

Consultant Agreement

1.1 This Agreement is made as of the date set forth below between the Cleveland-Cuyahoga County Port Authority (Owner), and **Professional Design Firm, Inc.** (Consultant) in connection with the Project:

Project Name: Port of Cleveland Main Gate Improvement Project – Component 1A
Site Address: 775 Erieside Ave.
Cleveland, OH 44114

Owner: Cleveland-Cuyahoga County Port Authority
Owner’s Representative: Nicholas A. LaPointe
Address: 1100 West 9th Street, Suite 300
Cleveland, OH 44113

Consultant: **Professional Design Services Firm, Inc.**
Consultant’s Principal Contact: Mr./Mrs. Jamie Smith, P.E..
Address: 123 Main Street
Cleveland, OH 44113

ARTICLE 2 - SCOPE OF WORK

2.1 The Consultant shall perform and provide all of the Services described in the Agreement.

2.1.1 The type of consulting services provided under this Agreement shall be professional services in the form of master planning, engineering, field investigation, data collection, and surveying services for the property of Owner located at 775 Erieside Avenue, Cleveland, OH 44114 (the “Site”).

2.1.2 The project delivery method(s) for this Project shall be: **See Exhibit B: Consultant Scope of Services**

2.1.3 The Consultant and appropriate Sub-consultants shall be present at the Site (excluding travel time to and from the Site) whenever any related Engineering Services are in preparation or progress, unless otherwise expressly provided in writing by the Owner.

2.2 The Project Services Budget is **TBD**

2.2.1 See **Exhibit C: Consultant Staffing Plan & Fee Schedule**

ARTICLE 3 - COMPENSATION

3.1 The total not to exceed compensation for the Consultant’s Services is **\$XXX,XXX.00**, which includes the sum of (1) Direct Personnel Expense, (2) Basic Fee, (3) Additional Services Fee, and (4) Reimbursable Expenses. The Owner shall pay the total compensation amount to the Consultant in exchange for the Consultant’s proper, timely, and complete performance of the Services.

3.2 Direct Personnel Expense.

3.2.1 Direct Personnel Expense for the Consultant’s employees and all Sub-consultants for such hours of their time as are devoted to performing Basic Services to the Project. Time records certified by the Consultant shall include brief notes related to the project communications, scope, meetings, site visits, etc. The certified time records are required to be submitted with monthly pay applications on the Project.

3.2.2 The Consultant shall use all reasonable means to minimize Direct Personnel Expense. In all events, the Owner shall pay the Consultant’s Direct Personnel Expense in accordance with the **Consultant Staffing Plan & Fee Schedule** attached as **Exhibit C**. At no time shall Direct Personnel Expenses exceed the **\$XXX,XXX.00** less any Reimbursable Expenses for the Project.

3.2.3 The Consultant’s Direct Personnel Expense multipliers are a follows:

3.2.3.1 Consultant A = X.XX

3.2.3.2 Consultant B = X.XX

3.2.3.3 Consultant C = X.XX

3.3 Basic Fee. (NOT APPLICABLE)

3.3.1 For Basic Services provided by the Consultant and all Sub-consultants in accordance with the **Consultant Scope of Services** attached as **Exhibit B**, the Owner shall pay the Consultant the Basic Fee of \$0.00, which shall not be exceeded without the prior written approval of the Owner and an amendment to this Agreement.

3.4 Additional Services Fees.

3.4.1 For Additional Services provided by the Consultant and all Sub-consultants, the Owner shall pay the Consultant the Additional Services Fees up to an amount authorized via an executed change order amendment, which will be required for any Additional Services, required beyond the authorized Scope of Services. Additional Service Fees shall not be exceeded without the prior written approval of the Owner and an amendment to this Agreement. For Additional Services performed by a Sub-consultant, Additional Services Fees shall be based on the Sub-consultant's associated invoices to the Consultant, and shall not include any markup but may include require additional time in accordance with Article 4 of Exhibit A.

3.5 Reimbursable Expenses.

3.5.1 The Owner shall pay the Consultant in accordance with Reimbursable Expenses that are invoiced directly to the Consultant by Sub-consultants or incurred directly by the Consultant. Reimbursable Expenses under this Agreement include but are not limited to mileage, lodging, instrument fees, permit fees, survey, geotechnical field investigation services, laboratory testing, software licenses, incidentals, field equipment expenses associated with field investigations, and any other charges not captured under the Direct Personnel Expenses outlined in the **Consultant Staffing Plan & Fee Schedule** attached as **Exhibit C**. The Owner shall pay the Consultant in accordance with the actual Reimbursable Expenses incurred by the Consultant at cost invoiced to them. No Consultant or Sub-consultant mark-up shall be permitted on Reimbursable Expenses other than mark-up already expressly imbedded into the expenses and fees outlined in the **Consultant Scope of Services** attached as **Exhibit B**. Receipts and other appropriate backup such as sub-consultant invoices to verify costs or correlate the charges directly to the rates/fees included in **Exhibit B** shall accompany reimbursable Expenses invoiced to the Owner with the monthly payment application. At no time shall Reimbursable Expenses exceed the **\$XXX,XXX.00** less the Direct Personnel Expenses for the Project.

ARTICLE 4 - KEY PERSONNEL

4.1 The Consultant & Sub-consultants key personnel for the Project are:

4.1.1 Consultant A: TBD

4.1.2 Consultant B: TBD

4.1.3 Consultant C: TBD

4.2 The identities of the Consultant's and Sub-consultants key personnel, and the extent of their participation in performing the Consultant's services as identified above, shall not be altered without the Owner's prior written consent.

4.3 The Consultant shall dismiss from the Project any individual employed by the Consultant or a Sub-consultant who the Owner finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

4.4 The Consultant will obtain all required Transportation Worker Identification Cards (TWIC) for any personnel requiring to work on the Project or obtain access to the site or abide the facility's TWIC escort policy.

4.5 The Owner will audit monthly payment applications to ensure Consultant is staffing the Project with not only the senior personnel that are noted above, but with personnel of appropriate experience in accordance with the Consultant Staffing Plan. Actual hourly pay rates shall be invoiced for the personnel staffed on the Project with the listed indirect and profit mark ups,

the categorical rates (if provided/listed) in **EXHIBIT C** are seen by the Owner as guideline for preparing the not to exceed contractual Project estimate. The Owner considers the rates included an average rate for personnel working at this level/category for the Consultant. This is an actual cost w/ allowable markup not to exceed Contract. In accordance with the Statement of Qualifications request, the Owner will not pay the Consultant's senior executives to perform tasks/work that should be performed by junior level support staff.

ARTICLE 5 - GENERAL PROVISIONS

5.1 Effectiveness.

5.1.1 It is expressly understood by the Consultant that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Owner first certifies that there is a balance in the Owner's treasury or are in the process of collection to an appropriate fund, free from any previous encumbrance.

5.1.2 Subject to **Section 5.1.1**, the Agreement shall become binding and effective upon execution by the Owner and Consultant.

5.1.3 This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

5.2 Representations.

5.2.1 The Consultant represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Agreement is void, and the Consultant shall immediately repay to the Owner any funds paid under this Agreement.

5.2.2 The Consultant represents and agrees that throughout the performance of the Services or longer as may be described below, the Consultant shall obtain, pay for, and keep in force, the insurance coverage required by terms of this Agreement and by ORC Section 153.70.

ARTICLE 6 - ENUMERATION OF DOCUMENTS

6.1 This Agreement includes the following documents:

6.1.1 Consultant Standard Terms and Conditions attached as **Exhibit A.**

6.1.2 Consultant Scope of Services attached as **Exhibit B.**

6.1.3 Consultant Staffing Plan & Fee Schedule attached as **Exhibit C.**

6.1.4 Consultant Statement of Qualifications Submission: Not Attached, By Reference Only

6.1.5 Owner Statement of Qualifications Request: Not Attached, By Reference Only

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:

PROFESSIONAL DESIGN SERVICE, INC.

**CLEVELAND-CUYAHOGA COUNTY
PORT AUTHORITY**

| | |
|---|--|
| _____ <i>Signature</i> Jamie Smith, P.E. | _____ <i>Signature</i> William D. Friedman |
| _____ <i>Printed Name</i> President/CEO | _____ <i>Printed Name</i> President/CEO |
| _____ <i>Title</i> | _____ <i>Title</i> |
| _____ <i>Date</i> | _____ <i>Date</i> |

END OF DOCUMENT

Exhibit A - Consultant Standard Terms and Conditions

ARTICLE 1 - CONSULTANT'S RESPONSIBILITIES

1.1 Nondiscrimination

1.1.1 The Consultant shall comply with Applicable Law regarding equal employment opportunity and non-discrimination.

1.2 RESERVED

1.3 Consultant's Services

1.3.1 The Consultant shall provide Services for the Project, including, but not limited to, Services customarily furnished in accordance with generally accepted architectural, landscape architectural, engineering, surveying, commissioning, construction management, or other relevant specialty consulting practice, in accordance with the terms of this Agreement.

1.3.2 The Consultant shall provide the Services in accordance with Applicable Law and the applicable announcement issued pursuant to ORC Section 153.67 ("Announcement") and ORC Section 4582.12

1.3.3 RESERVED

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

1.3.5 The Consultant shall render interpretations and 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 Standard of Care

1.4.1 Notwithstanding any other provision of this Agreement to the contrary, the Consultant shall perform its Services consistent with the professional skill and care ordinarily provided by registered architects, registered landscape architects, professional engineers, professional surveyors, commissioning agents, construction managers, or other relevant specialty consultant discipline in the same or similar locality under the same or similar circumstances. Consultant makes no other representations or any warranties, express or implied, with respect to the Services.

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

1.5 Project Budget

1.5.1 The Owner shall provide written notice to the Consultant of any change in the Project Budget.

1.5.2 The Consultant shall perform its Services so that the Project is completed within the Project Budget.

1.5.3. The Consultant and the 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 Consultant 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 as part of the scope, or agreed to, by the Consultant.

1.6 Cooperation

Exhibit A - Consultant Standard Terms and Conditions

1.6.1 The Consultant shall perform the Services so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or Work of the Contractors working on behalf of the Owner, unless directed to do so by the Owner. The Consultant shall cooperate and coordinate fully with all Separate Consultants and Contractors and shall freely share all of the Consultant's Project-related information with them to facilitate the timely and proper performance of the Services and of the services and work of Separate Consultants and Contractors. This specifically applies to the Owner's Site Operator, Logistec U.S.A..

1.6.2 If the Consultant 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 Consultant is responsible for that damage, injury, or expense.

1.6.3 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 Consultant shall review that other work and appropriate instruments of service, and promptly report to the Owner in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Services. The Consultant's failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the Consultant's Services except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the Consultant's inspection.

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

1.6.5 The award of this Contract to the Consultant shall not impact the Consultants progress on any other contracts the Consultant may have with the Owner, if any. Consultant shall remain fully committed to fully completing, in a timely manner, all other open Contracts and shall remain committed to the project schedule for this contracted scope of work.

1.7 Records

1.7.1 The records of all of the Consultant's Direct Personnel Expenses, Reimbursable Expenses, and payments to Sub-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 7 years after Substantial Completion of all Work.

1.7.2 All other records kept by the Consultant related to the Project shall be available at no additional cost to the Owner at all times and shall be maintained for 6 years after Substantial Completion of all Work.

1.7.3 Upon completion of the Project, the Owner will request all pertinent project documentation be delivered which includes PDF's, permits, AutoCAD files, ArcGIS geospatial maps, engineering calculations packages, O&M manuals, etc..

ARTICLE 2 - OWNER'S RIGHTS AND RESPONSIBILITIES

2.1 The Owner

2.1.1 The Owner shall designate a Project Manager for the Project. The Project Manager is authorized to act on behalf of the Owner to perform specific responsibilities under the Agreement.

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 it by this Agreement, the Contract Documents, and Applicable Law in a reasonable and timely manner.

Exhibit A - Consultant Standard Terms and Conditions

2.3 Owner's Requirements

2.3.1 The Owner shall provide, to the Consultant, full information regarding its requirements for the Project including 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.

2.4 Site Description

2.4.1 If reasonably requested by the Consultant 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 Provided Information

2.5.1 The Owner does not warrant or guarantee the accuracy of Project-related information it provides to the Consultant, but the Consultant may rely upon that information.

2.6 Notice to Consultant

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

2.7 Legal Representation

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

2.8 Limitation of Authority

2.8.1 The Consultant 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.

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

2.8.3 The Consultant's authority to act on behalf of the Owner may be modified only by an amendment to this Agreement in accordance with Article 4 of this Agreement.

2.9 Approval or Disapproval of Consultant's Services

2.9.1 The Owner may disapprove any portion of the Services.

2.9.2 If the Owner disapproves of the Services at any Stage, the Consultant shall proceed, when requested by the Owner, re-perform the Services to satisfy the objections without additional compensation to the Consultant or its Sub-consultants.

2.9.3 The Consultant acknowledges that any review or approval by the Owner of any Services shall not relieve the Consultant of the Consultant's responsibility to properly and timely perform the Services.

ARTICLE 3 - SUB-CONSULTANTS

3.1 Sub-consultant Services

Exhibit A - Consultant Standard Terms and Conditions

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

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

3.1.2.1 The Consultant shall not retain any Sub-consultant on terms inconsistent with this Agreement.

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

3.1.2.3 Upon the request of the Owner, the Consultant shall submit a copy of the agreement between the Consultant and each Sub-consultant.

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

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

3.1.5 The Owner may communicate with any Sub-consultant either through the Consultant or directly with the Sub-consultant, but the Owner may not modify the agreement between the Consultant and any Sub-consultant. The Owner will advise the Consultant with reasonable promptness of direct communication with any Sub-consultant.

3.1.6 The Consultant hereby assigns to the Owner each Sub-consultant's agreement provided that the assignment is effective only after the Owner terminates this Agreement and only for those agreements that the Owner accepts by notifying the Sub-consultant and Consultant in writing. The Owner may re-assign accepted agreements.

3.2 Payments by Consultant

3.2.1 Within 10 business days of receipt of payment made pursuant to this Agreement, the Consultant shall pay all portions thereof due to Sub-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 Sub-consultant except as otherwise required under Applicable Law.

ARTICLE 4 - MODIFICATIONS

4.1 Compensation for Extension of Project Time

4.1.1 If the Consultant 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 extended through no fault of the Consultant, and for good cause shown, the Consultant's compensation for Services to be rendered

Exhibit A - Consultant Standard Terms and Conditions

during such extended period, shall be negotiated to the mutual reasonable satisfaction of the Owner and Consultant.

4.1.2 If, through such negotiation, the Owner agrees, in its sole discretion, that the Consultant 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 Consultant 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 Project Budget

4.2.1 The Project Scope is defined by the Approved Consultant's Scope of Services, as provided in Exhibit B.

4.2.2 The Project Budget is defined in the Agreement.

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

4.2.4 If, through such negotiation, the Owner agrees, in its sole discretion, that the Consultant 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 Consultant renders any Services made necessary by such change in the Project Scope or the Project 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 executed by both the Consultant and the Owner.

ARTICLE 5 - DISPUTE RESOLUTION

5.1 Mediation

5.1.1 The Owner and Consultant 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 Consultant for additional fees or expenses shall be made in writing to the Owner prior to Consultant performing any services giving rise to such additional fees and/or prior to consultant incurring any such additional expenses. The Consultant's failure to comply with the requirements of this Section 5.2.1 shall constitute an irrevocable waiver by the Consultant 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 Consultant 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 Project Manager

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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 Project Manager 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 Project Manager shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Consultant.

5.7 Performance

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

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

5.8 Mutual Waiver of Consequential Damages

5.8.1 Except as provided under Section 5.8.2, the Owner and Consultant each waive against the other all claims for consequential damages that may arise out of or relate to this Agreement.

5.8.1.1 The Owner's waiver includes claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from termination of the Agreement or related to insolvency.

5.8.1.2 The Consultant's waiver includes claims for overhead; delay damages except as otherwise specifically provided for in the Agreement; increased cost of funds for the Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Services; and consequential damages arising from termination of the Agreement or related to insolvency.

5.8.2 Notwithstanding Section 5.8.1, this Section 5.8:

5.8.2.1 does not apply to any damages that would be covered by insurance required or provided in connection with the Project if the Agreement did not include Section 5.8.1;

5.8.2.2 does not apply to the Consultant's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that Section 5.8.1 would otherwise preclude; and

5.8.2.3 does not apply to Claims for damages arising from the Owner or Consultant's gross negligence or willful misconduct.

5.8.3 This Section 5.8 shall survive termination of the Agreement.

5.9 Civil Actions

5.9.1 Any dispute not resolved pursuant to this Article V shall be resolved in the civil courts located in Cuyahoga County, Ohio having jurisdiction over such claims.

ARTICLE 6 - COMPENSATION AND PAYMENT

6.1 Direct Personnel Expense

6.1.1 For Direct Personnel Expense provided by the Consultant and all appropriate Sub-consultants for Services, including services as an Owner Agent, the Owner shall pay the Consultant the amount identified in the Agreement.

Exhibit A - Consultant Standard Terms and Conditions

6.1.2 Direct Personnel Expense for the Consultant's employees for such hours of their time as are devoted to performing services to the Project shall be determined in accordance with the Consultant's Staffing Plan. Such Direct Personnel Expense shall be evidenced by time records certified by the Consultant. Direct Personnel Expense shall be calculated based upon the actual hourly pay rates for the personnel staffed on the Project with the listed indirect and profit mark ups in the Fee Schedule, the categorical rates listed in the Fee Estimate are seen by the Owner as guideline for preparing the not to exceed contractual Project estimate. The Owner considers the rates included an average rate for personnel working at this level/category for the Consultant.

6.1.3 The Consultant shall use all reasonable means to minimize Direct Personnel Expense.

6.1.4 The Consultant shall use all reasonable means to properly assign work to appropriate level, qualified personnel within the Consultant's organization to minimize Direct Personnel Expenses.

6.1.5 If services will be provided over multiple years, the Direct Personnel Expenses included shall remain fixed for the entire duration of the Project.

6.2 Basic Fee (NOT APPLICABLE)

6.2.1 RESERVED

6.3 Additional Services Fee

6.3.1 The Owner shall pay the Consultant the Additional Services Fees for the associated Additional Services, when those Services are authorized via a Change Order Amendment to this Agreement..

6.3.1.1 For Additional Services performed by a Sub-consultant, the Additional Services Fees shall be based on the Sub-consultant's associated invoices to the Consultant and shall not contain any consultant mark up.

6.3.2 Additional Services Fees shall be approved only by an amendment to this Agreement in accordance with Section 4.3.

6.4 Reimbursable Expenses

6.4.1 The Consultant shall use its best efforts to minimize Reimbursable Expenses.

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

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

6.4.4 No Consultant or Sub-consultant mark-up shall be permitted on Reimbursable Expenses.

6.4.5 Transportation and Living Expenses shall only be permitted for the items identified in the Agreement and shall not exceed the respective amounts.

6.4.6 Limits on Tangible Property: The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the Owner. The Consultant shall maintain a current inventory of all such property and any such property, which has been purchased and has a useful life after Project Closeout shall be delivered to the Owner.

6.5 Method and Terms of Payment

6.5.1 Direct Personnel Expense.

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6.5.1.1 Payments of Direct Personnel Expense in accordance with Section 6.1, shall be made *monthly* based upon services performed. Any request for the payment of Direct Personnel Expenses shall be accompanied by time records certified by the Consultant.

6.5.2 Reimbursable Expenses.

6.5.2.1 Payments for Reimbursable Expenses in accordance with Section 6.4 shall be made on a *monthly* basis upon expenses incurred, as applicable, and as properly documented.

6.5.3 Retention.

6.5.3.1 The Owner shall not retain any retention on this Project.

ARTICLE 7 - INSURANCE AND INDEMNIFICATION

7.1 Consultant's General Insurance Requirements

7.1.1 Throughout the performance of the Services or longer as may be described below, the Consultant 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 Sub-consultants just as it applies to the Consultant.

7.1.1.2 If a Sub-consultant's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Sub-consultant, the Consultant shall submit to the Owner (1) a certificate of insurance evidencing the insurance the Sub-consultant will carry without additional compensation and (2) if the Owner requests, a written proposal from the Sub-consultant to provide coverage that 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 Consultant may agree to adjust the below requirements for any particular Sub-consultant.

7.1.2 Before starting the Services, upon renewal of any policy, and upon a change of any insurance carrier, the Consultant 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 Consultant shall place the insurance with companies that (1) are satisfactory to the Owner, (2) hold an A.M. Best Rating of A-, X, or higher, and (3) are authorized to conduct business in Ohio;

7.1.3.2 the policies shall be endorsed to require the Consultant's insurance carrier to (1) provide at least 30-days' written notice to the Owner (as certificate holder) of the cancellation or non-renewal of the insurance and (2) provide at least 10-days' written notice to the Owner (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

7.1.3.3 within 30 days of the Owner's request, the Consultant shall submit insurance-company certified copies of the policies, the policy endorsements, or both from which the Consultant may redact the premium amount.

7.1.4 The Consultant shall pay all deductibles, or self-insured retentions, or both contained in the Consultant'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 Consultant may use to comply with any insurance requirement.

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7.1.5 The Consultant shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Owner purchases for the Project. The Consultant's proportionate share will derive from the percentage of the associated claim or loss attributable to the negligence of the Consultant or a Sub-consultant.

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

7.1.7 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 Consultant's obligation to maintain the required insurance.

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

7.2 Consultant's Minimum Coverage Requirements

7.2.1 Workers Compensation. Consultant shall at all times during the term of this Agreement subscribe to and comply with the Workers' Compensation Laws of the State of Ohio and pay such premiums as may be required thereunder and save the Owner harmless from any and all liability arising from or under said laws. If there is an exposure of injury to the Consultant's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

7.2.2 Employers Liability Coverage. The Consultant 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. If there is an exposure of injury to the Consultant's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

7.2.3 Commercial General Liability. The Consultant shall maintain commercial general liability ("CGL") coverage, that 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 ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent 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 Consultant shall include the Owner, as an additional insured under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.

7.2.3.3 The CGL policy shall be endorsed using ISO endorsement CG 25 03 or a substitute form providing equivalent coverage 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 that cover the additional insured.

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

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

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7.2.4 Business Automobile Liability. The Consultant shall maintain business automobile (“BA”) coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

7.2.4.1 The coverage shall extend to any auto: owned (if any), non-owned, leased, rented, hired, or borrowed.

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

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

7.2.6 Professional Liability. The Consultant shall maintain professional liability (“PL”) insurance with a per-claim limit of not less than \$2,000,000 and an annual aggregate limit of not less than \$4,000,000.

7.2.6.1 The PL policy shall have an effective date, which is on or before the date that the Consultant 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 Consultant shall advise the Owner in writing of any actual or alleged claims that may erode the PL policy’s limits.

7.2.6.3 The Consultant shall maintain the PL insurance in effect for no less than five years after the earlier of the termination of the Agreement or Substantial Completion 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.

7.2.7 Pollution Liability. If the Services include environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the Consultant shall maintain a contractor’s pollution liability (“Pollution”) policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Consultant for damages (including from mold) sustained by the Owner by reason of the Consultant’s performance of the Services.

7.2.7.1 The Pollution policy shall have an effective date, which is on or before the date that the Consultant first started to perform any Project-related Services.

7.2.7.2 Upon submission of the associated certificate of insurance and at each policy renewal, the Consultant shall advise the Owner in writing of any actual or alleged claims that may erode the Pollution policy’s limits.

7.2.7.3 The Consultant shall maintain the Pollution insurance in effect for no less than 5 years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

7.2.7.4 The Consultant may achieve the Pollution insurance requirement through a PL policy, which provides the required pollution coverage.

7.2.8 RESERVED

7.3 Waivers of Subrogation

7.3.1 To the fullest extent permitted by Applicable Law, the Consultant waives all rights against the Owner, and its agents and employees for damages to the extent covered by any insurance (not including professional liability insurance), except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

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7.3.2 To the fullest extent permitted by Applicable Law, the Consultant waives all rights against the Owner, and its employees for damages to the extent covered by any professional liability insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

7.3.3 The Owner and Consultant 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 not prohibited by law, Consultant shall indemnify and hold harmless the Owner and the State of Ohio, their respective consultants, partners, directors, officers, employees and anyone else acting for or on behalf of any of them (herein collectively called "Indemnities") from and against all liability, damages, loss, claims, demands, actions, costs and expenses (including reasonable attorney's fees and court costs) to the extent caused by the negligent performance of Consultant or any negligent act or omission of Consultant.

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

7.4.3 The Consultant's obligations under Section 7.4 shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Person indemnified under Section 7.4.

7.4.4 The Consultant's indemnification obligation under Section 7.4 will survive termination of the Agreement and Final Acceptance of the Work.

ARTICLE 8 - TERMINATION

8.1 Termination for Convenience

8.1.1 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 Consultant. Upon receipt of the notice of termination for convenience, the Consultant shall immediately proceed with performance of the following duties in accordance with instructions from the Owner: (1) cease operation as specified in the notice; (2) no further Sub-consultant agreements except as necessary to complete continued portions of the Project; (3) terminate all Sub-consultant agreements to the extent they relate to the Services terminated; and (4) proceed with Services not terminated.

8.1.2 The Owner shall pay the Consultant for Services rendered before the date of termination in accordance with the allocations the Agreement, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provided in the Agreement. In no event shall the Consultant be entitled to overhead and profit associated with Services the Consultant did not perform on account of the termination or otherwise.

8.1.3 If the Owner terminates the Services under this Section 8.1, the termination shall not affect the rights or remedies of the Owner against the Consultant then existing or which may thereafter accrue for Services performed in full before the termination.

8.1.4 Notwithstanding Section 8.1.2, if the Owner terminates the Services under this Section 8.1, but there exists an event of the Consultant's default, the Consultant 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 8.2.

8.2 Termination for Cause

8.2.1 The Owner may terminate all or a portion of the Agreement if the Consultant commits a material breach of the Agreement including but not limited to: (1) failure to prosecute the Services with the necessary force or in a timely manner; (2) refusal to remedy disapproved Services; (3) failure to properly make payment to Sub-

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consultants; or (4) disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

8.2.2 If the Owner intends to exercise its termination rights under this Section 8.2, the Owner shall notify the Consultant in writing of the Owner's intent to terminate this Agreement and the cause(s) for that termination.

8.2.3 If the Consultant fails to cure the identified cause(s) for termination within 7 calendar days after receiving the notice described under Section 8.2.2, the Owner may terminate the Agreement by giving written notice of the termination to the Consultant.

8.2.4 If the Agreement is terminated, the Owner may complete the Services by means the Owner determines appropriate and take immediate possession of all Consultant Documents.

8.2.5 If the Agreement is terminated, the Consultant shall not be entitled to further payment.

8.2.5.1 If the unpaid balance of the sum of the Direct Personnel Expense plus Additional Services Fees 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, the Consultant shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Agreement.

8.2.6 If the Owner terminates the Services under this Section 8.2, the termination shall not affect any rights or remedies of the Owner against the Consultant then existing or which may thereafter accrue. The Owner's retention or payment of funds due the Consultant shall not release the Consultant from liability for performance of the Services in accordance with the requirements of the Contract Documents.

8.2.7 If the Owner is adjudged to have improperly terminated the Services under this Section 8.2, the termination will be deemed to have been a termination under Section 8.1.

8.3 Consultant's Termination for Cause

8.3.1 The Consultant may terminate this Agreement for cause if the Owner fails to pay undisputed amounts owed to the Consultant when required under this Agreement.

8.3.2 If the Consultant elects to terminate this Agreement for cause, the Consultant must give the Owner written notice of (1) the Consultant's intention to terminate the Agreement and (2) an accounting of the undisputed amounts owed to the Consultant and the date(s) on which the Consultant believes payment of those amounts was due. If the Owner does not cure the cause for termination by initiating the process to pay the undisputed amounts owed to the Consultant within 30 days after receiving the notice, the termination will take effect upon the Owner's receipt of the Consultant's written notice of termination, which is in addition to the Consultant's notice of intention to terminate.

8.3.3 If the Consultant properly terminates this Agreement for cause, but subject to other provisions of this Agreement, the Owner must pay the Consultant for Services performed by the Consultant before the date of termination. In no event will the Owner be obligated to pay anything on account of Services the Consultant does not perform.

8.3.4 If the Consultant improperly terminates this Agreement under this Section 8.3, the Consultant shall be obligated to the Owner as described under Section 8.2.5.1.

ARTICLE 9 - GENERAL PROVISIONS

9.1 Consultant's Documents and Contract Documents

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9.1.1 Except as provided under Section 9.1.2 and subject to Section 9.1.6, the Owner alone owns the Consultant's Documents and the Contract Documents and every right, title, and interest in the Consultant'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 Consultant or any of its Sub-consultants in its normal course of business that are included in the Consultant's Documents. The Consultant 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 Consultant must execute and deliver and cause its employees and agents and all Sub-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 Consultant's Documents and the Contract Documents under Section 9.1.1 and the license described under Section 9.1.2.

9.1.4 The Consultant may retain copies, including reproducible copies of Consultant's Documents and the Contract Documents for information, reference, and the performance of the Services. The Owner grants to the Consultant and its Sub-consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the Consultant'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 Consultant'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 Consultant's Documents and the Contract Documents. Any unauthorized use of the Consultant's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of the Consultant's Documents and the Contract Documents.

9.1.6 Should the Owner desire to use any of the Consultant'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 Consultant'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 Consultant's Documents without reliance on any information in the Consultant's Documents that would be inconsistent to the standard of care applicable to that design professional.

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 Consultant may exercise reasonable public relations and marketing efforts related to the Project, provided the Consultant properly identifies the Owner, and its participation in the Project.

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 Ohio courts in Cuyahoga County shall have jurisdiction over any action or proceeding hereunder or related to the Project. The Consultant irrevocably consents to such jurisdiction.

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

9.4 Written Notice

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9.4.1 Notice under this Agreement shall be validly given if: (1) delivered personally to a member of the organization for whom the notice is intended; (2) delivered, or sent by registered or certified mail, to the last known business address of the organization; or (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 Consultant, or a Contractor, if any, gives notice to one of the other 2, 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 Consultant shall immediately notify the Owner by telephone.

9.4.5 The Owner or the Consultant 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 Design Schedule

9.5.1 By signing the Agreement, the Consultant acknowledges that the times listed in Exhibit B and the referenced schedule provided by the Consultant in their SOQ submission are reasonable.

9.5.1.1 The Consultant acknowledges that the Owner will enter into other contracts based upon the Consultant properly providing the Services in a timely manner.

9.5.1.2 The Consultant shall perform the Services in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule.

9.5.1.3 The Consultant 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.

9.6 Successors and Assigns

9.6.1 The Owner and the Consultant, 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.

9.6.2 The Consultant shall not assign, or transfer any right, title, or interest in this Agreement without the Owner's prior written consent of the Owner.

9.7 Extent of Agreement

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

9.7.1 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.

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9.7.2 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.

9.7.3 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.

9.8 Severability

9.8.1 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.

9.9 Electronic and Facsimile Signatures

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

9.10 No Third-Party Interest

9.11.1 Except as expressly provided under Article 3, (1) no person or entity, other than the Owner and the Consultant, 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 and the Consultant.

9.11 No Waiver

9.11.1 The failure of the Owner or the Consultant 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.

9.12 Rights and Remedies

9.12.1 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.

9.13 Survival of Obligations

9.13.1 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.

9.14 Independent Contractor Status

9.14.1 Consultant shall be and remain an independent contractor with respect to all services performed hereunder and shall accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, old age retirement benefits, pensions, or annuities now or hereafter imposed under any State or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Consultant for work performed under the terms of this Agreement. Consultant shall obey all rules and regulations which are now or hereafter may be issued or promulgated under said

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respective laws by a duly authorized State or Federal officials. Consultant shall indemnify and save harmless the Owner from any such contributions or taxes or liability therefore.

9.14.2 The relationship created by this Agreement is one of independent contractor, and neither party shall under any circumstances be deemed agents, representatives, partners, joint venturers or employees of the other party, and, except as explicitly set forth in this Agreement, neither party shall have any right to enter into any contracts or commitments or make any representations or warranties, whether express or implied, in the name of or on behalf of the other or to use the other party's name, tradename, trademark or logo in any fashion without the prior written consent of the other party.

9.15 Safety

9.15.1 The Consultant shall comply with all applicable federal, state, and local safety laws, rules, and regulations.

9.15.2 Personal protective clothing and equipment shall be furnished and maintained by the Consultant and worn while performing services on Site.

9.15.2 Prior to the commencement of work a Site specific Health & Safety plan shall be developed by the Consultant and submitted to the Owner. This plan shall contain an emergency action plan, identify potential project hazards and risk mitigations, a list of project contacts, site specific security protocols, and steps needed to coordinate the work in a safe manner.

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 "Consultant" means the Person identified in the Agreement responsible for providing professional consulting services for the Project.

10.1.2 "Consultant's Documents" means all Project-related documents, including those in electronic form, prepared by the Consultant or Sub-consultants.

10.1.3 "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.

10.1.4 "Direct Personnel Expense" means the portion of direct salaries and wages of all personnel of the Consultant or any Sub-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.

10.1.5 "Reimbursable Expenses" means actual expenditures incurred by the Consultant or its Sub-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, field investigations, equipment charges, and, if requested by the Owner, reformatting Project Record Submittals to a computer medium different than the computer medium used by the Consultant.

10.1.6 "Services" includes all of the Consultant's obligations, individually or collectively, under the Agreement including all items reasonably inferable from the Agreement, whether provided or to be provided by the Consultant, a Sub-consultant, or any other entity for whom the Consultant is responsible. The Services include both Basic Services and Additional Services as defined in the Agreement.

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10.1.7 “Sub-consultant” means a Person engaged by the Consultant to provide or perform a portion of the Services.

10.1.9 “Submittals” means Shop Drawings, Product Data, Samples, and other items for the Consultant’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

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ARTICLE 1 - PROJECT CRITERIA

1.1 Description

1.1.1 The Project consists of the following:

1.1.1.1 Development of a detailed electrification and net zero emissions master plan for the General Cargo Terminal, aggregation and collection of Project input data and existing conditions, establishment of the Project basemap with existing grades/topography, performance of necessary testing/field verification, development of the basis of design, and updating of the Project estimate.

1.1.2 The delivery method for this Project shall include the documents highlighted in the Consultant's Scope of Services in electronic format or hard copy, as requested by the Owner.

1.1.3 The Project Budget is **\$XXX,XXX.00**.

ARTICLE 2 - SCOPE OF SERVICES

2.1 Scope of Services

2.1.1 General Requirements: The requirements and contractual expectations listed within this section cross multiple Tasks. Consultant shall allocate manhours associated with these efforts across the appropriate Tasks.

2.1.1.1 The Consultant shall be responsible for general Project management and coordination of project planning and preliminary design phase.

2.1.1.2 The Consultant shall work as an extension of the Port Authority staff. The Consultant shall closely coordinate and communicate with Port Authority as a larger percentage of the information needed to complete the Tasks is available in some shape/form and/or there is institutional knowledge that may help shape and inform the Tasks.

2.1.1.3 The Consultant shall interview our Terminal Operator, ILA labor representation, Argonaut/Davis Aerospace & Maritime High School, and members of the Port Authority staff to gain insights and key input data for the following:

- .1 Key requirements/components/siting location for new Maintenance/Repowering Facility
- .2 Key requirement/components/siting location for new Labor Hiring/Training Center
- .3 Key requirement/components/siting location for new Maritime Learning Resource Center
- .4 Key requirements/components/areas of focus for Warehouse A
 - Truck Loading Docks
 - Structural Steel Rehabilitation & Protective Measures
 - Security/Communications
 - Removal of Obsolete Infrastructure
 - Overhead Crane Replacement
 - Travel Lanes/Pathways including Possible Overhead Doorway Removal & Reduction
 - Office & Restroom Rehabilitation

2.1.1.4 Consultant shall closely monitor and manage MBE/FBE performance on the Project to meet the **XX%** minimum goal highlighted in the Consultant's Statement of Qualifications response. Consultant shall seek opportunities, where possible, to expand MBE/FBE participation on the Project. Goal participation progress reporting shall be submitted monthly with each payment application, and a final participation summary shall be submitted upon completion of the Project.

2.1.1.5 The Consultant shall be responsible for attending a Project kick off meeting at the Port Authority's offices in Cleveland, OH. Date will be coordinated prior to executing the Contract.

2.1.1.6 Consultant shall be responsible for complying with the Terminal's Health & Safety and Security Plans.

2.1.1.7 Consultant shall be required to jointly coordinate the advancement of this Project with the Port Authority and Cleveland Public Power. A key component of the success of this Project will be coordinating the additional electrical infrastructure needed for the General Cargo Terminal. Upon completion of this phase of the Project, the Port Authority and Cleveland Public Power shall be able to determine the best approach to advance the detailed design and local permitting phase of the Project through the establishment of the basis of design criteria (Task 4). The information and deliverables developed will influence Project participation agreements and contracts between the Port Authority and

Cleveland Public Power that may be required to complete the Project. The work performed by the Consultant shall also clearly delineate efforts each Project partner will be required to advance in order to bring this Project to completion.

2.1.2 TASK #1: General Cargo Terminal Electrification & Net Zero Emissions Master Plan

2.1.2.1 The Consultant shall be responsible for assessing and as-built existing electrical infrastructure within the Terminal, including both Cleveland Public Power's and Port Authority's infrastructure. This data shall be used in Task #2 to update the Port Authority's AutoCAD & GIS databases to delineate infrastructure ownership, transformer details, meter numbers/locations, electrical account information, disconnect locations, circuit panel information/location, circuits fed from each electrical panel, and existing power access points.

2.1.2.2 The Consultant shall work with the Port Authority to determine future electrical loads and power access locations to support the Port Authority's transition to net zero emissions operations at the General Cargo Terminal. Electrical needs include the following:

- .1 Cargo Handling Equipment (Battery-Electric and/or Hydrogen Fuel Cell)
- .2 Cargo & Cruise Ship Cold Ironing
- .3 Drayage Trucks (Battery-Electric)
- .4 Mobile Harbor Cranes (Battery-Electric)
- .5 Switcher Locomotive (Battery-Electric)

2.1.2.3 The Consultant shall develop a comprehensive plan that addresses/speaks to efforts to mitigate/eliminate Scope 1-3 emissions from the General Cargo Terminal. While the focus will be net zero Terminal emissions, future efforts may be taken by the Port Authority to reduce and improve Scope 2 & 3 emissions via cooperation with our business partners and Cleveland Public Power. The Consultant shall use data made available from the Port Authority's Climate Action Planning efforts.

2.1.2.4 The Consultant shall prepare a comprehensive phasing plan detailing capital investment necessary to achieve the Port Authority's net zero emissions goal. This plan will directly feed Tasks #4 and #5, establishing the electrical investments to be made by the Port Authority to establish Warehouse A as the future electrical distribution hub and Cleveland Public Power's investments that will be necessary to bring additional electrical service into the Port Authority's General Cargo Terminal. Both are key objectives of this Project.

2.1.2.5 The Master Plan shall highlight industry best practices to be implemented by the Port Authority to isolate and track electrical usage, charge for usage, recover cost capital, and recover maintenance costs necessary to furnish this infrastructure to our tenants and business partners.

2.1.2.6 The Consultant shall assess the risks to our operation created by transitioning our Terminal's operation to be reliant on the supply of electricity from Cleveland Public Power and make recommendations on how to mitigate this risk.

2.1.2.7 The Consultant shall prepare a resilient Electrification/Net Zero Terminal Emissions Master Plan for the Port Authority's General Cargo Terminal that is adaptable to accommodate changes in the market, business operations, and technologies.

2.1.3 TASK #2: Existing Conditions Survey & Basemap Development

2.1.3.1 Consultant shall review the Port Authority's AutoCAD basemap and GIS database and make necessary updates to these documents to reflect existing field conditions.

2.1.3.2 Survey of Project area to include subsurface utility investigations (as required) and collection of topography data.

2.1.3.3 Establishment of Project basemap with elevation control to support future detailed design phase of Project.

2.1.3.4 Evaluate use and condition Warehouse A, including contents, to determine rehabilitation needs and what contents and obsolete infrastructure can and should be removed. Contractor shall reference Project goals/objectives outlined in the Statement of Qualifications Request for further guidance.

2.1.3.5 Assess existing light levels within Warehouse A in accordance with OSHA standards and determine if improvements are necessary. New Warehouse lighting system shall dim when not in use to provide a base level amount of security lighting.

2.1.3.6 Assess existing roof structural design for possible future support of solar array on roof of Warehouse A. If not structurally sufficient, determine whether existing structure could be retrofitted in a cost-effective manner. Note, this does not include detail design, only general structural and feasibility assessment.

2.1.4 TASK #3: Field Testing & Data Collection

2.1.4.1 Consultant shall clean, scope, and survey the stormwater infrastructure immediately surrounding Warehouse A that will be part of the planned stormwater collection system improvements on this Project and prepare a brief report/narrative summarizing issues and deficiencies. The Port Authority's existing AutoCAD basemap and GIS database shall be updated as required.

2.1.4.2 Evaluate extensive amount of geotechnical data and determine whether any additional geotechnical investigation work is needed. Perform field investigative geotechnical work as necessary.

2.1.4.3 Consultant shall perform the following environmental testing/sampling:

- .1** Soil sampling surrounding existing Maintenance Building to determine if remedial measures will be necessary when this building is demolished and the subsurface stormwater detention structure is located in the vicinity of this building.
- .2** Assess buildings that are scheduled for demolition for any environmental risk during razing.
- .3** Assess air quality within Warehouse A for diesel emissions to evaluate whether abandoned air handling units that have not been operable can be removed.
- .4** Assess infrastructure that is scheduled for rehabilitation and test any paint, coatings, flooring, window glazing, etc. for environmental concerns if disturbed.

2.1.5 TASK #4: Basis of Design (On & Off Terminal)

2.1.5.1 Consultant shall prepare a Basis of Design Report for on Terminal Project elements that will directly feed the detailed design phase of the Project. At this time, this scope should include the on Terminal investments required by the Port Authority to receive and safely manage the additional electrical supply from Cleveland Public Power and to establish Warehouse A as the electrical distribution hub of the General Cargo Terminal. Please reference the Project goals in the Statement of Qualifications Request and the detailed scope of work in the other Tasks for additional information.

2.1.5.2 . Consultant shall prepare a Basis of Design Report for the off Terminal related Project elements to be advanced by Cleveland Public Power in partnership with the Port Authority. At this time, this scope should include the off Terminal investments required by Cleveland Public Power to safely deliver increased electrical supply to the Port Authority's General Cargo Terminal. At this time, it has not been determined whether a new substation will be required. If required, this high voltage substation may be located within the Port Authority's General Cargo Terminal in close proximity to Warehouse A.

2.1.6 TASK #5: Cost Estimate Update (On & Off Terminal)

2.1.6.1 Using the Basis of Design Report(s) prepared in Task 4, consultant shall prepare updated rough order of magnitude construction cost estimates for the work that will occur on Terminal to be performed by the Port Authority and the work required off Terminal to be performed by Cleveland Public Power in cooperation with the Port Authority.

2.1.6.2 Consultant shall support the Port Authority in determining the financial gap that exists on the Project beyond the Federal dollars already secured and to be determined funds Cleveland Public Power may contribute to the advancement of the Project to determine the amount of funds to be pursued at the State level under the Maritime Assistance Program to support this Project. Note, this need/requirement may occur in parallel with other tasks as the Port Authority does not have certainty as to when the request for grant applications will be released.

2.2 Schedule of Services

2.2.1 The anticipated target dates for the Project are as follows:

2.2.1.1 Task 1: General Cargo Terminal Electrification & Net Zero Emissions Master Plan – November 30th, 2023

2.2.1.2 Task 2: Existing Conditions Survey & Basemap Development – September 1st, 2023

2.2.1.3 Task 3: Field Testing & Data Collection – September 1st, 2023

2.2.1.4 Task 4: Basis of Design (On & Off Terminal) – November 30th, 2023

2.2.1.5 Task 5: Cost Estimate Update (On & Off Terminal) – November 30th, 2023 unless State of Ohio FY 2024 & 2025 Grant Applications Necessitate Pulling This Up In Schedule

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