

An Agreement for the Provision of Limited Professional Services

Design Professional: Westlake Reed Leskosky 1422 Euclid Avenue, Suite 300 Cleveland, Ohio 44115	Client: Columbus Redevelopment Commission City of Columbus, Indiana 123 Washington Street Columbus, Indiana 47201
Project No. 14093.00	Date: August 15, 2014
Project Name: Custer-Nugent Amphitheatre	
Location: Columbus, Indiana	
Scope of Services: As indicated in Exhibit A (attached) dated August 15, 2014	
Fee Arrangement: As indicated in Exhibit A (attached) dated August 15, 2014	
Special Conditions:	
Additional services shall be as equitably negotiated per the average rates indicated in Exhibit A (attached) and where authorized in writing by the Client.	
Exhibit B – Certificate of Insurance	
Offered by:	Accepted by: (Client):
Signature _____ Date _____	Signature _____ Date _____
Printed name / title Peter Rutti, Principal	Printed name / title Signature indicates the authority to bind the company to the terms herein
<u>The terms and conditions attached to this Form are part of this Agreement.</u>	

TERMS & CONDITIONS

Fee

Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered.

Reimbursable Expenses

Reimbursable Expenses are in addition to the Fee and include expenses incurred by the Design Professional directly related to the Project, including but not limited to: regulatory fees; authorized out-of-town travel, lodging, and subsistence; all mileage, parking, and tolls related to the project regardless of proximity to the Design Professional's place of business; long distance communications; printing; freight; professional photography; and other similar Project-related expenditures.

Communications Expense

Monthly costs that are not compensated by traditional reimbursable expense, related to the Design Professional's maintenance and provision of electronic data share-sites, data transmissions, document scanning, "Go-To" Meetings, conference call sites, and other internet based communications services including voice and data transfer, and mobile phone communications required to complete the scope of services defined in Exhibit A

Billings/Payments

Invoices for services and reimbursable expenses shall be submitted, on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% per month will be applied to the unpaid balance after 30 days from the invoice date. Initial Payments shall be credited on the final invoice. The Client shall not withhold amounts from the Design Professional's compensation to impose a penalty or liquidated damages on the Design Professional, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Design Professional agrees or has been adjudged liable for the amounts in a binding dispute resolution proceeding.

Client's Responsibilities

The Client shall provide full information regarding requirements for the Project. The Client shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Design Professional shall be entitled to rely on the accuracy and completeness thereof.

The Client shall designate a representative authorized to act on the Client's behalf with respect to the Project. The Client or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.

Standard of Care

In providing services under this agreement, the Design Professional 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. Design Professional will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of Design Professional's part of the Project. Regardless of any other term or condition of this Agreement, Design Professional makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

Cost of the Work

For purposes of this Agreement, the Cost of the Work shall be the total cost to the Client to construct all elements of the Project designed or specified by the Design Professional and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Design Professional, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Client.

Consequential Damages

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Client nor the Design Professional shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

Hidden Conditions

A condition is hidden if concealed by existing finishes or structure or site or is not capable of investigation by reasonable visual observation. If the Design Professional has reason to believe that a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after such notification, or (2) the Design Professional has no reason to believe that such a condition exists, the Design Professional shall not be responsible for the existing conditions or any resulting damages or losses resulting therefrom.

Hazardous Materials/Mold

The Design Professional shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including mold. The Design Professional shall have no responsibility for an existing or constructed building that may, as a result of post-construction, use, maintenance, operation or occupation, contain or be caused to contain mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures and costs.

New York	1201 Broadway Suite 1006 New York, New York 10001	F 212.659.0050	T 212.564.8705
Phoenix	One East Camelback Road Suite 690 Phoenix, Arizona 85012	F 602.212.1020	T 602.212.0451
Washington	1634 Eye Street NW Suite 900 Washington, DC 20006	F 202.296.6116	T 202.296.4344
Cleveland	1422 Euclid Avenue Suite 300 Cleveland, Ohio 44115	F 216.522.1357	T 216.522.1350
Los Angeles	2140 Hyperion Avenue Los Angeles, CA 90027	F 323.664.3566	T 213.804.4531

TERMS & CONDITIONS

Insurance Types and Limits

The Design Professional shall maintain the following insurance types and limits for the duration of this Agreement. If the Owner requires types or limits in excess of those indicated below, the Client shall reimburse the Design Professional for any additional cost. The City of Columbus, Indiana shall be added as an "additional insured".

- General Liability \$1,000,000 each occurrence \$2,000,000 aggregate
- Automobile Liability \$1,000,000
- Worker's Compensation \$1,000,000
- Professional Liability \$1,000,000 per claim \$2,000,000 aggregate

Indemnifications

The Client agrees, to the fullest extent permitted by law, to indemnify and hold Design Professional and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorneys' fees and defense costs) caused in whole or in part by its acts, errors or omissions and those of anyone for whom the City of Columbus are legally liable. The Design Professional further agrees, subject to Risk Allocation below, to indemnify the Client for damages arising from the Design Professional's own negligent errors acts or omissions.

Termination of Services

This agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the Client shall pay the Design Professional for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Betterment

If a required item or component of the Project is intentionally or negligently omitted from the Design Professional's documents, the Design Professional 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 included or required in the Design Professional's original documents. In no event will the Design professional be responsible for any costs or expense that provides betterment or upgrades or enhances the value of the Project.

Ownership of Documents

All documents produced by the Design Professional under this agreement, including electronic files, shall remain the property of the Design Professional and may not be used by this Client for any other purpose without the written consent of the Design Professional. Any such use or reuse shall be at the sole risk of Client who shall defend, indemnify and hold the Design Professional and its subconsultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to Design Professional and its consultants.

Data Transfer

The Design Professional may furnish or be furnished electronic files, hereafter referred to as Data, data which contains machine readable information. Because of the possibility that information and data delivered in machine-readable form may be altered, where inadvertently or otherwise, Design Professional reserves the right to retain hard copy originals of the electronic documentation delivered in machine-readable form. These hard copy originals shall be referred to and shall govern in the event of any inconsistency between the two formats. Automated conversion (translation) of information and data from the system and format used by Design Professional to an alternate system or format cannot be accomplished without the introduction of anomalies and/or errors. The Client agrees to assume all risks associated with electronic transfer of files. The Client recognizes that changes or modifications to Design Professional's instruments of professional service introduced by anyone other than Design Professional may result in adverse consequences which Design Professional can neither predict nor control. Therefore, and in consideration of Design Professional's agreement to deliver its instruments of professional service in machine-readable form, the Client agrees to the fullest extent permitted by law to hold harmless and indemnify Design Professional from and against all claims, liabilities, losses, damages, connected with the modification, misinterpretation, misuse or reuse by others of the machine readable information and data provided by Design Professional under this agreement. The forgoing indemnification applies, without limitation, to any use of the project documentation on other projects, for additions to this project or for completion of this project by others, excepting only such use as may be authorized, in writing, by Design Professional.

Defects in Service

The Client shall promptly report to the Design Professional any defects or suspected defects in the Design Professional's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contracts and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify the Design Professional shall relieve the Design Professional 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.

Construction Activities

The Design Professional shall not be responsible for the acts or omissions of any person performing any construction Work or for instructions given by the Client or its representatives to any one performing any construction Work, nor for construction

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means and methods or job-site safety.

Dispute Resolution

Any claim or dispute between the Client and the Design Professional shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator they may submit a request to the Bartholomew County Indiana Circuit Court for the appointment of a mediator. Unless otherwise specified, the laws of the state of the Project location shall govern this agreement.

Equal Opportunity Employer

Design Professional provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, gender, sexual orientation, national origin, age, disability, or status as a Vietnam-era or special disabled veteran in accordance with applicable federal laws. In addition, the firm complies with applicable state and local laws governing nondiscrimination in employment. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation, and training.

Relationship of the Parties

All services provided by Design Professional are for the sole use and benefit of the Client. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Design Professional.

Entire Agreement

This Agreement constitutes the entire agreement between the parties and these Terms & Conditions may only be amended by written agreement by both parties. If any portion of this Agreement is found to be illegal or unenforceable, such portion shall be deleted and the balance shall remain in effect.

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