

**ORDINANCE NO. 41-20**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH FAIR DERMODY CONSULTING ENGINEERS FOR ENGINEERING, DESIGN SERVICES AND CONSTRUCTION PLANS FOR THE WEST SMITH ROAD RAILROAD BRIDGE REPAIRS PROJECT.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:**

**SEC. 1:** That the Mayor is hereby authorized and directed to execute an Agreement with Fair Dermody Consulting Engineers for engineering, design services and constructions plans for the West Smith Road Railroad Bridge Repairs, Project #1072.

**SEC. 2:** That the funds to cover the agreement in the estimated amount of \$22,125.00 are available in Account No. 145-0630-52215.

**SEC. 3:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein and is subject to the Law Director’s final approval.

**SEC. 4:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

**SEC. 5:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

**PASSED:** February 24, 2020

**SIGNED:** John M. Coyne, III  
President of Council

**ATTEST:** Kathy Patton  
Clerk of Council

**APPROVED:** February 25, 2020

**SIGNED:** Dennis Hanwell  
Mayor



*Ord. 41-20  
Exh. A*

7 February 2020

Mr. Patrick Patton, PE  
City of Medina, Ohio  
132 N. Elmwood Avenue  
Medina, Ohio 44256

Re: West Smith Road Railroad Bridge Repairs

Dear Mr. Patton,

In response to City of Medina's request, Fair Dermody Consulting Engineers (FDCE) is pleased to provide this proposal for engineering services for the West Smith Road Railroad Bridge Repairs.

### **Introduction**

The City of Medina plans to perform general maintenance and repairs to the City owned railroad bridge located over West Smith Road as a part of the West Smith Road Rehabilitation Project. The structure is a steel through plate girder with a ballasted deck, carrying a single railroad track, with a reinforced concrete substructure that was built in 1966. The overall condition of the structure is good. The repairs required would generally consist of preventative and basic maintenance procedures.

### **Project Understanding**

The scope of the project is to perform any necessary repairs to the structure in order to prolong its useful life. The proposed repairs are non-structural and are intended to protect the structure from additional deterioration.

### **Scope of Work**

FDCE will provide all necessary plans and technical specifications for the following:

- Clean and paint all exposed structural steel with a three-coat system.
- Pressure inject cracks in concrete abutments/wingwalls with epoxy.
- Perform surface repairs to delaminating and spalling concrete.
- Apply a penetrating sealer to all exposed concrete surfaces.
- Remove excessive vegetation along wingwalls.

Plans and specifications will include all necessary details and quantities for the City of Medina to facilitate the Bid Process.

A total of four (4) site visits are recommended throughout the duration of the project. The first site visit will entail two men (a Licensed P.E. and an Engineer Intern) field measuring the structure to quantify the extent of repairs in order to accurately provide an engineer's estimate. The remaining three site visits will entail one engineer for ½ day performing construction

inspection services at project milestones (30%, 60%, and 100% completion). This includes time for general correspondence between the City of Medina and the Contractor.

All design calculations, construction plan sets, and technical specifications will be in accordance with the A.R.E.M.A. Manual for Railway Engineering and the Ohio DOT Construction and Materials Specifications.

**Basis of Billings and Budget Estimate**

Billings for FDCE’s professional services will be on a time and material basis for the above scope in accordance with the attached Schedule of Fees. Based on the proposed scope of work outlined above, we estimate the costs to execute to be approximately **\$22,125.00** as provided below. This number represents a not to exceed price. We only bill for hours worked and the expenses we incur. Our presence in the surrounding area for other clients will likely result in savings throughout the project, especially when it comes to travel time and expenses.

Plans and Technical Specifications .....	\$4,500.00
Pre-Bid Meeting.....	\$2,800.00
• 1 Licensed Professional Engineer on site for 4 hours	
• Travel time and expenses	
Initial Site Visit and Engineer’s Estimate.....	\$6,425.00
• 1 Licensed Professional Engineer on site for 8 hours	
• 1 Engineer Intern on site for 8 hours	
• Travel time and expenses	
(3) Construction Inspection Site Visits .....	\$8,400.00
• 1 Licensed Professional Engineer on site for 4 hours each visit	
• Travel time and expenses	

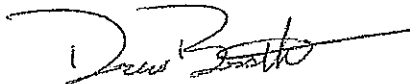
If additional tasks are required beyond this scope, FDCE can provide these services for an additional fee in accordance with the attached Schedule of Fees unless an additional proposal is requested.

Enclosed are terms and services for providing professional engineering to the City of Medina, Ohio. All work shall be in accordance with the attached *Statement of Terms and Conditions* and *Engineering Rate Schedule*.

We appreciate the opportunity to provide these services. If this proposal is agreeable, please sign and return a copy for our files. Otherwise, please call if you have questions concerning this matter.

Very truly yours,

**Fair Dermody Consulting Engineers**



Drew Bessette, P.E.  
Project Engineer





2020 ENGINEERING RATE SCHEDULE

Licensed Principal Engineer \$112.50/hr
Designs and supervises construction projects. Responsibilities include estimating costs and personnel and material needs, preparing proposals and establishing completion dates. Has a bachelor's degree in engineering and 10+ years of experience in the field or related area. Is a licensed engineer.

Licensed Project Engineer \$100.00/hr
Designs and supervises construction projects. Responsibilities include estimating costs, preparing proposals, and inspection. Has a bachelor's degree in engineering and 6+ years of experience in the field or related area. Is a licensed engineer.

Project Engineer \$92.50/hr
Designs construction projects. Responsibilities include estimating costs, preparing proposals, and inspection. Has a bachelor's degree in engineering and 4+ years of experience in the field or related area. Reports to a licensed principal and/or licensed project engineer.

Engineer Intern \$88.00/hr
Designs construction projects under direct supervision of a licensed engineer. Performs a variety of tasks. Has a bachelor's degree in engineering and 0-4 years of experience in the field or in a related area. Has passed the fundamentals of engineering exam. Works under immediate supervision of a licensed or project engineer

Senior Engineering/CAD Technician \$92.50/hr
Provides engineering and CAD support for the design of construction projects. Requires an associates or bachelor's degree in engineering field or a related area. Has knowledge of commonly-used concepts, practices, and procedures within a particular field. Relies on instructions and pre-established guidelines to perform the functions of the job. Works under immediate supervision of a licensed or project engineer and has 10+ years of experience.

Engineering/CAD Technician \$80.00/hr
Provides engineering and CAD support for the design of construction projects. Requires an associates or bachelor's degree in engineering field or a related area. Has knowledge of commonly-used concepts, practices, and procedures within a particular field. Relies on instructions and pre-established guidelines to perform the functions of the job. Works under immediate supervision of a licensed or project engineer and has 0-10 years of experience.

Clerical \$60.00/hr

In addition to the above fees, the following items will be charged as required:

Mileage Current Fed. Rate

Expenses At Cost

Printing At Cost

Climbing Gear \$25.00/day

Subcontract Engineering Cost plus 10%



Attached to and made part of this Agreement for Professional Services (Agreement) dated 7 February 2020, by and between City of Medina, Ohio (Client) and Fair Dermody Consulting Engineers (FDCE) in respect of engineering services (Projects) described therein.

## **1.0 SCOPE OF SERVICES**

- 1.1** FDCE hereby agrees to provide Client with the professional services set forth in the Agreement under the terms and conditions set forth herein.
- 1.2** This Agreement, once executed, will become effective upon FDCE's receipt of the Agreement signed by an authorized agent of the Client. The Agreement is subject to renegotiation if acceptance is not received within sixty (60) days.
- 1.3** Client acknowledges that work shall proceed under the defined scope of services only upon receipt by FDCE of a signed Agreement (this Agreement) and, if required by the Agreement, a retainer payment. The retainer amount shall be held by FDCE and shall be applied against the final invoice. In the event the amount of the retainer exceeds the final invoice, FDCE shall refund the balance with the final invoice. If the final invoice exceeds the retainer, the Client shall promptly remit the amount due.
- 1.4** If the Client authorizes changes in the scope, extent, or character of the Projects, then the time for completion of FDCE's services, and the rates and amounts of FDCE's compensation, shall be adjusted equitably and reduced in writing as according to Section 17.1 of this agreement.
- 1.5** If FDCE's services include the performance of any services during the construction phase of the Projects:
  - 1.5.1** It is understood that the purpose of any such services (including any visits to the site) will be to enable FDCE to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide Client with a greater degree of confidence that the Work of the Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). Neither the professional activities of FDCE, nor the presence of FDCE and/or FDCE subconsultants at the construction site, shall relieve the Contractor and any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with contract documents and any health or safety precautions required by any regulatory agencies. FDCE personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. Client agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in Client's agreement with the Contractor.



**1.5.2** It is understood that FDCE 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. The 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. FDCE's review shall be conducted with reasonable promptness while allowing sufficient time in FDCE's judgment to permit adequate review. Review of a specific item shall not indicate that FDCE has reviewed the entire assembly of which the item is a component. FDCE shall not be responsible for any deviations from the Construction Documents not brought to the attention of FDCE in writing by the Contractor. FDCE shall not be required to review partial submittals or those for which submissions of correlated items have not been received.

## **2.0 BILLING AND PAYMENT**

- 2.1** Client agrees to pay FDCE in accordance with the rates and charges set forth in the attached Rate Schedule. Invoices for services rendered and expenses incurred will be submitted monthly by FDCE to Client. All such invoices shall be due and payable upon receipt.
- 2.2** In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be promptly paid.
- 2.3** If Client fails to make any payment due FDCE for services and expenses within thirty (30) days after the invoice date of FDCE's statement therefor, the amounts due FDCE shall include an interest charge at the rate of one percent (1.0%) per month from said thirtieth day, and in addition, FDCE may, after giving seven (7) days written notice to Client, suspend services under this Agreement until Client has paid in full all amounts due FDCE for services and expenses. Unless FDCE receives payment in full within seven (7) days of the date of the notice, the suspension shall take effect without further notice. Payments on account will be credited first to interest and then to principal. In the event of a suspension of services, FDCE shall have no liability to Client for delay or damage caused Client because of such suspension of services.
- 2.4** In the event of termination by Client under Section 14, Client shall remain liable for and shall promptly pay FDCE for the full amount for all services rendered by FDCE to the date of termination and all termination costs together with interest on all overdue accounts in accordance with the foregoing rate and attendant attorneys' fees and costs of collection. No failure by FDCE to exercise any right hereunder shall operate as a waiver nor preclude FDCE from exercising any other right.
- 2.5** If Client fails to make payment to FDCE in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by FDCE.



- 2.6 In the event legal action is necessary to enforce payment provisions of this Agreement, FDCE shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by FDCE in connection therewith and, in addition, the reasonable value of FDCE's time and expenses spent in connection with such collection action, computed at FDCE's prevailing fee schedule and expense policy.
- 2.7 Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.
- 2.8 Payment of invoices to FDCE is the sole responsibility of the signatory of this Agreement and is not subject to third party agreements.

### **3.0 TIME FOR PERFORMANCE**

- 3.1 The term of this Agreement shall commence upon FDCE's receipt of the Agreement signed by an authorized agent of the Client and end when terminated by Client or FDCE in accordance with Section 14 of this Agreement. The Client and FDCE are aware that many factors outside FDCE's control may affect FDCE's ability to complete the services to be provided under this Agreement. FDCE will perform these services with reasonable diligence and expediency consistent with sound professional practices.

### **4.0 REIMBURSABLE EXPENSES**

- 4.1 Normal reimbursable expenses are in addition to the fee for services. Internal expenses incurred and allocated to the Projects will be billed to Client in accordance with our fee proposal and/or our attendant Rate Schedule. Outside expenses incurred and allocated to the Projects shall be billed at a rate of one (1) times the amount expended. Reimbursable expenses include, but are not limited to, expenses associated with the Projects such as: travel including transportation, meals, and lodging; printing, copying, and handling of documents; computer charges including computer-aided design; film and processing; telephone calls and other communications charges; postage and delivery; equipment for tests; and securing approval of authorities having jurisdiction over the Projects and not specified as part of the fee.
- 4.2 Subconsultant or subcontracted engineering services incurred and allocated to the Projects shall be billed at a rate of one and one tenth (1.1) times the amount expended.

### **5.0 CLIENT'S RESPONSIBILITY**

- 5.1 FDCE shall indicate to Client the information needed for rendering of services hereunder. Client shall provide to FDCE all criteria and full information as to Client's requirements for the Projects and such other information as is available to Client and Client's consultants and contractors, and FDCE shall be entitled to rely upon the accuracy and completeness thereof. Client recognizes that it is impossible for FDCE





to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions that may have occurred in assembling the information Client is providing.

- 5.2** Client shall designate in writing a person to act as Client's representative with respect to services to be rendered; shall examine and respond promptly to FDCE's submissions; and shall give prompt written notice to FDCE whenever he or she observes or otherwise becomes aware of any defect in work.
- 5.3** Client shall arrange for access to and make all provisions for FDCE to enter upon public and private property as required for FDCE to perform its services.
- 5.4** Client acknowledges that invoices must be kept current for services to continue. If Client fails to pay any invoice due FDCE within thirty (30) days of the date of the invoice, FDCE may, without waiving any other claim or right against Client, suspend services under this Agreement until FDCE has been paid in full amounts due FDCE and/or any of its Consultants and Subcontractors (See Paragraph 2.4). Sealed plans, final documents, reports and attendance at meetings/hearings will not be provided unless payment for services is current. Client acknowledges FDCE's right to suspend services and withhold plans and documents, as provided above, if payments are not current. If services are suspended for thirty (30) days or longer, upon resuming services FDCE shall be entitled to payment for expenses incurred in the interruption and resumption of services. If services are suspended for ninety (90) days or longer, FDCE shall be entitled to payment for expenses incurred in the interruption and resumption of its services, and fees for remaining services shall be equitably adjusted.

## **6.0 INSURANCE**

- 6.1** FDCE is covered by General Liability Insurance, Workers Compensation and Employer's Liability Insurance, Automobile Liability Insurance, Umbrella Liability Insurance, and Professional Liability Insurance. We will furnish information and certifications upon request.

## **7.0 STANDARD OF CARE**

- 7.1** Services provided by FDCE under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same locality.

## **8.0 USE OF DOCUMENTS**

- 8.1** All reports, plans, specifications, field data, and notes and other documents on electronic media prepared or furnished by FDCE under this Agreement are instruments of service in respect to these Projects, and FDCE shall retain ownership and property interest therein (including the copyright and the right of reuse at the discretion of FDCE) whether or not the Projects are completed. Client shall not rely in any way on any Document unless it is in printed form, signed or sealed by FDCE or one of its Consultants.



- 8.2** A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies control.
- 8.3** Because data stored on electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the sixty (60) day acceptance period will be corrected by the party delivering the electronic files.
- 8.4** When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator. If any information is provided in electronic format, Client recognizes that such plans, documents or other information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") are subject to undetectable alterations, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the electronic documents are provided to Client for informational purposes only and not as record documents. All documents transferred electronically from FDCE to Client shall be in .pdf format.
- 8.5** Client may make and retain copies of Documents for information and reference in connection with use on the Projects by Client. FDCE grants Client a license to use the Documents on the Projects, extensions of the Projects, and other Projects of Client, subject to the following limitations: (1) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Projects unless completed by FDCE, or for use by Client or others on extensions of the Projects or on any other project without written verification or adaptation by FDCE; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by FDCE, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to FDCE or to FDCE's Consultants; (3) Client shall indemnify and hold harmless FDCE and FDCE's Consultants from any claims, damages, losses, expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification, completion, or adaptation by Client; (4) such limited license to Client shall not create any rights in third parties.
- 8.6** If FDCE at Client's request verifies or adapts the Documents for extensions of the Projects or for any other project, the Client shall compensate FDCE at rates or in an amount to be agreed upon by Client and FDCE.



## 9.0 OPINIONS OF PROBABLE COST

9.1 Since FDCE has no control over cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, opinions of probable project cost and construction cost provided for herein are to be made on the basis of our experience and qualifications and represents our best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but FDCE cannot and does not guarantee nor make warranty, expressed or implied, that proposals, bids, or actual project or construction cost will not vary from opinions of probable cost prepared by us. Similarly, since FDCE has no control over building operations and/or maintenance costs, FDCE cannot and does not guarantee that the actual building or maintenance costs will not vary from any estimates given by FDCE.

## 10.0 CERTIFICATIONS

10.1 Client shall not request certifications and/or affidavits that would require knowledge or services beyond the scope of this Agreement and/or beyond the professional qualifications and engineering expertise of FDCE. FDCE shall not be required to sign any documents, no matter by whom requested, that would result in FDCE having to certify, guaranty or warrant the existence of conditions whose existence FDCE cannot ascertain. Any certification provided by FDCE shall be so provide based on FDCE's knowledge, information and belief subject to the preceding sentence, and shall be given in FDCE's professional opinion consistent with the Standard of Care. FDCE shall be compensated for any work necessary to verify project compliance with regulatory standards of such certification.

10.2 The proposed language of such certificates, affidavits or certifications requested of FDCE or FDCE's consultants shall be submitted to FDCE for review and approval at least fourteen (14) days prior to expected execution.

## 11.0 LIMITATION OF LIABILITY

11.1 To the maximum extent permitted by law, Client agrees to limit FDCE's liability to Client for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of FDCE's performance of services, such that the total aggregate liability of FDCE for any and all claims and/or damages of any nature whatsoever, arising out of the performance of FDCE's services on the Projects, shall not exceed \$50,000 or FDCE's total fee for services rendered on the Projects, whichever is greater.

11.2 Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any special, indirect, incidental, loss of use, or consequential damages incurred do to the fault of the other party, regardless of the nature of this fault or whether it was committed by Client or FDCE, their employees, agents, subconsultants or subcontractors.



## 12.0 INDEMNIFICATION

- 12.1** FDCE agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by FDCE's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom FDCE is legally liable.
- 12.2** Paragraph 12.2 omitted from this Agreement.
- 12.3** The party seeking indemnification must notify the other party immediately of any lawsuits, claims, or demands for which the party seeking indemnity is allegedly responsible, and shall give that other party the opportunity to arrange and direct the defense of the case and provide all necessary information and assistance for such defense.
- 12.4** Neither the Client nor FDCE shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- 12.5** Neither the Client nor FDCE shall be obligated to indemnify the other party in any manner whatsoever for any consequential, incidental, loss of use, indirect, or special damages arising out of this Agreement.
- 12.6** This Section 12 shall survive the termination of this Agreement.

## 13.0 DISPUTE RESOLUTION

- 13.1** When a party identifies a dispute arising out of or relating to this Agreement, that party shall make the dispute known to the other party. Any such dispute, including any disputes under termination, shall first be negotiated by the parties to achieve resolution. If negotiation by the parties is not successful, either party may give Notice of Dispute to the other party stating the nature of the dispute and the corrective action necessary to remedy the dispute.
- 13.2** After Notice of Dispute has been given, the parties shall first attempt to resolve the dispute by mediation. The parties shall agree on a mediator who shall be an attorney licensed to practice law in Ohio, has experience in commercial transactions such as this Agreement, and is a trained and experienced mediator. Mediation shall be conducted in Medina, Ohio. Each party shall pay its own attorneys' fees, and mediation costs shall be divided equally between the parties.
- 13.3** If the dispute has not been resolved by mediation within 90 days after Notice of Dispute, or if the parties are unable to agree on a mediator within 30 days of Notice of Dispute, then the dispute shall be resolved by binding arbitration, and judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The parties shall agree on an arbitrator who shall be an attorney licensed to practice law in Ohio, has experience in commercial transactions such as this Agreement, and is an experienced arbitrator. The arbitrator shall be bound by and



follow the substantive law of Ohio. The arbitrator shall render a decision within 30 days of the arbitration hearing. Arbitration shall be conducted in Medina, Ohio.

**13.4** The parties further agree to include a similar alternative dispute resolution clause 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 alternative dispute resolution clause in all agreements with subcontractors, subconsultants, suppliers, or fabricators so retained, thereby providing for mediation and arbitration as the exclusive methods for dispute resolution between the parties to those agreements.

**13.5** Any deadline in this Section 13 may be extended by mutual agreement of the parties. Anything else in this provision notwithstanding, if either party at any time believes that there is the need to maintain the status quo pending resolution by one or more of the methods set forth in this Section 13, that party may seek a temporary restraining order, preliminary injunction, or other equitable relief from any court of competent jurisdiction.

## **14.0 TERMINATION**

**14.1** Either Client or FDCE may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay FDCE for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

## **15.0 TITLES**

**15.1** The titles in this Agreement are for general reference only and are not part of the Agreement.

## **16.0 GOVERNING LAW**

**16.1** The laws of the State of Ohio will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be resolved in the courts of the State of Ohio.

## **17.0 INTEGRATION**

**17.1** This Agreement comprises the final and complete agreement between Client and FDCE. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement, except as otherwise provided herein, shall not be binding unless made in writing and signed by both Client and FDCE.



## **18.0 SEVERABILITY AND SURVIVAL**

- 18.1** Any provisions of this Agreement later to be held unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and FDCE shall survive the completion of the services hereunder and the termination of this Agreement.

## **19.0 THIRD-PARTY BENEFICIARIES**

- 19.1** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or FDCE. FDCE's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against FDCE because of this Agreement or the performance or nonperformance of services hereunder. The Client and FDCE agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

## **20.0 HAZARDOUS MATERIALS**

- 20.1** The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless FDCE, its officers, partners, employees and subconsultants (collectively, FDCE) 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, regulatory or any other cause of action, except for the sole negligence or willful misconduct of FDCE.

## **21.0 ENTIRE AGREEMENT**

- 21.1** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no verbal understandings, statements, or stipulations bearing upon the meaning or effect of this Agreement. This Agreement may only be modified or amended by written instrument executed by both parties, except as may be otherwise provided herein.

(END)