

ORDINANCE NO. 6-02

By: Jeffrey McClelland

An Ordinance to authorize the Mayor and Auditor to enter into a contract on behalf of the City with Myers-Schmalenberger and Associates with respect to the study and development of a Master Plan for the southwest area of the City, at a cost not to exceed \$62,000.00; to accept contributions totaling \$30,000.00 from Capital University and Trinity Lutheran Seminary in support of such study; to authorize payment for such services to be paid from the Development and Planning Contracts Account (01-170-1190), and to declare an emergency.

WHEREAS, the City is committed to the revitalization of the community and to encouraging good commercial and residential development that enhances the appropriate areas; and

WHEREAS, the development of a Master Plan for the southwest area of the City will enhance future planning and development decisions affecting this area and the entire City; and

WHEREAS, Capital University and Trinity Lutheran Seminary have agreed to fund \$30,000.00 of the project, with the remaining \$32,000.00 coming from City funds; and

WHEREAS, the Planning Commission on December 18, 2001 endorsed the project together with the Main Street Redevelopment Commission on January 9, 2002, Board of Zoning Appeals on January 10, 2002 and Tree & Public Gardens Commission on January 16, 2002 with the recommendation this Ordinance be submitted by the Development Office to the Council; and

WHEREAS, Myers-Schmalenberger has a proven track record assisting communities in preparing, adopting and implementing comprehensive plans, land use plans, master plans and similar policy documents, brings many years of experience involving urban design, planning and development to the project, and has an intensive understanding of the challenges the community faces to facilitate quality, orderly development within its commercial corridors and residential districts; and

WHEREAS, City Council has heard and reviewed the phases, options and requirements of the Southwest Bexley Master Plan project as presented and reviewed in its open meetings; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the Mayor and Auditor are hereby authorized and directed to enter into a contract on behalf of the City with Myers-Schmalenberger and Associates to study and develop a comprehensive Master Plan for Southwest Bexley at a cost not to exceed \$62,000.00, to be paid for by funds previously appropriated to the Development and Planning Contracts Account (01-170-1190).

Section 2. That the Auditor is hereby authorized and directed to accept contributions totaling \$30,000.00 from Capital University and Trinity Lutheran Seminary to reimburse the City for 48% of the costs of the contract authorized by Section 1 hereof.

Section 3. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to commence with the planning process at the earliest possible date, and shall take effect upon its passage and approval by the Mayor.

Passed: 2-26, 2002


President of Council

Attest: 
Clerk of Council

Approved: Feb 26, 2002


David H. Madison, Mayor

1/22/02 First reading
2/12/02 Second reading
2/26/02 Third reading. Passed



Meyer Bongirno
Myers Schmalenberger

26 October 2001

Mr. Dan Lorek
Development Director
City of Bexley
2242 E. Main Street
Bexley, OH 43209

Tim S. Schmalenberger, ASLA

Keith J. Bongirno, ASLA

Karen J. McCoy, ASLA

Keith A. Myers, ASLA

Kerry M. Reeds, RLA

Greg A. Meyer, RLA

Re: **Southwest Bexley Master Plan proposal for the City of Bexley, Ohio**

Dear Mr. Lorek,

Myers Schmalenberger is pleased to submit this revised proposal for preparing the Southwest Bexley Master Plan for the City of Bexley, Ohio. This project will examine the land use, zoning, site design, and potential future redevelopment patterns in the southwest area of the City of Bexley. This area is facing increasing development pressure due to the continued success and expansion of the Trinity Lutheran Seminary and Capital University, the desirability of living in Bexley, the undeveloped land along Alum Creek, and requests for higher residential densities. There are additional peripheral issues including appearance of commercial business corridors, economic impacts to the city, increased traffic, and a shortage of parking. This study will culminate in an illustrated master plan with recommendations on the best land use patterns for the future welfare of this area and the city. It will also include development guidelines for implementing the plan. This plan will interface with the Main Street Design Guidelines as they are developed.

This proposal is based on our current understanding of the project with regard to the detail of the planning effort, the number of public meetings, and composition of the final master plan. Our Assumptions, Scope of Work, and Fee Proposal are outlined below:

Proposal

1) General Assumptions:

- a) The Client will be the City of Bexley. The Consultant is to be Myers Schmalenberger, Inc. (MSi): Keith Myers, Partner in Charge; and Chris Hermann, Project Manager.
- b) Consultants retained on behalf of the project shall be approved and paid directly by the Client. The Consultant, with consent of the City, shall retain other consultants such as architectural, civil engineering, economic, legal, traffic, etc., if necessary, to address specific architectural character, infrastructure, marketing, land use law, parking, and/or street improvement issues. The fee for any such additional consultant(s) is not included in this proposal and would be negotiated with the Client.
- c) The Client shall assist in arranging meetings with commissions, steering committee members, and property owners as needed. The Client shall also supply relevant city service and utility information and provide historical context. This information could include specific right-of-way location, previous plans and studies for the area, planned capital improvements, etc.
- d) The following Scope of Work is based upon our current understanding of work to be completed. Any additional services that may be required can be identified and additional fees can be authorized accordingly.

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Winter Park Florida 32789
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Planning Urban Design Landscape Architecture



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2) Study Area

The study area will consist of a Primary Study Area and a Secondary Study Area in Southwestern Bexley. The full study will be performed within the Primary Study Area, while the parking impact will be examined throughout the expanded Secondary Study Area.

Primary Study Area (full study)

Southwestern Bexley bounded by:

- East Main Street – North Boundary
- Euclaire Avenue – East Boundary
- Livingston Avenue – South Boundary
- Alum Creek – West Boundary

Secondary Study Area (parking impact)

Southwestern Bexley bounded by:

- Bryden Road – North Boundary
- Montrose Avenue – East Boundary
- Livingston Avenue – South Boundary
- Alum Creek – West Boundary

3) Meeting and Review Process

This public project will be guided by a Southwest Master Plan Steering Committee composed of various representatives from within this area of the City of Bexley. The public will also be invited to participate.

a) Southwest Master Plan Steering Committee

The Consultant will work with the City of Bexley staff and with a Steering Committee. It is the City's responsibility to appoint members to this committee, but it is expected to be no larger than nine members (Ex-Officio not included). We recommend one representative from each of the following:

- City Council
- Main Street Redevelopment Commission
- Planning Commission
- Board of Zoning Appeals
- Chamber of Commerce
- Capital University
- Trinity Lutheran Seminary
- Residents/property owners from neighborhood (two)

Ex-Officio Representative from:

- Tree and Public Gardens Commission
- City Attorney
- City Staff (two)
- Bexley School District
- Bexley Library
- Friends of Alum Creek
- Main-Holtzman Business Association

b) Public Input

The public will have an opportunity to be heard as part of the regular monthly business of the Southwest Master Plan Steering Committee. In addition, City staff will regularly update the Main Street Redevelopment Commission, Planning Commission, Board of Zoning Appeals, and City Council regarding the work progress



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of the master plan. Products of this study will be provided to the city for public display and comment, and digital copies will be posted on the city's World Wide Web for public review.

4) Scope of Work:

For this project we have organized the work by the tasks required to complete the master plan. The descriptions of these tasks and their associated work products are detailed below.

a) Task I: Project Launch

Purpose: Introducing the project to the Steering Committee, and defining the plan goals.

Project Tasks:

1.1 Begin base mapping and data collection

The project will commence with a large mapping and data collection effort that will be instrumental in establishing the base line for the study.

1.2 Draft project goals

Base materials will be assembled, reviewed, and analyzed to create draft goals for the master plan.

Meeting 1:

1.3 Meeting 1 – Project Launch

Meet with Steering Committee to kick-off the process, establish goals, and gather background information.

Products

- Summary memo outlining the goals of the Southwest Master Plan and background information.

b) Task II: Data Collection, Interviews, and Assessment

Purpose: Documenting and analyzing all pertinent influences in the study area.

Project Tasks:

2.1 Interview stakeholders individually

Collect information on needs, goals, and plans of the individual stakeholders, including the City. It is expected that this task will consist of six (6) separate interviews.

2.2 Investigate study area

Understand all the existing conditions within the study area and define the characteristics that make it important to the community. This includes identifying both opportunities and constraints for the area.

2.3 Complete base maps

Complete scaled base maps of the area including existing land use, ownership, streets, zoning districts, orthophotographs, and aerial photos.

2.4 Meet with Bexley city staff

Collect any additional background information and data.

Meeting 2:

2.5 Meeting 2 – Planning Framework

Meet with Steering Committee to review the existing conditions of the study area and to discuss and identify opportunities, constraints, ideas, and goals leading to a draft plan.



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Products

- Base maps and technical memorandum outlining characteristics of the existing area.
- Summary memo of stakeholder issues.
- Summary memo of the opportunities and constraints.

c) Task III: Alternative Concept Plans

Purpose: Creation of alternative conceptual plans for review and selection of the preferred final master plan.

Project Tasks:

3.1 Create alternative conceptual plans

Design several different conceptual plan maps incorporating various options and development directions.

3.2 Comparative analysis of concepts

Highlight differences and analyze benefits and impacts of each conceptual plan for the City.

Meeting 3:

3.3 Meeting 3 – Concept Plan Review

Meet with Steering Committee to review alternative conceptual plans and select a preferred plan for refinement and creation of draft Southwest Area Master Plan.

Products:

- Several illustrated color master plans highlighting various development options and paths
- Summary memo of implications of each alternative plan.

d) Task IV: Draft Master Plan

Purpose: Creation of a draft Master Plan for the study area.

Project Tasks:

4.1 Create draft master plan

Synthesize comments from the Steering Committee on preferred master plan to create draft master plan.

4.2 Prepare draft Master Plan text

Write text describing master plan components, including recommendations for the study area.

4.3 Prepare draft Development Standards

Write list of development standards that can be codified and used to guide future redevelopment in the area in conformance with the Master Plan. These standards will probably take one or more of the following forms: a new design standard code section, a design standard matrix of requirements, and/or an overlay zoning district for the study area. Issues addressed will likely include the following:

- Parking requirements and location,
- Parkland dedication,
- Density/bulk standards,
- Site development standards
- Architectural requirements,
- Streetscape standards,



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- Landscaping requirements, and
- New zoning districts.

4.4 Review draft plan for conflicts with the Main Street Guidelines

Ensure that the plan is compatible with the recommendations of the Main Street Guidelines (currently being developed).

Meeting 4

4.5 Meeting 4 – Draft Plan Review

Meet with Steering Committee to review the draft master plan and obtain input on plan, draft text, and recommendations.

Products:

- Color draft master plan.
- Draft master plan text.
- Draft of master plan recommendations.
- Draft development standards
- Internet-based display of work products.

e) Task V: Final Master Plan

Purpose: Creation of a final Master Plan based on consolidation of the comments, corrections, and changes to the draft plan, and presentation of Master Plan for adoption by the City.

Project Tasks:

5.1 Create final Master Plan

Incorporate comments from the Steering Committee and other valid written input into a final illustrative master plan consisting of:

- Final graphic images
- Plan text
- Recommendations
- Final master plan
- Development standards

Meeting 5:

5.2 Meeting 5 – Final Plan Review

Meet with Steering Committee to review final Southwest Area Master Plan.

Products:

- Final illustrated master plan w/ recommendations and development standards.
- Digital file of entire plan for the City.
- Internet-based display of work products.

f) Task VI: Master Plan Adoption Process

Purpose: Presentation of Master Plan for adoption by the City.

Project Tasks:

Meeting 6

6.1 Meeting 6 – Presentation of Master Plan

Meet with joint Main Street Redevelopment Commission and Planning Commission to present the SW Master Plan for recommendation to City Council (one meeting).



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Meeting 7

6.2 Meeting 7 – Recommend Master Plan Adoption

Meet with the Bexley City Council to present the Southwest Area Master Plan for adoption (one meeting).

Products:

- Revised final illustrated master plan w/ recommendations and development standards.
- Digital file of entire plan for the City.
- Internet-based display of work products.

4) Project Schedule

Myers Schmalenberger expects to complete the master plan within six months from authorization to proceed. The adoption process will then commence immediately after the master plan is approved by the steering committee. This assumes the meeting schedule as described above with approximately one meeting per month. Meeting postponement, project tabling at public meeting(s), additional meeting requests, or heavy revision requests could lengthen this project timeline.

5) Compensation

We propose that the fees for this project be calculated at our standard hourly rates (see the Terms of Contract). We estimate that these fees would not exceed the following for each task:

Task 1 – Project Launch	\$2,000
Task 2 – Data Collection, Interviews, and Assessment	\$8,000
Task 3 – Alternative Concept Plans	\$8,000
Task 4 – Draft Master Plan	\$22,000
Task 5 – Final Master Plan	\$14,000
Task 6 – Master Plan Adoption	\$4,000
Project Expenses	\$4,000
TOTAL:	\$62,000

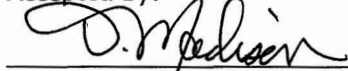
Thanks again for your consideration of this proposal.

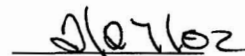
Sincerely,



Keith Myers, ASLA
Principal

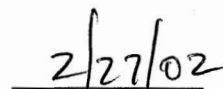

Chris Hermann, AICP
Project Manager

Accepted By:


Mayor of Bexley


Date


Bexley City Auditor


Date

MSI Terms and Conditions of Proposal / Agreement

DIRECT PROJECT EXPENSES Direct project expenses will be billed in addition to the fee for basic services and include actual out-of-pocket expenditures made in the interest of the Project. All direct project expenses will be invoiced at 1.2 times the actual amount. Direct project expenses include, but are not limited to mileage, film and processing, courier and overnight delivery services, travel, hotel, car rental, etc.

Requested documents to be printed in-house will be invoiced at the following rates: (excluding those for office use)

B/W Plots 24" x 36" - Bond/ Vellum	\$15	Color Plot 30" x 42"	\$50
B/W Plots 30" x 42" - Bond/ Vellum	\$22	Color Plot 24" x 36"	\$35
B/W Copy 24" x 36" - Bond/ Vellum	\$3	Color Plot 18" x 24"	\$20
B/W Copy 30" x 42" - Bond/ Vellum	\$4	Color Copy 8 1/2 x 11"	\$1
		Color Copy 11" x 17"	\$2

ADDITIONAL SERVICES / STANDARD HOURLY RATES If the Scope of Work or if the Consultant's service is substantially revised, the amount of total compensation shall be equitably be adjusted. Fees for requested additional services shall be computed at our standard hourly rates below or outlined under a separate proposal.

Senior Principal	\$110	Landscape Architect II	\$75
Principal	\$100	Landscape Architect III	\$65
Senior Project Manager	\$90	Landscape Architect IV	\$50
Senior Designer	\$90	Landscape Architect V	\$35
Planner I	\$80	Graphic Designer I	\$55
Planner II	\$70	Graphic Designer II	\$45
Landscape Architect I	\$85	Administration	\$40

RETAINER The Client shall make an initial payment as defined in the attached proposal as a retainer upon execution of this agreement. This retainer shall be held by the consultant and applied against the final invoice.

PAYMENT DUE Invoices shall be submitted monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the due date. The Consultant has been commissioned by the Client to provide professional services, which are independent of whether the Project for which they are provided is executed or not.

SATISFACTION WITH SERVICES Payment of any invoice by the Client to the Consultant shall be taken to mean that the Client is satisfied with the Consultant's services to the date of payment and is not aware of any deficiencies in those services.

DISPUTED INVOICE If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within ten (10) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in the Consultant's favor and shall be calculated on the unpaid balance from the due date of the invoice.

INTEREST If payment in full is not received by the consultant within forty-five (45) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to unpaid principal.

SUSPENSION OF SERVICES If the Client fails to make payments when due or otherwise is in breach of this agreement, the Consultant may suspend performance of services upon seven (7) days' notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this agreement by the Client. Upon payment in full by the Client or cures the breach to the satisfaction of the Consultant, the Consultant shall resume services under this agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance.

TERMINATION OF SERVICES If the Client fails to make payment to the Consultant in accordance with the payment terms herein, this shall constitute a material breach of this agreement and shall be cause for termination of this agreement by the Consultant.

TERMINATION OF AGREEMENT This agreement may be terminated by either party upon seven (7) days written notice with or without cause. In the event of termination not initiated by the Consultant, the Consultant shall be compensated for all services performed to the date of termination, together with direct project expenses then due.

MEDIATION In an effort to resolve any conflicts that arise during the design or construction or the project or following the completion of the project, the Client and the Design Professional agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors

and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

APPLICABLE LAW Unless otherwise specified, this agreement shall be governed by the laws of the State of Ohio.

ENTIRE AGREEMENT This agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Client and Consultant.

LIMITATION OF LIABILITY To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officer's, directors, partners, employees and any of them, to the Client and anyone claiming by and through the Client, for any and all claims, losses, costs or damages, including attorney's fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant under this Agreement, or the total amount of fifty thousand dollars (\$50,000), whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

CONTRACTOR AND SUBCONTRACTOR CLAIMS To the fullest extent permitted by law, to limit the liability of the Consultant and the Consultant's officer's, directors, partners, employees and sub-consultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs or damages of any nature whatsoever or claims expenses from any cause or causes including attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant and the Consultant's sub-consultants to all those named shall not exceed fifty thousand dollars (\$50,000) or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

OBSERVATION SERVICES The Client understands that by not retaining the Consultant for construction observation services, there may be misinterpretations of the Consultant's plans and specifications during construction, which may lead to errors and subsequent damage. Inasmuch as the Client has elected to proceed with the Project without the Consultant providing construction observation services. The Client agrees to indemnify and hold-harmless the Consultant against any and all claims, damages, awards and cost of defense, which may arise out of the acts of the Contractor and Subcontractor performing work not in compliance with the intent of the design documents.

UNAUTHORIZED CHANGES The Consultant, upon delivery of documents is completely absolved and indemnified from any liability that may result from the interpretation or revision of documents for which the Consultant was not responsible.

STANDARD OF CARE In providing services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

OWNERSHIP OF INSTRUMENTS OF SERVICE All reports, drawings, specifications, electronic files, field data, notes and other documents and instruments prepared by the Consultant as instruments of services shall remain the property of the Consultant. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto.

OPINIONS OF PROBABLE CONSTRUCTION COST In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgement and experience. The Consultant makes no warranty, express or implied, that the bids or negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

SHOP DRAWING REVIEW The Consultant shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Consultant's review shall be conducted with reasonable promptness while allowing sufficient time in the Consultant's judgment to permit adequate review. Review of a specific item shall not indicate that the Consultant has reviewed the entire assembly of which the item is a component. The Consultant shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Consultant in writing by the Contractor. The Consultant shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

MSI Terms and Conditions of Proposal / Agreement

INFORMATION PROVIDED BY OTHERS The Client shall furnish, at the Client's expense, all information requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

DELIVERY OF ELECTRONIC FILES In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant. The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior written consent of the Consultant.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

SEVERABILITY Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

SURVIVAL Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

ASSIGNMENT Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to sub-consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

PROPRIETARY INFORMATION The Client agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Consultant pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Consultant.

ADA COMPLIANCE The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Client understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Consultant, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Consultant, however, cannot and does not warrant or guarantee that the Client's Project will comply with all interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

CORPORATE PROTECTION It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, an Ohio corporation, and not against any of the Consultant's individual employees, officers or directors.

BETTERMENT If, due to the Consultant's negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and

included in the original construction documents. In no event will the Consultant be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

DEFECTS IN SERVICE The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant 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.

ATTORNEYS FEES In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

CONTINGENCY The Owner and the Consultant agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by the Consultant and, therefore, that the final construction cost of the Project may exceed the estimated construction cost. The Owner agrees to set aside a reserve in the amount of at least ten (10) percent of the Project construction costs as a contingency to be used, as required, to pay for any such increased costs and changes. The Owner further agrees to make no claim by way of direct or third-party action against the Consultant or its sub-consultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

CONSEQUENTIAL DAMAGES Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

CHANGED CONDITIONS If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for re-negotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating re-negotiation, and the Consultant and the Client shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

DEFINITION OF 'HAZARDOUS MATERIALS' As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

HAZARDOUS MATERIALS - SUSPENSION OF SERVICES Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.

HAZARDOUS MATERIALS INDEMNITY The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees and consultants (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.