

P. 7-0

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adopted 11-28-2022

RESOLUTION NO.: 37-2022

SPONSORED BY: MAYOR MATTHEW A. BURKE

Co-Sponsor: All of Council

A RESOLUTION AUTHORIZING THE CITY OF GARFIELD HEIGHTS TO BECOME A POWER A CLEAN FUTURE OHIO COMMUNITY

WHEREAS, Power a Clean Future Ohio is an expansive, diverse coalition engaging with cities and local governments across the state of Ohio to build a clean future for our communities, and empower local leaders with tools and resources to create carbon reduction plans and implement them in ways that are achievable, measurable, equitable, and economical; and

WHEREAS, steps taken toward carbon emissions also aim to improve community quality of life, building community capital and increasing government efficiency, accountability and transparency; and

WHEREAS, local governments have the unique opportunity to achieve both energy use and carbon emission reductions and cost savings through building and facility management, land use and transportation planning, and through economic and community development; and

WHEREAS, efforts to address energy and climate issues provide an opportunity to move toward energy self-reliance and greater community resiliency and quality of life, provide environmentally healthy and cheaper-to-operate public buildings, encourage new economic development and local jobs, and support local renewable energy production; and

WHEREAS, uncertainty in energy prices and the transition away from fossil fuel energy sources present new challenges and opportunities to both the City of Garfield Heights and to the economic health of its citizens and businesses; and

WHEREAS, climate changes have been observed in Ohio and have the potential to negatively impact local, regional and state economies, infrastructure development, habitat, ecological communities (including native fish and wildlife populations), as well as spread invasive species and exotic diseases, reduce drinking water supplies and recreational opportunities, and pose flooding, drought and health threats to our citizens; and

WHEREAS, Power a Clean Future Ohio assists in facilitating technical assistance for the implementation of these carbon reduction policies; and

WHEREAS, the Power a Clean Future Ohio provides cost-effective sustainable development policies in the following four categories: (1) Renewable Energy; (2) Energy Efficiency; (3) Transportation Electrification; and (4) Land Use.

NOW, THEREFORE, BE IT RESOLVED by the Council of Garfield Heights, Cuyahoga County, State of Ohio, that:

SECTION 1. City Council does hereby authorize the City of Garfield Heights to participate in Power a Clean Future Ohio that offers a free, voluntary continuous improvement framework recognize Garfield Heights as a Power a Clean Future Community.

SECTION 2. Garfield Heights hereby commits to a goal of developing a comprehensive plan over Fiscal Years 2023 and 2024 to identify variables driving the City of Garfield Heights' actual reduction of Greenhouse Gas Emissions by 8.65% from 2010 to 2019, and building on them as related to renewable energy, energy efficiency, Electronic Vehicle Corridor Designations and land use.

SECTION 3. Garfield Heights will prioritize the lowest cost measures identified in the plan to meet energy needs to be mindful of the use of taxpayer dollars and any impact of consumers' personal expenses.

SECTION 4. Garfield Heights appoints Janice Tubbs to serve as the City's PCFO coordinator for implementation.

SECTION 5. Garfield Heights will facilitate the involvement of community members in an equitable way and other units of government as appropriate in the planning, promoting and/or implementing of PCFO policies.

SECTION 6. Garfield Heights will provide feedback once a year on how well PCFO is serving the city and on city needs from the program.

SECTION 7. Garfield Heights will claim credit for having implemented and will work at its own pace toward identifying policies from the PCFO policy categories designed to result in carbon emission reductions, cost savings, and quality of life improvement.

SECTION 8. This Resolution shall be in full force and effect from and after the earliest period allowed by law.

PASSED: 11-28-2022

APPROVED: 
MAYOR


PRESIDENT OF COUNCIL

ATTEST: 
CLERK OF COUNCIL

EFFECTIVE DATE: 12-28-2022

P. 7-0
eff. 11-28-2022
adopted - 11-28-2022

ORDINANCE NO.: 104-2022

SPONSORED BY:

Co-Sponsor

MAYOR MATTHEW A. BURKE

Clinn Vaughn

AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AGREEMENT WITH OHM ADVISORS TO PROVIDE ENGINEERING SERVICES TO THE CITY OF GARFIELD HEIGHTS FOR 2023 AND 2024

WHEREAS, the City Council of the City of Garfield Heights has deemed it to in the best interest of the City to enter into an agreement with OHM Advisors to provide engineering services to the City of Garfield Heights for 2023 and 2024.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GARFIELD HEIGHTS, OHIO, THAT:

SECTION 1. The Mayor be and he is hereby authorized and directed to enter into an agreement with OHM Advisors to provide engineering services to the City of Garfield Heights for 2023 and 2024 delineated in Exhibit A attached hereto and made a part hereof as if fully rewritten herein.

SECTION 2. The Finance Director is hereby authorized and directed to issue her vouchers of the City for the purposes stated in Section 1. hereof, said vouchers to be charged to the appropriate fund.

SECTION 3. Council declares this Ordinance to be an emergency measure necessary for the immediate preservation and protection of the public peace, health, safety, and general welfare of the inhabitants of the City of Garfield Heights and shall take effect and be in full force immediately upon its adoption by this Council and approval by the Mayor, otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 11-28-2022

APPROVED: Matthew A. Burke
MAYOR

Thomas J. Vaughn
PRESIDENT OF COUNCIL

ATTEST: Lottie Overby
CLERK OF COUNCIL

EFFECTIVE DATE: 11-28-2022

RE: City of Garfield Heights – Engineering Services

Contract: 2023 & 2024

Proposal # 22277

The following scope of services, price proposal, and schedule of services represent our understanding of the needs of the Municipality, based upon prior discussions, meetings, and/or additional information made available at the time of this proposal. We look forward to our role in your community.

Proposal Outline

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Identification

The parties of the Agreement shall be referred to within this document as follows:

- “Municipality” shall refer to the City of Garfield Heights, Cuyahoga County, Ohio
- “OHM” shall refer to Orchard, Hiltz & McCliment, Inc., dba OHM Advisors



Task #1 Municipal Engineering Services

- **Overview:**

- OHM will provide a Professional Engineer, registered in the State of Ohio, as well as an Engineering Rep. to the Municipality for the purposes of handling the City Engineer duties per City Ordinance and also in accordance with the Scope of Services and Fee for Services listed below.
 - OHM shall perform these services as a private Consultant.
 - OHM is not a “Public Official” or “Public Employee”, nor does OHM have any supervisory control over any Municipality staff.
 - OHM shall report directly to the Mayor, who will act in the role of Manager for OHM.

- **Scope of Services:**

- This includes all City Engineer duties as per City ordinance.
- This also includes all hours, duties, services, funding applications and/or reports listed in the Table on Page 3, which are marked with an “X”, denoting that those services are included in the price listed for Task #1 on the Fee Schedule.
- 12 hour per week (average) @ (50 weeks/year) is anticipated to provide these services.

- **Fee for Services:**

- OHM shall invoice monthly, in accordance with the Fee Schedule, for Task #1 services.
 - Fee shall be set for the entire calendar year of the contract and will not change, unless -
 - At the Municipality’s request, mutually agreed upon changes can be made to the fee and the scope of services for Task #1, by adjusting the services provided in Task #1 versus Task #2 in the Table on Page 3.

Task #2 General Engineering Services (GES) (As Authorized)

- **Overview:**

- This Task has been provided in the proposal to allow the Municipality flexibility in determining what services are included in Task #1 versus what services are included as optional services under Task #2.
 - As described above, those services marked with an “X” under Task #1 (see Table on Page 3) shall be included in the fee for services under Task #1 Municipal Engineering Services.
- Task #2, General Engineering Services (GES) allows the Municipality to contract with OHM for specific additional services, upon request of the Municipality.
- The Table on Page 3 is intended to provide a list of typical services that the Municipality may need from OHM. This is not intended to be an all-inclusive list, but rather a guide as to the type of services that OHM can provide, upon request, along with the approximate fee for that service.

- **Scope of Services:**

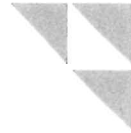
- At the request of the Municipality, OHM shall provide specific Task #2 services.
- OHM shall prepare a scope of services and fee for the specific work requested by Municipality.
- Upon authorization by the Municipality, OHM shall perform services in accordance with the scope, schedule, and budget proposed.

- **Fee for Services:**

- OHM shall invoice monthly, for work completed on GES Contracts.



| Task 1 (As Noted) | Task 2 (If Auth.) | Value (Approx.) | SCOPE OF SERVICES (For Task 1 & Task 2, As Marked with an "X") |
|----------------------|----------------------|-------------------------------------|--|
| X | | \$2,400 Per Month | Technical Advisor (24 Hours / Month) Provide technical support to the Mayor, Council, and Administration on all engineering-related issues involving Municipality. Provide a monthly report to the Mayor & Council Coordinate with County, Regional, State, and Federal Agencies on all engineering-related issues involving Municipality. |
| X | | \$2,400 Per Month | Office Hours at Municipality (24 Hours/Month) Coordinate with Municipality's Mayor, Administration, and Council Members on engineering-related topics pertinent to their department, ward, residents, etc. (hours will be performed on-site or City as applicable) Attend Council, Committee, Planning, Zoning, BZA, and other Special meetings, at the request of Municipality. |
| X | | \$400 Per Month | 5-year Capital Improvement Plan (CIP) Maintain a 5-Year CIP for Municipality-owned Infrastructure <ul style="list-style-type: none"> Develop Priority Levels, Sketches, Cost Estimates, & Funding Sources Coordinate with Funding Agencies regularly to support the CIP |
| X | | \$500 Per Month (Per App) | Funding Applications To support the goals of the Municipality's CIP, Apply for Grants & Low Interest loans from various County, State, Federal and Regional Agencies. <ul style="list-style-type: none"> Funding sources: CDBG, OPWC, ODNR, FEMA, EPA, OWDA, & ODOT This effort allows Municipality to leverage local funds 3 to 4 times. Includes Application, Research, Concept Plan, Cost Estimate, etc. |
| | X | \$TBD Per Month (Per App) | Some Funding Applications require Detailed Architectural Plans, Engineering Plans, Reports, and/or Certified Cost Estimates. The costs for these supporting documents can be significant. |
| | X | \$TBD | Pavement Condition Ratings (PCR) Maintain Pavement Condition Ratings of all streets in Municipality. <ul style="list-style-type: none"> This supports Capital Improvement Planning, Funding Efforts, and planning of Annual Paving Programs. Results can be tailored to fit GIS, Asset Management Plans, and Cost Estimating programs. |
| X | | \$400 Per Month | Annual Reports The following annual reports are required for the Municipality: <ul style="list-style-type: none"> EPA MS4 Storm Water Annual Report |
| | X | \$2,000 to \$10,000 Per Month | EPA MS4 Stormwater Management Program Assist the municipality with EPA MS4 best management practices (BMPs) to stay in compliance with the annual permit. <ul style="list-style-type: none"> Minimum Control Measures 1 thru 6 (as needed) |
| | X | TBD Per Request | Miscellaneous Services This allows Municipality to utilize OHM in a variety of situations: <ul style="list-style-type: none"> Mayor, Council, Department/Director Requests Emergency Infrastructure Issues, Flooding, Natural Disasters, etc. Specialty Design or Specialty Subconsultant hiring situations |
| N/A | N/A | TBD Per Request | Private Sector Plan & Construction Review Review plans and construction inspection for private sector developments within Municipality, in accordance with Local Ordinances. <ul style="list-style-type: none"> See Task #4 Private Sector Developments for details (Page 5). |



Task #3 Professional Services Contracts

- **Overview:**

- This task has been provided in the proposal to allow the Municipality to hire OHM under a separate contract, to provide Professional Services on public projects within the Municipality.
- The Municipality shall follow its own selection process to contract with OHM for these services, or, in the alternative, may follow the QBS process to determine if OHM is the most qualified, to perform professional services for the specified contract.

- **Scope of Services:**

- This Task covers Professional Services Contracts, such as:
 - Pre-Design Services (Survey, Environmental, Traffic, Geotechnical, Planning, etc.)
 - Reports & Studies (Flood Studies, Traffic Studies, Environmental Studies, etc.)
 - Architectural, Engineering, and Planning Design Services (Plans & Specifications)
 - Public Bidding & Award Services
 - Construction Administration, Management, Inspection & Testing (CA/CM/CI)
 - Criteria Engineer/Architect Services (per ORC 153.692)
 - GIS Services
- Typical Architectural, Engineering, and Planning Design Projects requiring Professional Services:
 - Streets, Waterlines, Sanitary Sewers, Storm Sewers, Bridges and Culverts
 - Downtown redevelopment, trails, parks, and recreation
 - Police, fire, and administrative/municipal buildings, and facilities
 - Other publicly owned infrastructure projects
- Professional Services Contracts shall have the following:
 - Detailed Scope of Services, Itemized Pricing, and Project Schedule
 - No work shall commence without written authorization to proceed by Municipality

- **Fee for Services:**

- OHM shall invoice monthly, for work completed on Professional Services Contracts.
- If changes in the Scope of Services for a project are made necessary, a revised price proposal and schedule shall be provided to Municipality for approval, prior to proceeding with the work.



Task #4 Private Sector Development

- **Overview:**

- This task has been provided in the proposal to allow the Municipality to hire OHM to perform plan review and construction inspection on private sector development projects within Municipality.
 - For Conflict of Interest reasons, OHM shall not perform services for private sector developments within Municipality.
- OHM will utilize the Professional Review Account (PRA) Program to provide professional services representation on behalf of Municipality, for Private Sector Development Projects.
- **Professional Review Account (PRA) Program Overview:**
 - OHM shall work with the Municipality to setup the PRA Account.
 - On behalf of the Municipality OHM shall:
 - Request an initial deposit to the PRA Account by the Developer/Owner/Representative
 - Request additional deposits to the PRA Account, throughout the duration of the project, as necessitated by project costs.
 - Grant no approvals until all requested deposits are made.
 - The cost of the PRA services shall be tracked and itemized for invoicing to Municipality.
 - Municipality shall pay OHM for such services via the PRA Account deposits.
 - In the event that Deposits are not received in a timely manner, Municipality and OHM shall work cooperatively to seek deposits via other means, including direct communications regarding past due deposits, stopping work on the project, collections, etc.

- **Scope of Services:**

- On behalf of the Municipality OHM shall:
 - Review construction plans, plats, easements, surveys, etc., required for the construction of new developments, utilities, building additions, etc.
 - Provide construction administration services, including pre-construction meetings, shop drawing review, progress meetings, punch-list items, etc.
 - Provide construction inspection and testing services to verify that the public infrastructure is being constructed to Municipality standards.
 - Coordinate with the bonding companies and financial institutions to guarantee the proper completion of all construction.

- **Fee for Services:**

- OHM shall invoice monthly, for work completed on Private Sector Development task(s).
- This deposit-based system (PRA) assures that the Developer/Owner/Representative pays in advance for all professional services reviews. Since all fees should be paid via the PRA Account, there should be no net cost to the Municipality.
- Fees to perform professional reviews and construction administration, management & inspection will be charged at OHM's standard hourly rates.



Fee Schedule

| <i>Task</i> | <i>Description</i> | <i>2023</i> | <i>2024</i> |
|----------------|--|--|--|
| <i>Task #1</i> | <i>Municipal Engineering Services</i> | <i>\$5,000 monthly \$60,000 annually</i> | <i>\$5,200 monthly \$62,400 annually</i> |
| <i>Task #2</i> | <i>General Engineering Services</i> | <i>Specific Contract for each Project (Separate Approval Required)</i> | |
| <i>Task #3</i> | <i>Professional Services Contracts</i> | <i>Specific Contract for each Project (Separate Approval Required)</i> | |
| <i>Task #4</i> | <i>Private Sector Developments</i> | <i>No Net Cost to Municipality (100% Developer Cost)</i> | |

Executive Summary of Tasks:

Task #1: This includes the City Engineer role, as outlined in City Ordinance, and the scope of services outlined in this proposal.

Task #2: This includes those small tasks and small projects (under \$50k) that OHM, with its intimate knowledge of the City and its infrastructure, can perform more efficiently and cost effectively than others, and therefore is to the benefit of the City from the standpoint of cost savings and timely response.

Task #3: This includes the ability for the City to hire OHM for the purposes of Planning, Design, and/or Construction Engineering Services on public infrastructure projects such as Buildings, Parks & Recreation, Streets, Public Utilities, and other publicly owned infrastructure or publicly funded projects of any type.

Task #4: This task provides for professional plan review and construction engineering services for Private Sector Developments within the City.



Contract Term

Contract Term shall be for two (2) consecutive calendar years, commencing on January 1, 2023 and terminating on December 31, 2024.

Standard Terms and Conditions

The Standard Terms and Conditions attached herein shall be in effect for the entirety of the Contract Terms shown above. The Standard Terms and Conditions shall also be considered a part of any and all future contracts associated with Task #3 and Task #4 for the duration of those contracts.

Termination Clause

Upon 90 days advance written notice, either contracted party (Municipality or OHM), may request termination of the contract. The termination date shall be the last day of any month, a minimum of 90 days from the date of written notice. The timeframe shown in this Termination Clause shall take precedent and override the timeframe shown in the main agreement. All contract requirements and payment requirements shall apply through the final date of termination.

Authorization

OHM Advisors

David G. Krock, PE
Vice President

City of Garfield Heights

Mayor

Date

Approved as to form:

Law Director

Date

TERMS & CONDITIONS



1. THE AGREEMENT. These Terms and Conditions and the attached Proposal or Scope of Services, upon acceptance by CLIENT, shall constitute the entire Agreement between OHM ADVISORS, a registered Ohio company, and CLIENT. OHM ADVISORS and CLIENT may be referred to individually as a Party or collectively as Parties. This Agreement supersedes all prior negotiations or agreements and may be amended only by written agreement signed by both Parties.
2. CLIENT RESPONSIBILITIES. CLIENT, at no cost, shall:
 - a. Provide access to the project site to allow timely performance of the services.
 - b. Provide all information in CLIENT'S possession as required by OHM ADVISORS to perform the services.
 - c. Designate a person to act as CLIENT'S representative who shall transmit instructions, receive information, define CLIENT policies, and have the authority to make decisions related to services under this Agreement.
3. PROJECT INFORMATION. OHM ADVISORS shall be entitled to rely on the accuracy and completeness of services and information furnished by CLIENT, other design professionals, or consultants contracted directly to CLIENT.
4. PERIOD OF SERVICE. The services shall be completed within the time specified in the Proposal or Scope of Services, or if no time is specified, within a reasonable amount of time. OHM ADVISORS shall not be liable to CLIENT for any loss or damage arising out of any failure or delay in rendering services pursuant to this Agreement that arise out of circumstances that are beyond the control of OHM ADVISORS.
5. COMPENSATION. CLIENT shall pay OHM ADVISORS for services performed in accordance with the method of payment, as stated in the Proposal or Scope of Services. CLIENT shall pay OHM ADVISORS for reimbursable expenses for subconsultant services, equipment rental, or other special project related items at a rate of 1.15 times the invoice amount.
6. TERMS OF PAYMENT. Invoices shall be submitted to the CLIENT each month for services performed during the preceding period. CLIENT shall pay the full amount of the invoice within thirty days of the invoice date. If payment is not made within thirty days, the amount due to OHM ADVISORS shall include a service fee at the rate of one (1%) percent per month from said thirtieth day.
7. STANDARD OF CARE. OHM ADVISORS shall perform their services under this Agreement in a manner consistent with the professional skill and care ordinarily provided by similar professionals practicing in the same or similar locality under the same or similar conditions.
8. RESTRICTION OF REMEDIES. OHM ADVISORS is responsible for the work of its employees while they are engaged on OHM ADVISORS' projects. As such, and in order to minimize legal costs and fees related to any dispute, CLIENT agrees to restrict any and all remedies it may have by reason of OHM ADVISORS' breach of this Agreement or negligence in the performance of services under this Agreement, be they in contract, tort, or otherwise, to OHM ADVISORS, and to waive any claims against individual employees.
9. LIMIT OF LIABILITY. To the fullest extent permitted by law, CLIENT agrees that, notwithstanding any other provision in this Agreement, the total liability in the aggregate, of OHM ADVISORS to CLIENT, or anyone claiming under CLIENT, for any claims, losses, damages or costs whatsoever arising out of, resulting from, or in any way related to this Agreement or the services provided by OHM ADVISORS pursuant to this Agreement, be limited to \$25,000 or OHM ADVISORS fee, whichever is greater, and irrespective of whether the claim sounds in breach of contract, tort, or otherwise.
10. ASSIGNMENT. Neither Party to this Agreement shall transfer, sublet, or assign any duties, rights under or interest in this Agreement without the prior written consent of the other Party.
11. NO WAIVER. Failure of either Party to enforce, at anytime, the provisions of this Agreement shall not constitute a waiver of such provisions or the right of either Party at any time to avail themselves of such remedies as either may have for any breach of such provisions.
12. GOVERNING LAW. The laws of the State of Ohio will govern the validity of this Agreement, its interpretation and performance.
13. INSTRUMENTS OF SERVICE. OHM ADVISORS shall retain ownership of all reports, drawings, plans, specifications, electronic data and files, and other documents (Documents) prepared by OHM ADVISORS as Instruments of Service. OHM ADVISORS shall retain all common law, statutory and other reserved rights, including, without limitation, all copyrights thereto. CLIENT, upon payment in full for OHM's services, shall have an irrevocable license to use OHM's Instruments of Service for or in conjunction with repairs, alterations or maintenance to the project involved but for no other purpose. CLIENT shall not reuse or make any modifications to the Documents without prior written authorization by OHM ADVISORS. In accepting and utilizing any Documents or other data on any electronic media provided by OHM ADVISORS, CLIENT agrees they will perform acceptance tests or procedures on the data within 30 days of receipt of the file.
14. CERTIFICATIONS. OHM ADVISORS shall have 14 days to review proposed language prior to the requested dates of execution. OHM ADVISORS shall not be required to execute certificates to which it has a reasonable objection, or that would require knowledge, services, or responsibilities beyond the scope of this Agreement, nor shall any certificates be construed as a warranty or guarantee by OHM ADVISORS.
15. TERMINATION. Either Party may at any time terminate this Agreement upon giving the other Party 7 calendar days prior written notice. CLIENT shall within 45 days of termination pay OHM ADVISORS for all services rendered and all costs incurred up to the date of termination in accordance with compensation provisions in this Agreement.
16. RIGHT TO SUSPEND SERVICES. In the event CLIENT fails to pay OHM ADVISORS the amount shown on any invoice within 45 days of the date of the invoice, OHM ADVISORS may, after giving 7 days' notice to CLIENT, suspend its services until payment in full for all services and expenses is received.
17. OPINIONS OF PROBABLE COST. OHM ADVISORS preparation of Opinions of Probable Cost represents OHM

ADVISORS' best judgment as a design professional familiar with the industry. CLIENT recognizes that OHM ADVISORS has no control over costs of labor, equipment, materials, or a contractor's pricing. OHM ADVISORS makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual cost.

18. JOB SITE SAFETY. Neither the professional activities of OHM ADVISORS, nor the presence of OHM ADVISORS or our employees and subconsultants at a construction site shall relieve the Contractor or any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequences, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and the health or safety precautions required by any regulatory agency. OHM ADVISORS has no authority to exercise any control over any construction contractor or any other entity or their employees in connection with their work or any health or safety precautions.
19. CONTRACTOR SUBMITTALS. If included in the services to be provided, OHM ADVISORS shall review the contractor's submittals such as shop drawings, product data, and samples for the limited purpose of checking for conformance with information given and the design concept expressed in the construction documents issued by OHM ADVISORS. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the contractor's responsibility. OHM ADVISORS review shall not constitute approval of safety precautions or, unless otherwise specifically stated by OHM ADVISORS, of any construction means, methods, techniques, sequences or procedures. OHM ADVISORS approval of a specific item shall not indicate approval of an assembly of which the item is a component.
20. CONSTRUCTION OBSERVATION. If requested, OHM ADVISORS shall visit the project construction site to generally observe the construction work and answer questions that CLIENT may have. OHM ADVISORS shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the construction work, or to determine whether the construction work is being constructed in accordance with the Contract Documents.
21. HAZARDOUS MATERIALS. As used in this Agreement, the term hazardous materials shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site. Both Parties acknowledge that OHM ADVISORS' Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event OHM ADVISORS or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to OHM ADVISORS that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of OHM ADVISORS' services, OHM ADVISORS may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until CLIENT retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. CLIENT agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless OHM ADVISORS, its officers, partners, employees and subconsultants (collectively, OHM ADVISORS) 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 OHM ADVISORS.
22. WAIVER OF CONSEQUENTIAL DAMAGES. The Parties waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Agreement.
23. WAIVER OF SUBROGATION. The Parties waive all rights against each other and any of their contractors, subcontractors, consultants, agents, and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to a written contract or other property insurance applicable to the construction work.
24. THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either CLIENT or OHM ADVISORS.
25. CODE REVIEW/ACCESSIBILITY. In providing its services under this Agreement, OHM ADVISORS may have to interpret federal and or state laws, codes, ordinances, regulations and/or statutes. CLIENT understands and agrees that these may be subject to different and possibly contradictory interpretations by relevant governmental officials charged with interpreting same and furthermore understands and agrees that OHM ADVISORS does not warrant or guarantee that their interpretation will be consistent with the interpretation of the relevant governmental officials. OHM ADVISORS shall not be liable for unreasonable or unforeseeable interpretation of federal and or state laws, codes, ordinances, regulations and/or statutes by governmental officials charged with interpreting same.
26. DISPUTE RESOLUTION. In an effort to resolve any conflicts that arise during the project or following the completion of the project, the Parties agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the Parties mutually agree otherwise, as a prerequisite to further legal proceedings. The Parties agree to share the mediator's fee and any filing fees equally, and the mediation shall be held in the place where the project is located, unless another location is mutually agreed upon.