

RESOLUTION NO. 2023-71
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY RESOLUTION
AUTHORIZING THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO AN AGREEMENT WITH
GALLAGER ARCHITECTS, INC.
FOR BACK-UP BUILDING CODE REVIEW AND PLANS EXAMINATION SERVICES
ON AN HOURLY FEE BASIS**

WHEREAS, the Village's Building Department is required to have in place certain personnel and back-up personnel for building code review and plans examination services; and

WHEREAS, CT Consultants has provided those services to the Village by and through William G. Gallagher, A.I.A. who holds a Masters Plans Examiner Certificate No. 509; and

WHEREAS, William G. Gallagher wishes to continue to provide such services to the Village but through, Gallagher Architects, Inc.; and

WHEREAS, the Village wishes to enter into an agreement on an hourly basis for back-up building code review and plans examination services with Gallagher Architects, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF MAYFIELD VILLAGE THAT:

SECTION 1. The Council of Mayfield Village hereby authorizes and directs the Mayor and President of Council to enter into an agreement with Gallagher Architects, Inc. for building code review and plans examination back-up services, on an hourly basis, in accordance with the terms and conditions set forth in the Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 2. The Council finds and determines that all formal actions of the Council relating to the adoption of this Resolution have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary to provide building code review and plans examination back-up services so they may continue uninterrupted in compliance with the Ohio Building Code and appropriate certification of the Village's Building Department. It shall, therefore, take effect immediately

upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

STEPHEN SCHUTT
Council President

First Reading: _____, 2023

Second Reading: _____, 2023

Third Reading: _____, 2023

PASSED: _____, 2023

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

DIANE A. CALTA
Director of Law

ATTEST: _____
MARY E. BETSA, MMC
Clerk of Council

EXHIBIT A

November 28, 2023

Mr. Daniel T. Russell
Building Official
Mayfield Village
6622 Wilson Mills Road
Mayfield Village, Ohio 44143

**Re: *Mayfield Village Proposal for
Building Department Plans Examination Services***

Dear Mr. Russell:

Gallagher Architects, Inc. (GA) is pleased to submit this proposal for Building Department Services to Mayfield Village, in accordance with the terms and conditions set herein.

SCOPE OF SERVICES

GA will provide Master Plans Examination services include performing reviews for Architectural, Structural, Mechanical, Plumbing, Electrical, and Fire Alarm as required by the State of Ohio. Building Code items may include the following:

- Ohio Building Code
- Ohio Mechanical Code
- Ohio Plumbing Code
- National Electrical Code
- NFPA Fire Protection Systems

The Client hereby agrees to provide the following:

1. Designate a person to function as the Client's representative with respect to the services to be rendered under this Agreement who shall have complete authority to transmit instructions, receive information, interpret, and define the City's policies and decisions with respect to the services for the project.

FEE AND BILLING

Work will be performed by William G. Gallagher, AIA NCARB, Building Official and Master Plans Examiner Certificate No. 509. Billing rates for Master Plans Examination services are \$200/hour.

We will accomplish the work outlined in our Scope of Services on an hourly basis. Invoices will be submitted monthly based on that portion of work completed during the month. Invoices are due upon receipt and past due 30-days after receipt. These services and rates are valid through December 31, 2024. This Agreement may be extended one (1) year, if agreed to by both parties.

November 28, 2023
Mr. Daniel T. Russell
Mayfield Village
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CLOSURE

If you concur with these terms and wish to proceed with the aforementioned work, please sign and return one (1) copy of this Agreement along with the Standard Terms and Conditions. Upon receipt of this Agreement, GA can proceed with the work.

If you have any additional questions, please do hesitate to contact us. We at Gallagher Architects look forward to the opportunity to provide professional services to you and Mayfield Village.

Respectfully,

GALLAGHER ARCHITECTS, INC.



William G. Gallagher, AIA NCARB
President

ACCEPTED BY:

Mayfield Village

Date

Witness

Date

Enclosure

WGG:wgg

C:\Users\Gallaghe\AppData\Desktop\Filesfromoldpc\CT\My Documents\COVID Projects At Home\GAI\Proposals\2311(Mayfield Village_Bldg_Dept)Wgg.Docx

**GALLAGHER ARCHITECTS
STANDARD TERMS & CONDITIONS**

The following conditions and provisions define the basic terms relating to the services and compensation agreed to and as outlined on the attached Scope of Services; Letter Agreement; and/or, Work Authorization.

OWNER: Mayfield Village

ARCHITECT: Gallagher Architects, Inc.

AGREEMENT DATE: November 28, 2023

INITIAL: _____

ARTICLE 1 - SERVICES OF ARCHITECT

1.01 Scope

A. ARCHITECT shall provide all Services set forth herein and upon this Agreement becoming effective, ARCHITECT is authorized to begin unless otherwise stipulated to by the OWNER.

ARTICLE 2 - TIMES FOR RENDERING SERVICES

2.01 General

A. ARCHITECT's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ARCHITECT's obligation to render services hereunder will be for a period which may be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ARCHITECT's, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ARCHITECT's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

ARTICLE 2 - PAYMENTS TO ARCHITECT

2.01 Methods of Payment for Services and Reimbursable Expenses of ARCHITECT

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ARCHITECT's standard invoicing practices and will be submitted monthly to OWNER by ARCHITECT, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in the Agreement including additional services and reimbursable costs, if any.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ARCHITECT for services and expenses within 30 days after receipt of ARCHITECT's invoice therefor, the amounts due ARCHITECT will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ARCHITECT may, after giving seven days written notice to OWNER, suspend services under this Agreement until ARCHITECT has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

Payments Upon Termination.

1. In the event of any termination, ARCHITECT will be entitled to invoice OWNER and will be paid for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

~~2. In the event of termination by OWNER for convenience or by ARCHITECT for cause, ARCHITECT, in addition to invoicing for those items identified in paragraph 2.01, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ARCHITECT's Consultants, and other related close-out costs, using normal methods and rates.~~ **WEP / EEP**

ARTICLE 3 - GENERAL CONSIDERATIONS

3.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ARCHITECT under this Agreement will be the care and skill ordinarily used by members of ARCHITECT's profession practicing under similar circumstances at the same time and in the same locality. ARCHITECT makes no warranties, express or implied, under this Agreement or otherwise, in connection with ARCHITECT's services.

B. ARCHITECT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ARCHITECT shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ARCHITECT shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ARCHITECT shall serve as OWNER's prime professional for the Project. ARCHITECT may employ such ARCHITECT's Consultants as ARCHITECT deems necessary to assist in the performance or furnishing of the services. ARCHITECT shall not be required to employ any ARCHITECT's Consultant unacceptable to ARCHITECT.

D. ARCHITECT and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ARCHITECT's scope of services, times of performance, or compensation.

E. OWNER shall make decisions and fulfill its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ARCHITECT.

G. ARCHITECT shall not be required to sign any documents, no matter by whom requested, that would result in the ARCHITECT's having to certify, guarantee or warrant the existence of conditions whose existence the ARCHITECT cannot ascertain. OWNER agrees not to make resolution of any dispute with the ARCHITECT or payment of any amount due to the ARCHITECT in any way contingent upon the ARCHITECT's signing any such certification.

H. ARCHITECT shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees

or any other persons (except ARCHITECT's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ARCHITECT.

3.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ARCHITECT and OWNER shall designate specific individuals to function as ARCHITECT's and OWNER's representatives with respect to the services to be performed or furnished by ARCHITECT and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

3.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ARCHITECT shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ARCHITECT) whether or not the Project is completed.

B. Because data stored in 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 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ARCHITECT shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

C. When transferring documents in electronic media format, ARCHITECT makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ARCHITECT at the beginning of this Project.

D. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ARCHITECT, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ARCHITECT or to ARCHITECT's Consultants. OWNER shall indemnify and hold harmless ARCHITECT and ARCHITECT's Consultants from all claims, damages,

losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ARCHITECT to further compensation at rates to be agreed upon by OWNER and ARCHITECT.

3.04 Insurance

A. The ARCHITECT shall maintain the following insurance:

1. Workmen's Compensation
2. Employer's Liability Insurance
3. General Liability Insurance
4. Automobile Liability Insurance

B. OWNER shall maintain similar insurance and shall cause ARCHITECT and ARCHITECT's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER, which are applicable to the Project.

C. If requested, OWNER and ARCHITECT shall each deliver to the other certificates of insurance evidencing the coverage's indicated. Such certificates shall be furnished prior to commencement of ARCHITECT's services and at renewals thereafter during the life of the Agreement.

D. All policies of property insurance shall contain provisions to the effect that ARCHITECT's and ARCHITECT's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

E. At any time, OWNER may request that ARCHITECT, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified. If so requested by OWNER, with the concurrence of ARCHITECT, and if commercially available, ARCHITECT shall obtain and shall require ARCHITECT's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and the agreed to fee shall be supplemented to incorporate these requirements.

3.05 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ARCHITECT:

1) Upon seven days written notice if ARCHITECT believes that ARCHITECT is being requested by OWNER to furnish or perform services contrary to ARCHITECT's responsibilities as a licensed professional: or

2) ARCHITECT shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ARCHITECT.

B. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ARCHITECT to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

3.06 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

3.07 Successors, Assigns, and Beneficiaries

A. OWNER and ARCHITECT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ARCHITECT (and to the extent permitted by paragraph 3.07.B the assigns of OWNER and ARCHITECT) are hereby bound to the other

party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ARCHITECT may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ARCHITECT to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ARCHITECT and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph shall appear in any Contract Documents.

3.08 Dispute Resolution

A. OWNER and ARCHITECT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their right to arbitrate, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

3.9 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ARCHITECT shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ARCHITECT or ARCHITECT's officers, directors, partners, employees, and ARCHITECT's Consultants in the performance and furnishing of ARCHITECT's services under this Agreement.

~~2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ARCHITECT, ARCHITECT's officers, directors, partners, employees, and ARCHITECT's Consultants from and against any and all costs, losses, and damages (including but not limited to all and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.~~ WEP / ELES

3. To the fullest extent permitted by law, ARCHITECT's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ARCHITECT and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ARCHITECT's negligence bears to the total negligence of OWNER, ARCHITECT, and all other negligent entities and individuals and in no case shall this liability exceed the maximum fee amount.

3.10 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

3.11 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

3.12 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ARCHITECT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.