

For the following contract, please make sure the documents to be included in Exhibit A do not contain a *Limitation in Liability* clause. If they do, please negotiate that limitation (in writing) to be no less than the liability insurance requirements. Please contact the Property Management Office with questions.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into as of _____, 20__ (“Effective Date”), by and between:

_____ (“Consultant”), and
_____ (“Owner”).

The parties hereto agree as follows:

1. SCOPE OF WORK

1.1. In connection with _____ (the “Project”), Consultant and Owner will develop and enter into one or more Statements of Work incorporating a description of the professional services requested by Owner (each, and as modified by the parties from time to time, an “SOW”). Each SOW will set forth project scope, schedule, project activities and tasks, payment terms, Consultant personnel to be dedicated to the Work and roles and responsibilities of the parties. Consultant will provide the professional services described in each SOW (the “Work”). To the extent there are any conflicts between this Agreement and any SOW, the provisions of this Agreement shall control. The initial SOW is attached hereto as Exhibit A.

1.2. Owner shall have the right to review, evaluate and/or test any Work provided by Consultant to determine whether or not such Work conforms with the applicable SOW or this Agreement in all material respects. If Owner determines that any such Work fails to conform in any material respect, then the provisions of Section 5.2 shall apply.

1.3. The contract documents on which the agreement between Owner and Consultant is based, consist of this Agreement, Exhibit A, and any subsequent SOW signed by Owner and Consultant.

2. COMPENSATION

2.1. Owner shall pay Consultant the fees and other compensation set forth in each SOW as full compensation for the Work provided thereunder. Consultant shall invoice Owner as set forth in the SOW. Each invoice shall itemize fees and expenses by specific Work and any sales, use or excise taxes required to be collected or paid by Consultant.

2.2. All invoices shall be payable within the period set forth in the applicable SOW. If the Owner should dispute the nature or basis of any charges contained in any invoice, the Owner shall provide written notice to Consultant setting forth the reason for the dispute, after which the parties shall attempt to reach a resolution in good faith in accordance with Section 13.1 hereof.

2.3. If any SOW provides for reimbursement of “out-of-pocket” expenses of Consultant, the nature and approximate amount of such expenses must be

approved in advance by the Owner in writing. The term “out-of-pocket” expenses includes reasonable and verifiable coach class travel, hotel accommodations and meal expenses, which Consultant incurs and are directly related to the Work. The cost of any subcontractors or supplementary providers employed by Consultant shall not be an out-of-pocket expense; and Consultant shall be solely responsible for such expense. Each invoice shall include copies of receipts for all out-of-pocket expenses reflected therein. All such expenses shall be reimbursed at cost, without mark-up.

3. TERM AND TERMINATION

3.1. This Agreement shall be effective on the date hereof and shall remain in effect until terminated as provided herein.

3.2. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party; provided, however, that any such termination shall not affect the obligations of either party pursuant to any then existing SOW (including but not limited to reimbursement of out-of-pocket expenses and other prepaid expenses), which shall continue until fully performed by both parties as if this Agreement had not been terminated; and provided further, however, that the Owner shall have the right at any time to (a) terminate any request for services on any specific item of Work by providing Consultant with fifteen (15) days prior written notice, and (b) terminate this Agreement or any SOW immediately for (i) Consultant’s refusal or inability to perform the Work, (ii) Consultant’s breach of any provision of this Agreement, (iii) Consultant’s failure to perform the Work satisfactorily or (iv) a Change of Control of Consultant; and provided further, however, that the Consultant shall have the right at any time to terminate this Agreement or any SOW immediately for Owner’s breach of any provision of this Agreement. For purposes of this Section 3, the term “Change of Control” means any transaction resulting in the sale of (i) all or substantially all of the assets of Consultant or (ii) beneficial ownership, direct or indirect, of capital stock representing 50% or more of the number of votes that may be cast to elect directors.

3.3. Upon a termination of this Agreement by the Owner, the Owner agrees to pay Consultant for services rendered and expenses incurred hereunder which have not been previously paid by the Owner for the period up to the date of termination and, without limiting Section 9, Consultant agrees to deliver or perform any Work, including any Materials, through the date of termination, whether fully or partially complete, provided payment therefor has been made in accordance with this Section 3.3. Without limiting the foregoing, in the event of a termination of this Agreement, Consultant will (a) transfer and assign to Owner all property and Materials in Consultant’s possession or control paid for by Owner, and (b) cause to be assigned to Owner, or its designee, any contractual rights with third parties relating to the Work and to the extent assignable.

4. DUTIES OF CONSULTANT

4.1. Consultant agrees that the Work performed by it and its employees, agents and subcontractors shall be performed (a) in accordance with this Agreement, and any applicable SOW; (b) in accordance with all reasonable rules which

Owner may impose, including all such rules which Owner may impose upon its own employees provided Consultant has been provided with a copy of such rules and regulations in advance of executing any SOW; (c) so as not to unreasonably disrupt the Owner's systems or operations or the duties of Owner employees. Except as otherwise expressly provided in an SOW, Consultant shall furnish all required labor, tools, equipment, material, parts, transportation and supervision necessary to perform the Work. Consultant shall collect and pay all Federal, state and local sales, use, excise and similar taxes attributable to the Work. Upon the Owner's request, Consultant shall furnish the Owner with copies of its receipts for such tax payments and copies of such licenses and permits. Consultant shall maintain records of its payment of such taxes throughout the term hereof and for a period of three (3) years following the termination of this Agreement.

4.2 Consultant shall perform all Work pursuant to this Agreement in accordance with current, accepted professional standards and the same degree of skill and care, as ordinarily exercised by professional _____ in the county where the Project is located, for projects of the size, complexity, schedule and other characteristics of the Project ("Standard of Care").

5. REPRESENTATIONS AND WARRANTIES; NON-CONFORMING WORK

5.1. Consultant represents and warrants to the Owner that:

(a) Consultant has full right, power and authority to enter into this Agreement;

(b) Consultant's execution and performance of this Agreement and the performance or provision of Work hereunder, will not (i) violate or infringe upon the rights of any third party or (ii) conflict with or violate any agreement Consultant has with any other person or entity; and

(c) all of the Work to be provided or performed hereunder: (i) conforms and will conform to the overall description, features and specifications set forth in the applicable SOW and all of the other documentation provided pursuant to this Agreement; and (ii) is and will be provided or performed properly, in accordance with the Standard of Care.

5.2. In the event of the failure of any Work to comply with the covenants or warranties set forth in this Agreement, Consultant shall, in a timely manner and without charge to Owner, correct such failure upon written notification thereof by Owner to Consultant in sufficient detail to allow Consultant to correct such failure or re-perform such Work. Owner may withhold payment for any non-conforming or non-compliant Work until Consultant has corrected such failure or re-performed such work, and the parties agree that payment of any invoice shall not be deemed acceptance of any Work. If Consultant is unable to correct such failure or fails to re-perform the Work, as applicable, after reasonable opportunity, Consultant shall refund the fees paid by Owner to Consultant hereunder in connection with the applicable Work, and Owner may terminate the applicable SOW and/or

this Agreement, and may pursue any other remedies which are provided for in the SOW or available to it at law or in equity.

6. INSURANCE

6.1. Consultant shall carry and maintain at all times while Work is being performed pursuant to this Agreement, commercial general liability insurance covering bodily injury or death, property damage and advertising injury on an "occurrence" basis. This coverage shall include contractual liability insurance for the indemnity provided under this Agreement. Coverage shall include explosion, collapse, and underground hazards, and shall be for not less than the following amounts:

- (a) Each Occurrence: \$1,000,000.00
- (b) General Aggregate: \$2,000,000.00

The commercial general liability insurance shall identify as additional insureds (i) the Archdiocese of Cincinnati, (ii) Dennis M. Schnurr, Archbishop of Cincinnati, and his successors, and (iii) Owner, for claims which may arise or result from Consultant's operations, whether such operations be by Consultant or by any subcontractor retained by Consultant or anyone directly or indirectly employed or supervised by either of them.

6.2. Consultant shall make required contributions and maintain insurance in compliance with all applicable laws, ordinances, rules, regulations and orders of any public authority regulating worker's compensation, old age benefits, state and federal unemployment compensation and all other employee benefit laws, ordinances, rules, regulations and orders of any public authority with respect to employees of Consultant and the employees of any subcontractor engaged by Consultant.

6.3. Consultant shall carry and maintain at all times during the term of this Agreement comprehensive automobile liability insurance (including hired and non-owned automobile liability) protecting against liability arising from bodily injury (including death) and property damage coverage with the same minimum limits as set forth in Section 6.1(a) and Section 6.1(b). The comprehensive automobile liability insurance shall name as additional insureds (i) the Archdiocese of Cincinnati, (ii) Dennis M. Schnurr, Archbishop of Cincinnati, and his successors, and (iii) Owner.

6.4. Consultant shall carry and maintain at all times during the term of this Agreement professional liability insurance coverage for the activities of the Consultant's professional staff with a limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate.

6.5. Any subcontractor engaged by Consultant shall be required to maintain the same insurance coverage as required of the Consultant pursuant to Section 6.1 through 6.4.

6.6. Owner may waive any provision of this Section 6 expressly in writing or in any SOW.

7. INDEMNIFICATION

7.1. Indemnity. Consultant hereby agrees to indemnify, defend and save and hold harmless (i) Owner; (ii) Dennis M. Schnurr, Archbishop of Cincinnati, and his successors (the “Archbishop”); (iii) the Archdiocese of Cincinnati; and (iv) any clergy, religious, lay employee, or lay volunteer and/or parishioner serving the Owner and/or the Archbishop and/or the Archdiocese of Cincinnati (collectively the “Indemnified Parties”) from and against any action, suit, claim, demand, loss, damage or expense (including but not limited to reasonable attorneys’ fees, expert witness fees and court costs) resulting from (a) sickness or injury to person or persons, or damage or loss of property caused in any manner by Consultant, its officers, agents, employees or subcontractors, or (b) a breach by Consultant of the representations, warranties or other terms of this Agreement. The obligations of Consultant set forth in this paragraph shall survive expiration or termination of the Agreement.

8. CONFIDENTIALITY

8.1. The Owner may disclose to Consultant or its personnel information that is confidential or proprietary to the Owner and/or one or more of its Affiliates (“Confidential Information”). Confidential Information includes information and Materials related to the business, affairs and/or procedures of the Owner, or to the designs, programs, flowcharts and documentation of the Owner’s information technology, whether or not owned by the Owner. Confidential Information does not include any information that is: (a) in or enters into the public domain through no wrongful act of Consultant; (b) rightfully received from a third party without restriction and without breach of this Agreement; (c) approved for release by written authorization of the Owner; or (d) already in Consultant’s possession as evidenced by its records and is not the subject of a separate nondisclosure agreement.

8.2. Consultant will not, and will cause each of its employees, agents, subcontractors and Affiliates not to, either during or after the term of this Agreement: (a) disclose any Confidential Information to any third party (except as required by applicable law, regulation or legal process, but only after compliance with this Section 8.2) or to any employee, agent, subcontractor or Affiliate of Consultant other than on a “need to know” basis; or (b) use Confidential Information for its own advantage, other than in the performance of this Agreement. Consultant will hold in confidence the Confidential Information and will use Confidential Information solely to provide the Work. Consultant will take all reasonable precautions necessary to safeguard the Owner’s property, including Confidential Information, that is within Consultant’s control or knowledge. Upon the Owner’s request, Consultant will return all Confidential Information. In the event that Consultant or any of its employees, agents, subcontractors or Affiliates is required by applicable law, regulation or legal process to disclose any Confidential Information, Consultant will (a) notify Owner immediately so that Owner may seek a protective order or

other appropriate remedy and (b) exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information.

8.3. Consultant agrees not to disclose to any third party the nature or content of the Work which Consultant performs for the Owner pursuant to this Agreement.

9. OWNERSHIP OF MATERIALS

9.1. Except as otherwise provided in the SOW, Consultant acknowledges and agrees that all original materials produced by Consultant pursuant to this Agreement, whether in finished or incomplete form, including all software, computer programs, and print and audio-visual materials such as design, photographs, lay-outs and art work (the "Materials") are works-made-for-hire and shall belong exclusively to the Owner. The Consultant hereby irrevocably assigns all copyrights and any other intellectual property or proprietary rights in such Materials to the Owner. No rights are reserved to the Consultant.

9.2. Consultant agrees not to install or use any proprietary software of a third party on the Owner's computer system, premises or other tangible property unless Consultant has obtained, in writing, the software owner's permission or license to do so and the Owner's written agreement to do so.

10. NON-SOLICITATION

10.1. The Owner and Consultant mutually agree to refrain from hiring or soliciting for hire any employee or personnel of the other who is assigned to the Work during the term of this Agreement and for a period of one (1) year from the termination hereof.

10.2. Consultant also agrees that during the term of this Agreement neither Consultant nor any entity or other person affiliated with Consultant shall, directly or indirectly, induce or permit, any employee of the Owner to perform services of any kind for Consultant, or any such entity or other person (whether during such employee's normal working hours or otherwise), for which such employee is compensated in any manner by Consultant, or such entity or other person.

11. RELATIONSHIP OF THE PARTIES

11.1. The Owner and Consultant acknowledge and agree that nothing herein contained is intended to constitute them as employer/employee, joint venturers or partners, it being their intention that Consultant is an independent Consultant. The Owner and Consultant acknowledge and agree that the personnel employed by Consultant in performing the Work shall remain at all times employees of Consultant, and Consultant shall remain solely liable for all aspects of the employment of such persons including, recruitment, termination, training, promotion, compensation, benefits, F.I.C.A., payroll taxes and all other deductions or payments to be made by employers for or on behalf of employees.

12. USE OF NAME

12.1. Consultant shall not use the name, trade name, service marks, trademarks, trade, dress or logos of the Owner (or any of its Affiliates) in publicity releases, advertising or any other publication without the Owner's prior written consent.

13. GENERAL

13.1. Dispute Resolution. With respect to any dispute involving the interpretation or application of this Agreement, prior to instituting litigation the parties will use their reasonable best efforts to resolve such dispute. If the parties cannot resolve such dispute within thirty (30) days after one party notifies the other of an intent to sue, then either party shall be free to institute such litigation. All communications made in connection with the attempted resolution shall be treated as settlement negotiations and shall be inadmissible in any litigation or other proceeding.

13.2. Assignment. Consultant will not assign this Agreement, in whole or in part, without the Owner's prior written permission.

13.3. Certain Defined Terms. As used herein, (a) an "Affiliate" of a party means any person directly or indirectly controlling, controlled by or under common control with the applicable party to this Agreement, (b) a "Business Day" means any weekday on which the Owner is open for business at its principal offices and (c) the terms "includes", "included" or "including" shall be deemed to be followed by the words "without limitation."

13.4. Records. Consultant shall make available to the Owner all Owner related contracts, files and records (except for files relating to Consultant's internal administration of the account), upon reasonable notice during regular business hours. This obligation shall extend for one (1) year after termination or expiration of this Agreement.

13.5. Entire Agreement; Amendments. The provisions, terms and conditions of this Agreement (including its schedules) represent the entire agreement of the parties with regard to the subject matter of this Agreement and supersede any prior oral or written matter not included herein. No waiver, modification, change or amendment of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom such claimed waiver, modification, change or amendment is sought to be enforced.

13.6. Notices. All requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given (a) when received, if delivered in person, or (b) when sent, if sent by facsimile with receipt confirmed, or (c) three (3) Business Days following the mailing thereof, if mailed by certified first class mail, postage prepaid, return receipt requested, in any such case as follows:

if to the Owner:

if to the Consultant:

13.7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Owner and Consultant, their respective successors and assigns; provided, however, that Consultant may not transfer or assign its rights or obligations under this Agreement without the prior written consent of the Owner.

13.8. Governing Law; Forum. This Agreement is to be construed and determined under the laws of the State of Ohio, without giving effect to the conflict of laws principles thereof.

13.9. Headings. The headings of this Agreement are inserted merely for convenience and ease of reference and shall not affect or modify the meaning of any of the terms, covenants or conditions of this Agreement.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Owner

Consultant

Signature

Signature

Name

Name

Title

Title

Date

Date

Exhibit A

Statement of Work

[see attached and/or below]