenses shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

8.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Basic Fee, Additional Services Fee, or Reimbursable Expenses to the extent that:

- .1 performance was, or could have been, suspended, delayed, or interrupted by a cause for which the CA is responsible; or
- .2 an equitable adjustment is made or denied under another provision of the Agreement.

8.1.1.3 If the Owner suspends the Services under this **Section 8.1.1** and the CA submits a proper Architect/Engineer Payment Request, but subject to all other provisions of the Agreement, the CA shall be entitled to payment of compensation due under the Agreement for Services satisfactorily performed before the suspension.

8.1.2 The Owner, without prejudice to any other right or remedy it may have, may order the CA in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period of time as the Owner may determine on account of the CA's failure to properly or timely perform the Services.

8.1.2.1 The Owner's exercise of its right to suspend the Services under this **Section 8.1.2** shall not entitle the CA to any adjustment of the Basic Fee, Additional Services Fee, or Reimbursable Expenses.

8.1.2.2 If the Owner is adjudged to have improperly suspended the Services under this **Section 8.1.2**, the suspension shall be deemed to have been a suspension under **Section 8.1.1**.

8.1.3 Upon receipt of notice of suspension under this **Section 8.1**, the CA shall cease providing the suspended Services and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The CA shall furnish a report to the Owner, within 5 days of receiving the notice of suspension, describing the status of the Services, including, but not limited to, results accomplished, resulting conclusions, and other information as the Owner may require.

8.1.4 The Owner's right to stop the Services shall not give rise to any duty to exercise the right for the benefit of the CA or any other party, and the Owner's exercise or failure to exercise the right shall not prejudice any of the Owner's other rights.

8.2 Termination for Convenience

8.2.1 The Owner may terminate the Agreement in whole or in part for the Owner's convenience and without cause, at any time upon written notice to the CA.

8.2.2 Upon receipt of the notice of termination for convenience, the CA shall immediately proceed with performance of the following duties in accordance with instructions from the Owner:

- 8.2.2.1** cease operation as specified in the notice;
- 8.2.2.2** no further Consultant agreements except as necessary to complete continued portions of the Project;
- 8.2.2.3** terminate all Consultant agreements to the extent they relate to the Services terminated; and
- 8.2.2.4** proceed with Services not terminated.

8.2.3 The Owner shall pay the CA for Services satisfactorily rendered before the date of termination in accordance with the allocations in the Agreement, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provided in the Agreement Form.

8.2.3.1 In no event shall the CA be entitled to overhead and profit associated with Services the CA did not perform on account of the termination or otherwise.

8.2.4 If the Owner terminates the Services under this **Section 8.2**, the termination shall not affect the rights or remedies of the Owner against the CA then existing or which may thereafter accrue.

8.2.5 Notwithstanding **Section 8.2.3**, if the Owner terminates the Services under this **Section 8.2**, but there exists an event of the CA's default, the CA shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in **Section 8.3**.

8.3 Termination for Cause

8.3.1 The Owner may terminate all or a portion of the Agreement if the CA commits a material breach of the Agreement including but not limited to:

8.3.1.1 failure to prosecute the Services with the necessary force or in a timely manner;

8.3.1.2 refusal to remedy disapproved Services;

8.3.1.3 failure to properly make payment to Consultants;

8.3.1.4 performance of any services outside of the United States;

8.3.1.5 permitting Consultants to perform any services outside of the United States; or

8.3.1.6 disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

8.3.2 If the Owner intends to exercise its termination rights under this **Section 8.3**, the Owner shall notify the CA in writing of the Owner's intent to terminate this Agreement and the cause(s) for that termination.

8.3.3 If the CA fails to cure the identified cause(s) for termination within 7 days after receiving the notice described under **Section 8.3.2**, the Owner may terminate the Agreement by giving written notice of the termination to the CA.

8.3.4 If the Agreement is terminated, the Owner may complete the Services by means the Owner determines appropriate. The Owner may take immediate possession of all CA Documents.

8.3.5 If the Agreement is terminated, the CA shall not be entitled to further payment.

8.3.5.1 If the unpaid balance of the sum of the Basic Fee plus Additional Services Fee plus Reimbursable Expenses is exceeded by the costs of finishing the Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the CA shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Agreement.

8.3.6 If the Owner terminates the Services under this **Section 8.3**, the termination shall not affect any rights or remedies of the Owner against the CA then existing or which may thereafter accrue. The Owner's retention or payment of funds due the CA shall not release the CA or the CA's Surety from liability for performance of the Services in accordance with the requirements of the Contract Documents.

8.3.7 If the Owner is adjudged to have improperly terminated the Services under this **Section 8.3**, the termination will be deemed to have been a termination under **Section 8.2**.

8.4 CA Insolvency

8.4.1 Bankruptcy of CA.

8.4.1.1 If the CA files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the CA, the CA as the debtor-in-possession, or the trustee of the CA's bankruptcy estate shall file a motion to assume or reject the Agreement under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days

after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time frames provided by this **Section 8.4** shall constitute a material breach of the Agreement as time is of the essence with respect to CA's performance of all terms of this Agreement. CA agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Owner to terminate the Agreement for cause in such instance and issue and serve all notices necessary to terminate the Agreement or arising out of the termination of the Agreement and to take any and all other action necessary to terminate the Agreement.

8.4.2 Receivership or Assignment for the Benefit of Creditors.

8.4.2.1 If the CA makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the CA's business or property, the Owner shall serve written notice on the CA and the CA's Surety stating that any failure of the CA to provide adequate assurance of continued performance shall be considered a rejection of the Agreement, which shall result in termination of the Agreement for cause. Such termination of the Agreement need not be evidenced by an order of any court.

ARTICLE 9 – GENERAL PROVISIONS

9.1 CA's Documents and Contract Documents

9.1.1 Except as provided under **Section 9.1.2** and subject to **Section 9.1.6**, the Owner alone owns the CA's Documents and the Contract Documents and every right, title, and interest in the CA's Documents and the Contract Documents from the moment of creation.

9.1.2 **Section 9.1.1** does not apply to standard details and specifications regularly used by the CA or any of its Consultants in its normal course of business that are included in the CA's Documents. The CA grants to the Owner an irrevocable, non-exclusive, perpetual, freely assignable, and royalty-free license to copy, reproduce, distribute, and otherwise use those standard details and specifications for all Project-related purposes such as but not limited to owning, financing, constructing, testing, commissioning, decommissioning, using, operating, maintaining, repairing, modifying, selling, obtaining insurance for, and obtaining permits for the Project before, during, and after termination or completion of this Agreement.

9.1.3 The CA must execute and deliver and cause its employees and agents and all Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of all of the CA's Documents and the Contract Documents under **Section 9.1.1** and the license described under **Section 9.1.2**.

9.1.4 The CA may retain copies, including reproducible copies of CA's Documents and the Contract Documents for information, reference, and the performance of the Services. The Owner grants to the CA and its Consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the CA's Documents and the Contract Documents in relation to the performance of the Services, including any Additional Services.

9.1.5 The submission or distribution of CA's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights in the CA's Documents and the Contract Documents. Any unauthorized use of the CA's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of the CA's Documents and the Contract Documents.

9.1.6 Should Owner desire to use any of the CA's Documents for an addition to, remodeling or rehabilitation of, or change to any one or more of the Project improvements built on the basis of the CA's Documents, Owner shall engage one or more suitable licensed design professionals under terms that require each of those design

professionals to independently evaluate any design or related features in the CA's Documents without reliance on any information in the CA's Documents that would be inconsistent to the standard of care applicable to that design professional.

9.1.7 The CA shall provide Electronic Files to the Contractor for the Contractor's and Subcontractors' use in connection with the Project. CA shall provide the Electronic Files at no additional cost to the Contractor, the Subcontractors, or the Owner.

9.2 Public Relations

9.2.1 Publicity prior to completion of the Project. Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control, and with the consent of, the Owner.

9.2.2 Publicity after completion of the Project. After completion of the Project, the CA may exercise reasonable public relations and marketing efforts related to the Project, provided the CA properly identifies the Owner, and their participation in the Project.

9.2.3 Professional Photography. If the CA commissions photography of the completed Project, the CA shall include in its photography agreements a release for unrestricted and unlimited use of photographs by the Owner and the Owner, and shall provide the Owner with a reasonable quantity of photographs for use in the Owner's marketing and awareness activities, including, but not limited to, profiles of the Project on their respective websites.

9.2.4 Design Awards and Other Recognition.

9.2.4.1 If the CA submits the Project for design awards or other similar venues for recognition of the Project, the CA shall properly identify the Owner, and their participation in the Project.

9.2.4.2 In addition, if the Project receives any design award or other recognition, the CA shall provide duplicate copies of the award plaque or other memento of the award to the Owner.

9.3 Application and Governing Law

9.3.1 This Agreement and the rights of the parties hereunder shall be governed by the laws of the state of Ohio and only Warren County, Ohio courts shall have jurisdiction and venue over any action or proceeding hereunder or related to the Project. The CA irrevocably consents to such jurisdiction.

9.3.2 The parties to the Agreement shall comply with Applicable Law.

9.3.3 Other rights and responsibilities of the Contractor, the CA, and the Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

9.4 Written Notice

9.4.1 Notice under this Agreement shall be validly given if:

9.4.1.1 delivered personally to a member of the organization for whom the notice is intended;

9.4.1.2 delivered, or sent by registered or certified mail, to the last known business address of the organization; or

9.4.1.3 sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

9.4.2 When the Owner, the CA, or a Contractor gives notice to one of the other 3, it shall also simultaneously send a copy of that notice to the others.

9.4.3 A copy of all notices, certificates, requests, or other communications to the Owner shall be sent to the Project Manager.

9.4.4 In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the CA shall immediately notify the Owner by telephone.

9.4.5 The Owner or the CA may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

9.5 Computing Time

9.5.1 When this Agreement refers to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

9.5.2 Except as excluded under **Section 9.5.1**, all time periods referred to in this Agreement include Saturdays, Sundays, and all days defined as legal holidays by **Section 9.5.4**.

9.5.3 The standard workdays for State projects are Monday through Friday, excluding legal holidays.

9.5.4 Legal holidays are as follows:

9.5.4.1 New Year's Day – First Day in January;

9.5.4.2 Martin Luther King Jr. Day – Third Monday in January;

9.5.4.3 Washington-Lincoln (President's) Day – Third Monday in February;

9.5.4.4 Memorial Day – Last Monday in May;

9.5.4.5 Independence Day – Fourth day of July;

9.5.4.6 Labor Day – First Monday in September;

9.5.4.7 Columbus Day – Second Monday in October;

9.5.4.8 Veteran's Day – Eleventh Day of November;

9.5.4.9 Thanksgiving Day – Fourth Thursday of November; and

9.5.4.10 Christmas Day – Twenty-fifth day of December.

9.5.5 If a legal holiday falls on a Saturday, it is observed on the preceding Friday. If a legal holiday falls on a Sunday, it is observed on the following Monday.

9.6 Time

9.6.1 Time limits stated in the Agreement are of the essence of the Agreement and all obligations under the Agreement. By signing the Agreement, the CA acknowledges that those time limits are reasonable.

9.6.1.1 The CA acknowledges that the Owner has entered into, or may enter into, other contracts based upon the CA properly providing the Services in a timely manner.

9.6.1.2 The CA shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule but is not responsible for delays outside of its control.

9.6.1.3 The CA acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Services from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the time for performance of the Services, unless otherwise required by ORC Section 4113.62.

9.7 Successors and Assigns

9.7.1 The Owner and the CA, each bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Agreement.

9.7.2 The Owner and the CA each acknowledge that the Owner is the intended third-party beneficiary of this Agreement.

9.7.3 The CA shall not assign, or transfer any right, title, or interest in this Agreement without the Contracting Authority's prior written consent.

9.8 Extent of Agreement

9.8.1 Entire Agreement. This Agreement, including the attached documents, Exhibits, and the Contract Documents represent the entire and integrated agreement between the Owner and the CA and supersede all prior negotiations, representations, or agreements, either written or oral.

9.8.2 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.8.3 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

9.8.4 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement or this Agreement, the provisions of this Agreement shall prevail.

9.9 Severability

9.9.1 If any term or provision of this Agreement, or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

9.10 Facsimile Signatures

9.10.1 Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax, e-mail, or web-based project management software. Each party hereto shall be entitled to rely upon a scanned or facsimile signature of any other party delivered in such a manner as if such signature were an original.

9.11 No Third-Party Interest

9.11.1 Except as expressly provided under **Section 9.7.2, (1)** no person or entity, other than the Owner and the CA, will have any right or interest under the Agreement, and **(2)** the Agreement does not create a contractual relationship of any kind between any people or entities other than the Owner.

9.12 No Waiver

9.12.1 The failure of the Owner or the CA to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Agreement or to exercise any rights under the Agreement or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

9.13 Rights and Remedies

9.13.1 The duties, obligations, rights, and remedies under the Agreement are in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Laws and Regulations.

9.14 Survival of Obligations

9.14.1 All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Agreement, will survive final payment, completion and acceptance of the Work, and termination or completion of the Agreement.

ARTICLE 10 – DEFINED TERMS AND ABBREVIATIONS

10.1 For the purposes of this Agreement, the words, terms, and abbreviations set forth below have the following meanings:

10.1.1 “Architect” or “CA” means the Person identified in the Agreement responsible for providing professional design services and construction contract administration for the Project. The CA shall be a registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ORC Chapter 4703. As used in the Agreement, the term CA will designate a Criteria Architect for a Design-Build project.

10.1.2 “CA’s Documents” means all Project-related documents, including those in electronic form, prepared by the CA or Consultants.

10.1.3 “Change Order Fee Allowance” means the amount established by the Owner in the Agreement Form for the purpose of funding Change Order fees payable to the CA resulting from increases in the construction cost by approved Change Orders.

10.1.4 “Consultant” means a Person engaged by the CA to provide or perform a portion of the Services.

10.1.5 “Contractor” means a Person, which is party to a contract for the performance of Work on the Project in cooperation with Separate Contractors and Persons, and in accordance with the Contract Documents. As used in the Agreement, the term Contractor may include a Construction Manager at Risk or a Design-Builder.

10.1.6 “Direct Personnel Expense” means the portion of direct salaries and wages of all personnel of the CA or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing, and similar benefits related to their time devoted to the Project.

10.1.7 “Equal Opportunity Coordinator” means the public official who exercises the duties and responsibilities of the position of the equal employment opportunity coordinator identified in ORC Section 121.04, including but not limited to issuing certificates of compliance with the State’s affirmative action and EDGE programs.

10.1.8 “Fee” (as in “Basic Fee,” “Additional Services Fee,” and otherwise) means all of the compensation to be paid by the Owner to the CA on account of the proper, timely, and complete performance of the associated Services by the CA or its Consultants, including, but not limited to, salaries or other compensation of the CA’s employees at the principal office, branch offices, and the field office, general operating expenses of the CA’s principal office, branch offices, and the field office, any part of the CA’s capital expenses, including interest on the CA’s capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the CA’s negligence, the CA’s general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

10.1.9 “Indemnified Parties” means the Owner, and their respective officials, officers, and employees, in both individual and official capacities.

10.1.10 “Life Cycle Cost” means the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs over the lifetime of the Project, product, or measure.

10.1.11 “Life Cycle Cost Analysis” means an economic method for assessing the total cost of facility ownership, taking into account all costs of acquiring, owning, maintaining, and disposing of a building or building system. Life Cycle Cost Analysis is also utilized to compare design alternatives that fulfill the same performance requirements, but differ with respect to initial costs and operating costs, in order to select the one that maximizes net savings.

10.1.12 “Reimbursable Expenses” means actual expenditures incurred by the CA or its Consultants in the interest of the Project, approved by the Owner for reproduction of Contract Documents for distribution to Bidders, plan approval fees, building permits, and, if requested by the Owner, reformatting Project Record Submittals to a computer medium different than the computer medium used by the CA.

10.1.13 “Services” includes all of the CA’s obligations, individually or collectively, under the Agreement including all items reasonably inferable from the Agreement, whether provided or to be provided by the CA, a Consultant, or any other entity for whom the CA is responsible. The Services include both Basic Services and Additional Services as defined in the Agreement.

10.1.14 “Submittals” means Shop Drawings, Product Data, Samples, and other items for the CA’s review and action provided by a Contractor for any item required by the Contract Documents, but not fully described in the Contract Documents.

END OF DOCUMENT

Exhibit C – Criteria Architect Minimum Stage Submission Requirements

Professional Services Agreement

ARTICLE 1 - PROGRAM VERIFICATION STAGE

1.1 Purpose

1.1.1 The purpose is to define the scope of the work. It should define the Owner’s expectations by addressing the issues of location, space requirements, time, furnishings, equipment, and budget.

1.2 Owner Deliverables

1.2.1 The Owner shall provide the following information to the CA:

1.2.1.1 A list of spatial needs in terms of functionality needs, number of people to use space at a given time, etc.

1.2.1.2 A project budget.

1.2.1.3 An anticipated timeline required for delivery of the project.

1.2.1.4 A list of Owner’s “design standards” if applicable.

1.2.1.5 A list of any environmental or historical issues that may affect the project.

1.3 Project Scope and Parameter Verification

1.3.1 The CA shall provide the following confirmations to the Project Design Team:

1.3.1.1 Receipt of the Contract for the described work outlining the responsibilities of each party.

1.3.1.2 Verification of budget adequacy for the program presented.

1.3.1.3 Schedule for completion and/or phasing of the work.

1.3.1.4 Site appears adequate for meeting the program requirements.

1.3.1.5 Special relationships between spatial needs have been noted.

1.3.1.6 Code authority identified.

1.3.1.7 Utility suppliers identified (as applicable).

1.3.1.8 Project Core Team contacts identified.

ARTICLE 2 - SCHEMATIC DESIGN STAGE

2.1 Purpose

2.1.1 The purpose is to produce a design solution illustrating the scale and relationship of the project components based on the program, schedule, budget, and other project requirements.

2.2 Project Scope and Parameter Verification

2.2.1 Program and Program deliverables have been reviewed for completeness. Owner notified of any data missing and potential to affect project schedule and budget. Written approval of program provided by Owner.

2.2.1.1 Program tabulation and area analysis per design requirements of authorities have been documented.

2.2.2 Project budget has been reviewed for adequacy of program requirements. Verified funds have been appropriated.

2.2.3 Contract requirements and Scope of Services for Schematic Design have been reviewed.

2.2.4 Deliverables for Schematic Design have been reviewed and verified.

2.2.5 Document standards required have been reviewed and verified.

2.2.6 Completion of field measurement/verification of any existing and/or built conditions.

2.2.7 Code parameters have been determined and documented.

2.3 Deliverables

2.3.1 Documents.

2.3.1.1 Program: Written program and area analysis.

2.3.1.2 Code: Reviewed with governing authority if required, show type and occupancy information.

2.3.1.3 Narrative: Commentary covering site improvements, circulation, organization of building space in relation to program requirements, building materials, special features, building systems (HVAC, plumbing, fire protection, structural, security, and video voice and data).

2.3.1.4 Cost Estimate: An estimate of the total project cost including but not limited to direct expenses, indirect expenses and capital expenses, as required.

- .1 Direct Expenses: Construction, technology, contingencies.
- .2 Indirect Expenses: CA fee, permits, reimbursables, project management, special inspections, utility connections, insurance, relocation expenses, etc.
- .3 Capital Expenses: Furnishings, equipment, contingencies.

2.3.1.5 Project Schedule: A schedule showing major milestones for the project, estimated project delivery date and phasing plan if appropriate.

2.3.2 Drawings and Specifications.

2.3.2.1 Site/Civil:

- .1 As applicable.

2.3.2.2 Architectural:

- .1 Scaled building plan(s) indicating spatial relationships, basic dimensions, circulation areas, doors and window openings, and location of fire rated elements.
- .2 An outline specification in narrative format with selection of building materials and systems.
- .3 A list of alternate options that may affect the cost, quality, and/or schedule of the project for consideration by the Owner.

2.3.2.3 Interiors:

- .1 Space planning of major or typical interior spaces indicating basic furniture, fixtures, and equipment layout, as applicable to the project.

2.3.2.4 Structural:

- .1 As applicable.

2.3.2.5 Heating, Ventilating and Air Conditioning:

- .1 Narrative input on basic systems description.
- .2 Input on cost estimate for HVAC work.

2.3.2.6 Plumbing and Fire Protection:

- .1 Concurrence with sizes and location of mechanical rooms, as necessary.
- .2 Narrative input on basic systems description.
- .3 Input on cost estimate for plumbing and fire protection work.

2.3.2.7 Electrical & Technology Distribution:

- .1 Narrative input on basic systems description.
- .2 Input on cost estimate for electrical & technology distribution.

.3 Input on basic clearances required for panels, fixtures, and distribution systems.

2.3.2.8 Approval:

.1 Documented approval of Schematic Design Stage by Owner.

ARTICLE 3 - DESIGN DEVELOPMENT STAGE

3.1 Purpose

3.1.1 The purpose is to complete the design and provide sufficient information so others could prepare the construction documents. The design decisions are resolved and accepted by the Owner. Any changes beyond this point may constitute additional fees and additional time to the project schedule.

3.1.2 The Design Development Stage is to be considered as “Additional Services” under the Criteria Architect Agreement.

3.2 Project Scope and Parameter Verification

3.2.1 Schematic Design deliverables have been reviewed by project team and is verified as to completeness.

3.2.2 Received Owner’s written approval of Schematic Design documentation.

3.2.3 Program tabulation and area analysis per design requirements of authorities have been updated and documented.

3.2.4 Project budget has been verified for schematic design adequacy.

3.2.5 Contract requirements and scope of services for Design Development stage have been reviewed, estimate of fees have been submitted and approved.

3.2.6 Deliverables for the Design Development stage have been reviewed.

3.2.7 Code parameters have been reviewed, updated, and documented.

3.2.8 Interior design, furniture, fixtures, and equipment needs and Owner Standards (finishes, etc.) have been established. Basic layouts for furniture, fixtures, equipment, and casework have been completed.

3.2.9 Project schedule for any potential phasing of the work established (if necessary).

3.3 Deliverables

3.3.1 Documentation.

3.3.1.1 Program: Written program with revised program area tabulation and analysis.

3.3.1.2 Code: Documentation of code and zoning reviews with governing authority.

3.3.1.3 Cost Estimate: A detailed estimate of the total project cost including but not limited to the following:

- .1 Direct expense: construction, technology, contingencies
- .2 Indirect expenses: CA fees, permits, reimbursables, project management, special inspections, insurance, moving expenses, etc.
- .3 Capital expense: furnishings, equipment, contingencies

3.3.1.4 Project Schedule: A schedule confirming major milestones for the project, estimated project delivery date, and phasing plan if appropriate.

3.3.2 Drawings and Specifications.

3.3.2.1 Architectural:

- .1 Building plan(s) with dimensions, location of fire rated elements, wall thicknesses, door swings with numbers, casework/millwork (as necessary), equipment and fixture locations and room numbers.
- .2 Reflected ceiling plans with ceiling heights.
- .3 Larger scale plans of key areas showing furniture and equipment layouts, and any floor wall or ceiling treatments.
- .4 Finish Schedule for all spaces. Can be in narrative format.
- .5 Sections delineating any special features.
- .6 Outline specifications for all building materials and systems including acceptable manufacturers and/or suppliers. Outline of Front End specification items covering bidding requirements, special project conditions, phasing of the work, allowances, etc. Specifications can be brief and in Preliminary Project Description format.

3.3.2.2 Interiors:

- .1 Preliminary selections for furniture and equipment

3.3.2.3 Approval:

- .1 Documented approval of Design Development Stage by Owner.

ARTICLE 4 - CONSTRUCTION DOCUMENTS STAGE

4.1 Purpose

4.1.1 The Construction Documents Stage is not to be considered as Services rendered under the Criteria Architect Agreement in a Design-Build delivery.

END OF DOCUMENT