

ORDINANCE NO. 17-3552

AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT FOR PROFESSIONAL SERVICES FOR ARCHITECTURAL SERVICES AND DECLARING AN EMERGENCY

WHEREAS, Article X, Section Nine of the Charter of the Village of Silverton, authorizes the Village Manager to enter into and to execute contracts on behalf of the Village; and,

WHEREAS, the Village desires to enter into a contract for architectural services with Mark Dierkers, a licensed architect in the State of Ohio; and,

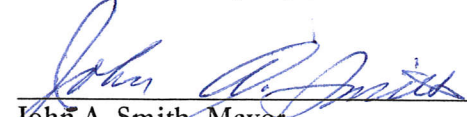
WHEREAS, the Village desires to memorialize the terms governing the provision of such services.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Silverton, Ohio, that:


SECTION I. The Village Manager is hereby authorized to enter into an agreement with Mark Dierkers for architectural services. Any requirement to follow formal bidding procedures, if any, is hereby waived in light of the professional services nature of this contract.

SECTION II. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the Village of Silverton, Ohio; the reasons for the emergency being the immediate need to engage architectural services at the earliest date possible and the fact that Mark Dierkers capably assisted the Village of Silverton with a previous architectural feasibility study for the renovation of the former Thompson, Jordan, Hall Funeral home into a municipal building. Therefore, this ordinance shall take effect and be in force form and after its passage.

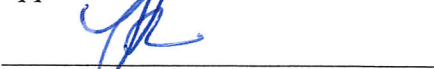
Passed this 1st day of June, 2017.


John A. Smith, Mayor

ATTEST:

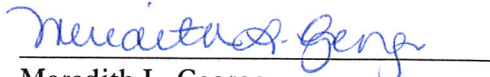

Thomas M. Carroll, Village Manager

Approved as to form:


Bryan E. Pacheco, Village Solicitor

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 17-3552 has been duly made by posting true copies in three (3) of the most public places in said municipality, as determined by Council as follows: 1) Parkview Lane at Railroad; 2) Silverton Municipal Building and 3) The Village of Silverton's Website. Said posting was for a period of fifteen days commencing June 2, 2017.


Meredith L. George
Clerk of Council of Silverton, Ohio

May 26, 2017

**VILLAGE OF SILVERTON
6860 PLAINFIELD ROAD
CINCINNATI, OHIO 45236
ATTN: TOM CARROLL**

Dear Tom:

Enclosed please find two copies of the contract for Professional Services for the renovation of the building at 6943 Montgomery Road for the new Village of Silverton Municipal Building.

The contract outlines the Architectural Services that we will provide. If you concur, please sign and return one copy with a payment of \$2000.00 for the start of the Construction Documents.

A breakdown of the project fees is as follows:

Architectural Services

Mark Dierkers Architecture
Fee: \$26,000.00

Mechanical Engineering

PE Services
See Attached Proposal
Fee: \$18,000.00

I look forward to working with you and all of the members of the Village of Silverton. If you have any further questions please call.

Sincerely,

MARK DIERKERS ARCHITECTURE



MARK J. DIERKERS
Architect

MJD/daw

Enclosures

CONTRACT FOR PROFESSIONAL SERVICES

Date, Place, Parties - This agreement is entered into this **26th day of May, 2017**, at Cincinnati, Ohio between **Mark Dierkers Architecture LLC** (hereafter referred to as "Mark Dierkers Architecture") of **9200 Montgomery Road Building F, Suite 23A, Cincinnati, Ohio 45242** and **Village of Silverton** (hereafter referred to as "Owner/Developer, O/D") of **6860 Plainfield Road, Cincinnati, Ohio 45236**.

BASIC

"Basic Architectural Services", defined as the provision to O/D of professional design and development assistance in the form of submission to O/D of construction documents and specifications for approval, preparation of bid forms, receipt of bids and advise as to the acceptance or rejection of the same for the renovation of the existing Thompson Hall & Jordan Funeral Home located at 6943 Montgomery Road for the new Village of Silverton Municipal Building (hereafter referred to as "**construction project**").

The scope of work described in Phase I and Phase II is based on the information provided by O/D at meetings on Monday June 20, 2016 and Tuesday, July 26, 2016 at Thompson Hall & Jordan Funeral Home building at 6943 Montgomery Road and Design Development Drawings prepared by Mark Dierkers Architecture dated November 17, 2016 and various emails. It is summarized as follows.

- A. Existing Exterior Front Elevation Renovations
 - Remove existing fabric awnings
 - New front doors
 - Raise existing patio up flush with existing first floor
 - New guardrail system
 - New front exterior stairs and sidewalk
 - New columns
 - Additional design elements to freshen up elevation
- B. New Exterior Handicap Accessible Ramp Addition
 - New ramp located on north side of existing front covered porch and connects to existing parking lot, new sheriff's office prisoner entrance, and new main building entrance
- C. Existing First Floor Interior Renovations for New Vestibule, New Village of Silverton Employee Work Area, New Sheriff's Department's Offices, New Employee Restroom and New Conference Room
 - Rework existing main first floor plan to include:
 - New secured public entrance/foyer
 - New work room for 4-5 work stations for village employees
 - New conference room
 - New printing/copy work station area
 - Renovate existing restroom into handicap accessible restroom
 - New sheriff's area to include:
 - New work area for deputies with operable window in wall shared with foyer to interact with public. Area to have (4) work areas
 - New lieutenant's office
 - New interrogation/holding/processing room with exterior door
- D. Rework Existing Chapel into New Community Room/Council Chambers
 - Room to include:
 - Remove all existing pews

p 513.791.4474 • f 513.791.4525

Montgomery Station • 9200 Montgomery Rd.
Building F, Unit 23A • Cincinnati, OH 45242

www.markdierkersarchitecture.com

- New paint
 - New carpet
 - Additional lighting
 - Add new training room that could act as council's private meeting chambers
 - Look at all exterior doors and eliminate as many as possible
- E. Existing First Floor's Interior Renovations for Existing Vestibule, Hall, Stairs, and Public Restrooms Located on Same Level as New Community Room/Council Chambers
- Open up existing vestibule outside of new community room/council chambers
 - Use back hall near Montgomery Road as new code enforcement office/new huddle area
 - Relocate existing back stairs
 - Add chair lift to stairs
 - Verify existing handicap accessible restrooms meet all code requirements
- F. Existing Covered Porte-Cochere
- Enclose existing exterior porte-cochere into new storage area
 - New storage area to have exterior overhead door and man door leading into council chambers
- G. Existing Second Floor Renovations
- Existing large hall closet to be used as new IT closet
 - Existing dining room and kitchen to be used as new breakroom
 - Existing full bathroom and linen closet to be renovated into (2) separate half baths. One bath accessible from new city manager's office and the other accessible from existing hall
 - Existing two bedrooms to be used as two new offices
 - Entire second floor existing carpet to be removed
 - Existing hardwood floor to be refinished
- H. Basement
- Existing area to remain as is and used as storage
 - New lighting
- I. Parking
- Assist civil engineer in designing site plan to include future parking lot layout using two family lot located directly north of existing property
- J. Energy Upgrades
- Investigate possibility of using geo-thermal heating and cooling, solar panels, and any other energy systems to upgrade energy efficiency

PHASE I: CONSTRUCTION DOCUMENTS INCLUDE:

1. **Sheet Index, Project Directory, Building Code Analysis, General Project Notes, Room Finish Schedule, Painting Schedules**
2. **Existing Basement Floor Demolition Plan**

3. Existing First Floor Demolition Plan
4. Existing Second Floor Demolition Plan
5. Existing South and East Elevation Demolition Plan
6. Existing North and West Elevation Demolition Plan
7. New South and East Elevations
8. New North and West Elevations
9. New Footing/Foundation Plan
10. New Basement Floor Plan
11. New First Floor Plan
12. New Second Floor Plan
13. New Roof Framing Plan
14. New Roof Plan
15. New Basement Floor Reflected Ceiling and Lighting Plan
16. New First Floor Reflected Ceiling and Lighting Plan
17. New Second Floor Reflected Ceiling and Lighting Plan
18. New Enlarged Accessible Restroom Plan, Wall Elevations and Details
19. New Window Frame and Glazing Types, Door Elevations and Frame Types, Hardware Notes, Typical Interior Door Detail
20. New Building Sections
21. New Wall Sections
22. New Stair Sections and Details
23. General Notes and Specifications
24. Book Specification
25. Meetings
26. Coordinating Civil, Mechanical, Structural Engineering Drawings and Specifications

PHASE II: GENERAL CONSTRUCTION BIDDING PROCESS

1. **Securing Three General Contractors to Bid Project**
2. **Coordinate and Host Open House for General Contractors, Subcontractors and Suppliers to View Existing House**
3. **Acquire Bids from General Contractors**
4. **Review Bids and Total Construction Cost with Owner**
5. **Interview and Review Bids and Total Construction Cost with Owner and General Contractors**
6. **Help Select General Contractor**

FEE

The agreed upon fee to be paid to Mark Dierkers Architecture for providing Basic Architectural Services is that of **\$26,000.00**. Additional costs are outlined under "Additional Services" and "Reimbursements".

PAYMENT

To start the construction documents, a fee of \$2000.00 is due with the balance being invoiced at intervals of substantial progress to the drawings.

ADDITIONAL SERVICES

The fee to be paid to Mark Dierkers Architecture by O/D quoted above is understood and agreed to be in return for providing "Basic Architectural Services". All additional services requested by O/D shall be compensated for at the rate of \$150.00 per hour for architect's time, \$100.00 per hour for architectural draftsman's time and \$70.00 per hour for administrative assistant's time unless otherwise noted.

"Additional Services" include, but are not limited to:

- Construction Documents and bidding process other than those listed in Phase I and II
- The making of alterations to the construction documents after drafting to the originals has begun
- Job site visits and observations
- Any other job related meetings
- Checking and approving shop drawings

It is further understood that job site visits and observations shall entail responsibility only for assuring that the project is completed in substantial accordance with the construction documents.

REIMBURSEMENTS

In addition to the payment of the fee for Basic Architectural Services, if any, O/D shall reimburse Mark Dierkers Architecture for all out-of-pocket expenses incurred, or cash advances made in connection with the construction project for preparation of blueprints, special reproductions, models, renderings, deliveries and postage at cost plus 10%.

DEFAULT

In the event O/D fails to make any payments required, Mark Dierkers Architecture shall have the right to:

1. Cease providing services of any type until such time as O/D becomes current in his financial obligations to Mark Dierkers Architecture, including the payment of any interest charges assessed; and;
2. Assess and receive from O/D interest at the rate of eighteen percent per annum (18%/yr.) on the amount not timely paid.

Mark Dierkers Architecture is entitled to retain all monies paid to him by O/D prior to default, and Mark Dierkers Architecture shall be entitled to be compensated in full for all services rendered up to the time of default by O/D.

OWNER/DEVELOPER RESPONSIBILITIES

It is understood and agreed that O/D shall be solely responsible for paying for the following consultants if their services are deemed to be needed:

- **Civil Engineer/Surveyor**
- **Mechanical Engineer (See Separate Attached Proposal from PE Services)**
- **Structural Engineer**
- **Geotechnical Engineer**
- **Interior Designer**
- **Landscape Architect**

PERMITS/APPROVALS

The O/D or their builder are solely responsible for acquiring any and all permits or licenses necessary to begin or continue construction from inspection agencies or governmental authorities and the payment of all fees relating to the permits/approvals.

ARCHITECT RESPONSIBILITY

It is understood and agreed that Mark Dierkers Architecture is only responsible to O/D for providing design and development assistance. Mark Dierkers Architecture is not responsible to O/D and O/D will not hold Mark Dierkers Architecture liable, for the negligence of others in carrying out the construction project. Nor will O/D hold Mark Dierkers Architecture liable, and O/D agrees to hold Mark Dierkers Architecture harmless, for any and all injuries or damages resulting to third parties, or anyone else in any way associated with the construction project to be undertaken by the general contractor, subcontractors, independent contractors, laborers, material men, employees, suppliers, or any other individuals.

CONSTRUCTION COST ESTIMATE

It is understood and agreed that the construction cost estimate provided by Mark Dierkers Architecture to O/D is just that, an estimate, and nothing more. Due to economic variables and time delays, both beyond the

control of Mark Dierkers Architecture, Mark Dierkers Architecture cannot be responsible for the final cost of construction required to be paid by O/D. Mark Dierkers Architecture shall not be liable to O/D for any increases.

ASSIGNABILITY

The benefits and obligations conferred upon Mark Dierkers Architecture and O/D under the terms and provisions of this agreement shall be binding upon the contracting parties, their heirs, assigns, administrators, executors, successors in interest. Absent written approval by the other party to this contract is not assignable to third person or entities.

ENTIRETY AND APPLICABLE LAW

This agreement is entire as it is written. There are no oral agreements, modifications or understandings relating to the same. All changes to this agreement are expressly required to be put in writing and signed by the parties in order to be of any validity. This agreement is subject to the laws of the State of Ohio, and shall be interpreted and enforced within the State in accordance with Ohio law. The illegibility of any one provision of this agreement shall not serve to defeat the remaining provisions.

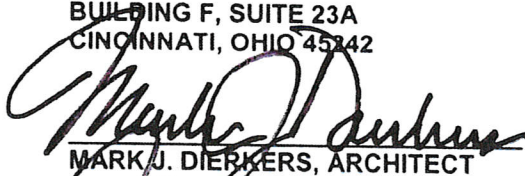
TIME PERIOD

It is understood and agreed that Mark Dierkers Architecture can terminate this contract, offering it null and void, if not executed within 90 (ninety) days from the contract date. It is also understood and agreed that Mark Dierkers Architecture can renegotiate the fee schedule of a signed contract if this agreement has not been fully executed within 365 (three hundred sixty-five) days from the signed contract date.

**VILLAGE OF SILVERTON
6860 PLAINFIELD ROAD
CINCINNATI, OHIO 45236**

**MARK DIERKERS ARCHITECTURE
9200 MONTGOMERTY ROAD
BUILDING F, SUITE 23A
CINCINNATI, OHIO 45242**

TOM CARROLL



MARK J. DIERKERS, ARCHITECT

DATE



DATE



LETTER OF PROPOSAL - REVISED

Tom Carroll
Village of Silverton
6860 Plainfield Road
Cincinnati, Ohio 45236

May 11, 2017

Re: Silverton Town Hall Renovations
Silverton, OH
Mechanical/ Electrical/ Plumbing Design Services

Dear Tom:

PE Services (the Engineer) is pleased to submit to the Village of Silverton (the Client) the following proposal for professional engineering services for the above noted project.

- 1) Project Scope and Description: The proposed project program is presumed to be as follows, and the Scope of Design services listed herein is based on the noted program unless specifically noted otherwise.
 - a. The proposed building is an existing two-story facility. The renovation will be to convert this building into a town hall and offices for the Village of Silverton. This building totals approximately 6,000 SF and is currently configured as a funeral home.
 - b. The proposed Mechanical system design scope presumes new HVAC systems and distribution ductwork.
 - c. The proposed Electrical system design scope includes distribution from existing main electrical services to new lights, general purpose receptacles and equipment.
 - d. The proposed Plumbing system design scope is limited to relocation of restroom fixtures for renovated restroom only.
 - e. This proposal presumes that the required building utilities are readily available the existing main services inside the building, and are presumed to be sized to meet the required service loads of the proposed project program without modification.
 - f. Engineer is expecting to be authorized to commence professional services by approximately May 22, 2017 and the project is expected to be submitted for permit by approximately the end of June, 2017 / Early July, 2017.
 - g. This proposal presumes that the project will be built "as-drawn". Any modifications to the documents relative to "value engineering" proposals from the Client, Owner / Tenant or their contractors or modifications to the prototype after the date of this proposal will be an additional service.

- 2) The Basic Services for the project are proposed to be completed in a single phase as follows:
 - i. Review and analysis of Client provided items related to MEP systems
 - ii. Field observation and documentation of existing MEP systems conditions as necessary for Engineers use only
 - iii. Participate in one (1) project team kick-off meeting
 - iv. Coordination of the MEP designs with architectural documents
 - v. Mechanical design and documents as described herein
 - vi. Electrical design and documents as described herein
 - vii. Plumbing design and documents as described herein
 - viii. Submit for technical review at 90% completion of construction documents, and subsequently revise the documents to address Client review and coordination comments.
 - ix. Preparation of construction documents including required MEP plans, schedules, details, notes, diagrams, legends and specifications in book format as determined by the Engineer to be sufficient for Client review, permitting and bidding
 - x. Provide the Client with signed and sealed construction documents for submittal to the local authority having jurisdiction and subsequently make revisions to the Engineers documents to address plan review comments
 - xi. Provide one (1) site visit for punch list during construction
- 3) Exclusions: The following items are not included in the Basic Services scope of work however can be provided, if requested by the Client, as an additional service.
 - a. Utility availability investigation and coordination with local providers for gas, water, sewer and electric services
 - b. Fire alarms systems design or documents
 - c. Fire suppression systems design or documents
 - d. Back-up / emergency generator design or documents
 - e. Modifications / Upgrades to existing utility main services
 - f. LEED design, documents, submittals or commissioning
 - g. Preparation of separate bid, alternates, or partial bid document packages
 - h. Value engineering services or revisions to documents
 - i. Quality control testing report / special inspection reviews
 - j. Sub-soil drainage systems design or documents
 - k. Supplemental / Booster pump(s) for domestic or fire supply design or documents

- l. Lighting Design, Fixture Selection, Fixture Layout or Photometric Calculations or Analysis.
 - m. Building Envelope portion of COMcheck form.
 - n. Construction Administration services except as described herein
- 4) Client Provided Items: As a condition of this proposal, the Client agrees to provide the following in a timely manner:
- a. Base drawing files in electronic (AutoCAD 2009) format
 - b. Reflected Ceiling/Lighting layout drawing files in electronic (AutoCAD 2016) format
 - c. Structural drawing files in PDF format
 - d. Current Flow test data for water service
 - e. Existing building systems "as-built" drawings (in .PDF format), including specifically documentation of the overall building electrical service distribution configuration
 - f. Any / All Client or Owner requests or requirements regarding MEP design and documents
- 5) Schedule: Based on the project program, project schedule, current workload and staffing, the Engineer is prepared to begin work on the project within two-to-three weeks upon receipt of written authorization to proceed, and all Client provided items. We anticipate that all phases of work can be completed within 4-6 weeks of project commencement pending timely Client reviews and approvals and no project delays.

Proposed Basic Service Fees: PE-Services proposes the following professional service fees for the defined scope of services on the project based on a stipulated sum form of compensation, billed monthly for actual work completed. The compensation by phase is proposed as follows:

Total Proposed Basic Service Fees.....\$18,000.00

6) Professional Fee Schedule:

Principal	\$200.00 per hour
Project Manager	\$185.00 per hour
Engineer	\$165.00 per hour
Designer	\$135.00 per hour
Administrative	\$80.00 per hour

7) Terms:

- a. A professional services fee retainer will not be required for this project.
- b. This proposal shall remain valid for a period of thirty (30) days from the date of issue
- c. Electronic drawings will be prepared in AutoCAD 2016 format software or newer.

Silverton Town Hall Renovations
Silverton, OH
May 11, 2017

- d. See attached "PE Services Standard Terms and Conditions" sheet for additional information regarding proposed agreement terms.
- e. All preliminary review and final deliverable submittals will be made to Client in .PDF format. If required by the local authority having jurisdiction, hardcopy originals, signed and sealed will be provided.

We appreciate this opportunity to provide you with this proposal and we look forward to your favorable response. If you have any questions or comments regarding the contents of the proposal or if we can be of further assistance, please feel to contact me directly at your convenience. If this proposal is acceptable to you, please execute the Project Proposal Approval on the last page and return to PE Services to authorize commencement of services.

We look forward to the possibility of working with you and to the successful completion of your project.

Sincerely,

PE Services

Cody Oakes

Cody Oakes
Business Development Manager

Project Proposal Approval:

Client: Village of Silverton
Project Name: Silverton Town Hall Renovations
Silverton, OH
Project Fee: \$18,000.00

Client authorizes PE Services to proceed with the project in accordance with the Letter of Proposal, dated May 11, 2017. Client hereby approves this proposal and authorizes PE Services to commence Basic Services on this project by signing below. Acceptance is limited to the terms and conditions stated within the proposal unless noted otherwise, and accepted by the Client and PE Services.

Client Authorization:

Accepted: _____ Date: _____
(Signature)
_____ Title: _____
(Printed)

Please return signed copy via fax, email or mail to PE Services.

Terms and Conditions

1. In providing services, the Engineer will endeavor to perform in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
2. The proposed scope of services and related professional service fees are based on the Engineers understanding of the project at the time of preparation of this proposal and are based on the project program and Client provided information available at that time. Changes to, modifications of, or deviations from the known project scope subsequent to issuance of the proposal may entail additional services.
3. The Client shall require that all of their other consultants coordinate their drawings and other instruments of service with those of the Engineer and to advise the Engineer of any potential conflict. The Engineer shall have no responsibility for the components of the project designed by the Clients other consultants. Review by the Engineer of the Clients or his consultants drawings and other instruments of service are solely for consistency with the Engineers design for the project. The Engineer shall be entitled to rely on the technical sufficiency and timely delivery of documents and services furnished by the Client and his consultants in connection with such documents and services and shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes and rules and regulations. The Client shall indemnify and hold harmless the Engineer and employees from and against claims, damages, losses and expenses, including, but not limited to reasonable attorney's fees arising out of the services performed by other consultants of the Client.
4. Additional services, if requested by the Client will be quoted in writing by the Engineer and will only be completed **after receipt of written approval of the additional service from the Client.**
5. Unless specifically noted otherwise herein, this proposal does not include out-of-pocket reimbursable expenses such as those listed below which will be billed to the Client at cost plus 10% (x1.10)
 - a. In-house and out-of-house CAD plotting (\$2.50 per sheet) and Xerox copy reproduction costs
 - b. Extraordinary postage, courier and delivery services
 - c. Mileage costs at the prevailing Internal Revenue Service rate
 - d. Out of town travel expenses (in excess of 150 miles from Engineers offices)
 - e. Long distance communications and teleconference charges / fees
 - f. Liability insurance premiums / costs in excess of that normally carried by the Engineer specific to the project as requested / required by the Client
6. Billings are compiled at the end of each month and at the completion of the project, based upon the work completed and are due in full net 30 days from invoice date. Invoices which are unpaid and past due more than 30 days are subject to interest penalty charges at a rate of 2% per month. In the event that any portion of an account remains unpaid 90 days after billing, the Client shall pay all cost of collections, including but not limited to reasonable attorney's fees. The Engineer may, at his sole discretion, elect to not issue final construction documents for the purpose of bidding or permit application if the Clients account is delinquent. Additionally, the Engineer may elect to suspend all services immediately upon written notification to the Client.
7. The obligation for payment of all outstanding fees to the Engineer by the Client is not conditional precedent to the Client receiving any payments or funding.
8. Ownership of Instruments of Service: All reports, drawings, specifications, electronic media / files, field data, notes and other documents prepared by the Engineer as Instruments of Service shall remain property of the Engineer. The Engineer shall retain all common law, statutory and other reserved rights, including copyrights thereto.
9. Termination: Engineer may terminate this agreement for cause or convenience by providing 7 days written notice to the Client. In such event Client shall pay Engineer for all work authorized, performed and accepted prior to the date of notice.
10. Indemnification: The Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold Engineer harmless from any and all claims, damage, costs or liability of whatever kind or nature arising from or related to the project and services subject to this Agreement except to the extent determined by a court of competent jurisdiction to have been caused by the sole negligence of the Engineer and that of his or her contractors, subcontractors or consultants or anyone for whom the Engineer is legally liable and arising from the project that is the subject of this Agreement.
11. All installations of this project will be completed by Others, therefore the Client, their assigns and the Owner / Developer of the project shall hold the Engineer harmless for any and all claims, losses, costs, damages or expenses caused by installations that differ from the design prepared by the Engineer.
12. Limitation of Liability: In recognition of the relative risks, rewards and benefits of the project to both the Client and the Engineer, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the Engineers liability for any and all claims, losses, costs, damages of any nature whatsoever including reasonable attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Engineer to the Client or his assigns shall not exceed the amount of the Engineers total fee for services rendered on this project. It is intended that this limitation shall apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
13. The professional services as requested by the Client are being delivered in an expedited delivery system, due to the nature of this requirement, more errors and omissions than usual may occur. The Client shall require that the Owner / Developer of the project establish a contingency equal to 2% of the project construction cost to pay for errors and omissions on the part of the Engineer which may cause additional construction costs beyond those that would have occurred without the error or omission. This contingency does not apply to unforeseen field conditions, changes requested by the Client and / or Owner / Developer, or to any other changes caused by conditions beyond the control of the Engineer.
14. Mediation: In an effort to provide resolution for any conflicts that may arise during the project, the Client and the Engineer agree that all disputes between them shall be submitted to non-binding mediation unless both parties agree otherwise.
15. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Engineer. Engineer's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Engineer because of this Agreement of the performance or nonperformance of services hereunder. Other than to Client, Engineer disclaims any duty to any other party or entity with respect to the materials or reports produced by Engineer under this Agreement and no other party or entity may rely upon such without advance and express written permission of Engineer and without such party or entity agreeing to be bound by the limitations, qualifications, terms, conditions, and indemnities set forth in this Agreement.
16. Regardless of any other term or condition of this Agreement, Engineer makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.
17. Consequential Damages: Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Client nor the Engineer shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.
18. The Client shall promptly report to the Engineer any defects or suspected defects in the Engineer's services. Failure by the Client to notify the Engineer shall relieve the Engineer of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.
19. Construction Activities: The Engineer shall not be responsible for the acts of omissions of any person performing any construction Work or for instructions given by the Client or its representatives to any one performing any construction work, nor for construction means and methods or job-site safety.
20. These Terms and Conditions constitute an Agreement governed by the State of Ohio laws, and define the full extents of the Terms and Conditions of this Agreement.