

City of Mount Vernon
STANDARD TERMS & CONDITIONS

The following conditions and provisions define the basic terms relating to the services and compensation agreed to and as outlined on the attached Letter Agreement and/or Work Authorization.

Agreement Date:

Owner: City of Mount Vernon, Ohio

Owner's Signature: _____
Richard S. Dzik, Safety-Service

Director

Date: _____

FIRM:

Representative's Signature: _____

Date: _____

I hereby certify that funds in the amount of \$ _____ have been lawfully appropriated for the purpose of meeting the obligations of this Contract and are in the Treasury or are in the process of collection to the credit of the appropriate fund, free from prior encumbrance.

Maximum certification for this contract shall be

\$ _____.

Date: _____

Terry Scott, City Auditor

ARTICLE 1 - SERVICES OF FIRM

1.01 Scope

A. FIRM shall provide all Services set forth herein and upon this Agreement becoming effective, FIRM is authorized to begin unless otherwise stipulated to by the OWNER.

ARTICLE 2 - TIMES FOR RENDERING SERVICES

2.01 General

A. FIRM's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion as outlined in the _____

Unless specific periods of time or specific dates for providing services are specified in this Agreement, FIRM's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of FIRM, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of FIRM's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

2.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if FIRM's services are delayed through no fault of FIRM, FIRM may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If FIRM's services are delayed or suspended in whole or in part by OWNER, or if FIRM's services are extended by Contractor's actions or inactions for more than 90 days through no fault of FIRM, FIRM shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by FIRM in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 3 - PAYMENTS TO FIRM

3.01 Methods of Payment for Services and Reimbursable Expenses of FIRM

A. *Preparation of Invoices.* Invoices will be prepared in accordance with FIRM's standard invoicing practices and will be submitted monthly to OWNER by FIRM, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in the Agreement including additional services and reimbursable costs, if any.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt of an acceptable invoice. In addition, FIRM may, after giving seven days written notice to OWNER, suspend services under this Agreement until FIRM has been paid in full all amounts due for services, expenses, and other related charges.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination, FIRM will be entitled to invoice OWNER and will be paid for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. This paragraph intentionally left blank.

C. FIRM shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. FIRM shall serve as OWNER's prime professional for the Project. FIRM may employ such FIRM's Consultants as FIRM deems necessary to assist in the performance or furnishing of the services. FIRM shall not be required to employ any FIRM's Consultant unacceptable to FIRM.

D. FIRM and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to FIRM's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and FIRM may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to FIRM pursuant to this Agreement. FIRM may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of FIRM.

G. FIRM shall not be required to sign any documents, no matter by whom requested, that would result in the FIRM's having to certify, guarantee or warrant the existence of conditions whose existence the FIRM cannot ascertain. OWNER agrees not to make resolution of any dispute with the FIRM or payment of any amount due to the FIRM in any way contingent upon the FIRM's signing any such certification.

H. During the Construction Phase, FIRM shall not supervise, direct, or have control over Contractor's work, nor shall FIRM have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. FIRM neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. FIRM shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except FIRM's own employees) at the Site or otherwise furnishing or performing any of the Contractor's

ARTICLE 4 - OPINIONS OF COST

4.01 Opinions of Probable Construction Cost

A. FIRM's opinions of probable Construction Cost provided for herein are to be made on the basis of FIRM's experience and qualifications and represent FIRM's best judgment as an experienced and qualified professional generally familiar with the industry. However, since FIRM has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, FIRM cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by FIRM. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

ARTICLE 5 - GENERAL CONSIDERATIONS

5.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by FIRM under this Agreement will be the care and skill ordinarily used by members of FIRM's profession practicing under similar circumstances at the same time and in the same locality. FIRM makes no warranties, express or implied, under this Agreement or otherwise, in connection with FIRM's services.

B. FIRM shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. FIRM shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of FIRM.

5.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, FIRM and OWNER shall designate specific individuals to act as FIRM's and OWNER's representatives with respect to the services to be performed or furnished by FIRM and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

5.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and FIRM shall retain an ownership and property interest therein (including the right of reuse at the discretion of the FIRM) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by FIRM are limited to the printed copies (also known as hard copies) that are delivered to the FIRM. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to FIRM are only for convenience of FIRM. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the FIRM. Files in electronic media format of text, data, graphics, or of other types that are furnished by FIRM to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. FIRM shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, FIRM makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages,

operating systems, or computer hardware differing from those used by FIRM at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by FIRM, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to FIRM or to FIRM's Consultants. OWNER shall indemnify and hold harmless FIRM and FIRM's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle FIRM to further compensation at rates to be agreed upon by OWNER and FIRM.

5.04 Insurance

A. The FIRM shall maintain the following insurance:

1. Workmen's Compensation
2. Employer's Liability Insurance
3. General Liability Insurance
4. Automobile Liability Insurance

B. OWNER will maintain similar insurance.

5.05 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By FIRM:

1) upon seven days written notice if FIRM believes that FIRM is being requested by OWNER to furnish or perform services contrary to FIRM's responsibilities as a licensed professional; or

2) upon seven days written notice if the FIRM's services for the Project are delayed or

suspended for more than 90 days for reasons beyond FIRM's control.

3) FIRM shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by FIRM.

B. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow FIRM to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.06 Controlling Law

A. This Agreement is to be governed by the laws of the State of Ohio.

5.07 Successors, Assigns, and Beneficiaries

A. OWNER and FIRM each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and FIRM (and to the extent permitted by paragraph 5.07.B the assigns of OWNER and FIRM) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor FIRM may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or FIRM to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and FIRM and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph shall appear in any Contract Documents.

5.08 Dispute Resolution

A. OWNER and FIRM agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their right to arbitrate, or under law. In the absence of such an agreement, the parties may exercise their rights under law, but agree to submit to the personal and exclusive jurisdiction of the courts located within Knox County, Ohio to resolve the dispute.

5.09 Hazardous Environmental Condition

A. OWNER represents to FIRM that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to FIRM the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, FIRM shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that FIRM's scope of services does not include any services related to a Hazardous Environmental Condition. In the event FIRM or any other party encounters a Hazardous Environmental Condition, FIRM may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that FIRM is performing professional services for OWNER and that FIRM is not and shall not be required to become an "arranger," "operator,"

“generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with FIRM’s activities under this Agreement.

F. If FIRM’s services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify FIRM’s terminating this Agreement for cause on 30 days notice.

5.10 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, FIRM shall indemnify and hold harmless OWNER, OWNER’s officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of FIRM or FIRM’s officers, directors, partners, employees, and FIRM’s Consultants in the performance and furnishing of FIRM’s services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless FIRM, FIRM’s officers, directors, partners, employees, and FIRM’s Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER’s officers, directors, partners, employees, and OWNER’s consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, FIRM’s total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of FIRM and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that FIRM’s negligence bears to the total negligence of OWNER, FIRM, and all other negligent entities and individuals and in no case shall this liability exceed the maximum fee amount.

4. In addition to the indemnity provided under paragraph 5.10.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless FIRM and its officers, directors, partners, employees, and FIRM’s Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 5.10.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence or willful misconduct.

5.11 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

5.12 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

5.13 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and FIRM, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.14 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.