

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE PROFESSIONAL SERVICES AGREEMENTS FOR MASTER PLANS EXAMINER AND DECLARING AN EMERGENCY.

WHEREAS, that the Ohio Building Code requires all building plans and specifications filed with the City to be examined and approved by a certified Master Plans Examiner; and

WHEREAS, the City invited proposals from qualified firms to provide Master Plans Examiner services; and

WHEREAS, that the Administration and the Building and Utilities Committee reviewed said proposals and recommended the firms of Makovich & Pusti Architects Inc. of Berea, Ohio and Sixmo Inc. of Cleveland, Ohio; and

WHEREAS, Council coming now to consider said proposals has determined the proposals submitted by the firms of Makovich & Pusti Architects Inc. of Berea, Ohio and Sixmo Inc. of Cleveland, Ohio to be the best responsive proposals and are acceptable to this Council.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF  
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into two-year Agreements with Makovich & Pusti Architects Inc. of Berea, Ohio and Sixmo Inc. of Cleveland, Ohio, for Master Plans Examiner services at the hourly rate of \$100.00. (Exhibit A & B)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of examining building plans and specifications in compliance with the Ohio Building Code, thus for the health, safety, and welfare of the citizens of Avon Lake. Therefore, this Ordinance shall take effect and be in full force immediately after its passage and approval by the Mayor.

PASSED: 4/25/2022

/s/ Martin E. O'Donnell

President of Council

POSTED: 4/29/2022

APPROVED: 4/26/2022

ATTEST: /s/ Valerie E. Rosmarin  
Clerk of Council

/s/ Gregory J. Zilka  
Mayor

# AGREEMENT

**THIS AGREEMENT**, made and entered into this First day of April, 2022, by and between the City of Avon Lake, Ohio (hereinafter referred to as "City"), and Makovich & Pusti Architects, Inc. (hereinafter referred to as "Architect").

WHEREAS, the Ohio Building Code (OBC) requires an Certified Plan Examiner, registered in the State of Ohio, to examine and approve the building plans and specifications filed with the City other than for one, two, and three family dwellings; and

WHEREAS, the City of Avon Lake desires to enter into an Agreement with Makovich & Pusti Architects, Inc., to provide such services.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, THE PARTIES HEREBY AGREE AS FOLLOWS:**

## **I. SCOPE OF WORK**

- (a) The Architect shall act as an Independent Contractor and shall supervise and act in a responsible manner and take charge of the review of the general building plans and specifications for the buildings other than one, two and three family dwellings which are referred to him by the Building Official of the City. The work shall not include review of civil engineering or zoning. The work of the Architect shall be under the oversight of the Chief Building Official. The Architect agrees that they are not an employee of the City and are not public employees under Ohio State Law.
- (b) The Architect shall maintain a Plans Examination Certificate from the State of Ohio.
- (c) The Architect shall maintain professional liability insurance in the minimum amount of \$1 million and \$2 million aggregate.
- (d) The Architect shall make a thorough examination, either alone or in concert with authorized Personnel of the Building and Fire Department, of all such plans and specifications to determine conformity with applicable sections of the Ohio Building Code as it applies to any such proposed building structure.
- (e) After completion of a plan review by the Architect, he shall communicate the findings of the scope of plan approval by "Approved", "Non-Conformance Approval", "Conditional Approval", "Phased Approval", or "Insufficient Documents". He shall also identify all non-compliant or code deficiencies that need to be addressed as a condition of the plan approval. A Documents Review Record and Report to Building Official shall be returned to the Building Official for further disposition by them to the applicant. If documents are not submitted electronically, one (1) paper copy of the plans shall remain with the architect until such time as a Certificate of Occupancy has been issued.

Under Ohio law, it is understood that the Architect makes plan review comments as a recommendation to the Building Official who is the Authority Having Jurisdiction (AHJ,) and is the only one having authority to enforce the Plan Review. At the request of the Building Official, the Architect shall, upon reasonable notice, meet with them or their authorized representative, and shall, with them, as instructed, visit construction sites under the jurisdictional authority of the Building Official and make recommendations to the Public Official.

- (f) When instructed to do so by the Building Official, the Architect shall attend all meetings and work sessions in connection with business matters involving the Building Department and/or any other public body or department.

## **II. GENERAL CONDITIONS**

- (a) All architectural services shall be carried out in accordance with the code of professional practices of the American Institute of Architects.
- (b) Insofar as the work for plan examination under this agreement may require, the Building Official agrees to furnish the Architect with one (1) complete set of plans and specifications, or an electronic copy received from each applicant.
- (c) The Architect shall not assign, sublet, or transfer any work under this agreement without written consent of the City.
- (d) The City agrees that if any work covered by this Agreement and performed by the Architect shall be suspended or abandoned, the Building Official shall notify the Architect of such suspension or abandonment of work and the City shall pay the Architect for all rendered service which were completed in accordance with the schedule agreed to herein.

## **III. FEES AND SCHEDULE OF PAYMENT**

- (a) The Architectural fee for building plan review under this Agreement or extra services shall be at a fixed rate of one hundred (\$100.00) Dollars per hour.

Extra services are defined as follows:

- (1) Preliminary plan evaluation if requested by its submitter and approved by the Building official, including meeting.
  - (2) Examination of plans resubmitted after the initial plan review including responses to the plan review, resubmittals, or changes to the original design such as project change orders or bulletins.
  - (3) Services required in case of an adjudication order and/or adjudication hearing as per ORC 119.09 to 119.13;
  - (4) Other technical services to the Building Department or any other City agencies, with the approval of the of the Building Official.
  - (5) Fees for meetings and site visits will be invoiced door to door to include travel time.
- (b) The Architect shall submit a fee statement to the City for each service provided and shall invoice once a calendar month for services rendered in the previous month based upon on itemized statement from the Architect.

#### **IV. TERMINATION**

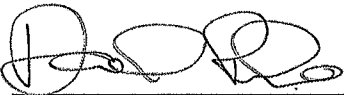
This agreement shall be in full force and effect from and after execution but may be terminated by either party by providing a thirty (30) day written notice to that party so terminated. The Architect understands and agrees that this is not an exclusive contract, and the City has the right to engage the services of another Architect(s) to perform the services set forth herein.

This is a two-year agreement and can be renewed for additional one-year extensions

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement on this \_\_\_\_ day of \_\_\_\_\_ 2022 at Avon Lake, Ohio.

WITNESSES:

\_\_\_\_\_  
  
\_\_\_\_\_  
*Maura Sikula*  
\_\_\_\_\_

\_\_\_\_\_  
Gregory Zilka, Mayor City of Avon Lake , Ohio  
  
  
\_\_\_\_\_  
Donald Rerko Pres, Makovich & Pusti Architects, Inc

Approved as to form:

\_\_\_\_\_  
Gary A. Ebert, Law Director  
City of Avon Lake , Ohio



Master Plans Examiner Services  
City of Avon Lake  
80070122r1  
April 1, 2022

- + **Architects**
- + **Engineers**
- + **Code Compliance**
- + **City Services**

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### **Cleveland Office**

1101 Auburn Avenue  
Cleveland, Ohio 44113  
216-767-5400

### **Westlake Office**

30311 Clemens Road | B2  
Westlake, Ohio 44145  
216-767-5400

### **Marietta Office**

204 Front Street  
Marietta Ohio 45750  
740-809-2400



April 1, 2022

Valerie Rosmarin  
150 Avon Belden Road  
Avon Lake, Ohio 44012  
Phone: (440) 930-4121  
Email: VRosmarin@avonlake.org

Re: Professional Services Proposal Number 80070122r1  
Master Plans Examiner Services

Ms. Rosmarin:

We appreciate the opportunity to provide you with this professional services proposal regarding the above referenced project. We have reviewed the information you provided in an effort to develop a thorough understanding of the project parameters. This understanding is reflected in the following proposal for professional services.

Please review this document and feel free to contact me if you have any questions or comments in its regard. I am generally available between 7:30 AM - 5:00 PM EST in our office at 216-767-5400, extension 100, and always available via email at [pthornton@sixmoae.com](mailto:pthornton@sixmoae.com).

Sincerely,

A handwritten signature in blue ink, reading "Pat E. Thornton", with a long horizontal flourish extending to the right.

Patrick E. Thornton, AIA  
Principal  
Sixmo, Inc.

## PROJECT UNDERSTANDING

The City of Avon Lake (Client) is seeking plans examination services to support the Building Department on a part-time, as requested basis. Sixmo Inc. (Consultant) will serve as a Plans Examiner on a consulting basis.

## SCOPE OF SERVICES

The scope of professional services for this project shall include the review and examination of any plans the Client deems necessary to be sent to the Consultant for review. The Consultant shall render a professional opinion in writing for all plans received from the Client as to whether or not such plans are in complete compliance with the Ohio Building Code, and codes referenced therein.

Specifically, these services shall include:

1. Plan Review
  - a. Based on the Ohio Building Code and referenced codes (for commercial projects)
  - b. Based on the Residential Code of Ohio and referenced codes (for residential projects)
2. Courier of documents
  - a. Electronic documents transmitted electronically or obtained from the submitter by Sixmo.
3. Develop a Document Examination Review Report (DERR) for each submittal
4. Develop a Fee Reporting document for each submittal
5. Submit monthly invoices, including a record of each submittal fee
6. Provide miscellaneous hourly plans examination related services on an "as requested in writing" basis
7. Provide year-end reporting to the City for submittal with State of Ohio requirements
8. *When instructed to do so by the Client's Building Official, the Consultant shall attend all meetings and work sessions in connection with business matters involving the Building Department and/or any other public body or department.*

## DELIVERABLES

Consultant shall provide PDF files for all deliverables, transmitted via email, including the following:

1. One (1) hard copy of the DERR for each plan review, and subsequent reviews
2. One (1) hard copy of the Fee Report for each plan review, and subsequent reviews
3. One (1) PDF copy of each document is available at no charge upon written request

Additional hard copies of deliverables are available to the Client at Consultant's cost of reproduction and labor, plus 10%.



## CLARIFICATIONS AND EXCEPTIONS

The following clarifications and exceptions refine Sixmo's understanding and offering to this project:

1. Plans may be delivered to Sixmo via email / electronic file transfer. There is no specific requirements for Sixmo to receive hard copies or documents.
2. At no additional cost and when convenient for the Client, Sixmo will provide courier service between the City of Avon Lake Building Department's offices and Sixmo's offices for the exchange of hard copies, up to two times a week.

## SCHEDULE

We are available to begin this work immediately. We will proceed according to a mutually agreeable schedule.

It is our intent to provide services in accordance with the State of Ohio Board of Building Standards requirements for plans examinations. We will also meet any reasonable schedule established by the Client for any specific plan review.

## PROFESSIONAL FEES

The professional services outlined herein shall be provided for an hourly rate of **\$100.00** per hour.

These fees are based on the language included in this professional services proposal. Any requested alterations to the language of this agreement may result in an adjustment to the proposed fee.

## EXPENSES

Expenses included in the professional fees above include:

1. Reproduction of deliverables and in-house progress documents required to execute our services.
2. Mileage/Travel costs related to project meetings, and other local travel required to execute the scope of work.

Expenses that will be considered reimbursable, shall include:

- Reproductions not included in the base scope of services.
  - Reproductions produced in-house will be billed at the following rates:
    - 8-1/2 x 11: \$.25 per page (single or double sided, color or B&W)
    - 11 x 17: \$.50 per page (single or double sided, color or B&W)

- Large Format: \$1 per square foot
- 3. Mileage/Travel over and above that specifically indicated as included in the base scope of services. This includes mileage and travel expenses incurred resulting from any additional services not specifically addressed above.
- 4. Postage/shipping costs for other than normal day-to-day firm operations, including the cost of shipping hard copies of construction documents and revisions to authorities having jurisdiction and to the Client.

Additional expenses, besides those described above, will be invoiced based on cost +10%. This includes additional subconsultant fees over and above the base services of this scope of work; the payment of permit and application fees that are not specifically included in the base scope of services, and other miscellaneous expenses incurred at the direction of the Client. Additional expenses will only be incurred upon written direction from the Client.

## METHOD OF PAYMENT

Payment for the proposed professional services will be invoiced monthly, in proportion to services provided and expenses incurred between the first and last day of the month, or upon completion of the scope of services. Payments are due **Net 30 Days** from their receipt.

Client agrees that any non-payment of the professional fees under this Agreement will result in interest being charged at the rate of eighteen percent (18%) per annum or the highest amount legally to be charged. Client also agrees that it will be responsible for any costs or fees, including attorney's fees, in the collection of any unpaid professional fee.

If the Client fails to make payments to Consultant in accordance with this agreement, such failure shall be considered substantial non-performance and cause for termination; or, at Consultant's option, cause for suspension of performance of services under this agreement. If Consultant elects to suspend services, Consultant shall give seven days' written notice to the Client before suspending services. In the event of a suspension of services, Consultant shall have no liability to the Client for delay or damage caused the Client because of such suspension, and any expenses incurred in the interruption and resumption of Consultant's services. Consultant's fees for the remaining services and the time schedules may be equitably adjusted.

## STANDARD OF CARE

In providing services under this agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant will perform its services as expeditiously as

is consistent with professional skill and care, and the orderly progress of Consultant's part of the Project. Regardless of any other term or condition of this Agreement, Consultant makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

## DEFECTS IN SERVICE

The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

## CONSTRUCTION ACTIVITIES

The Consultant shall not be responsible for the acts or omissions of any person performing any construction work, or for instructions given by the Client or its representatives to anyone performing any construction work, nor for construction means and methods or job-site safety.

## COPYRIGHTS AND LICENSES

The Consultant and the Client shall warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including drawings and specifications, and shall retain all common law, statutory and other reserved rights, including copyrights.

Upon execution of this agreement, the Consultant grants the Client a nonexclusive license to utilize the instruments of service solely for the project, provided that the Client performs its obligations, including payment based on the terms of this document.

If the Instruments of Service are used without retaining the Consultant or without the written permission of the Consultant, the Client releases the Consultant and Consultant's subconsultants from any and all claims and causes of action arising from such use. Any unauthorized use of the Instruments of Service shall be at the Client's risk and without liability to the Consultant.

The Instruments of Service shall be defined as any representation, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and their subconsultants under their respective professional services agreements.

## DISPUTE RESOLUTION

Any claim or dispute between the Client and the Consultant shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator, the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.

## CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, subject to Risk Allocation below, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

## THIRD-PARTY BENEFICIARIES

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 the Consultant. The Consultant'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 the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

## RISK ALLOCATION

In recognition of the relative risks and benefits of the Project to both the Client (**City of Avon Lake**) and the Consultant (**Sixmo Inc.**), the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any

nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the Consultant's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

## TERMINATION

*This agreement shall be in full force and effect from and after execution but may be terminated by either party by providing a thirty (30) day written notice to that party so terminated. The Consultant understands and agrees that this is not an exclusive contract, and the Client has the right to engage the services of another Architect(s) to perform the services set forth herein.*

## TERM

*This is a two-year agreement and may be renewed for additional one-year extensions.*

## ACKNOWLEDGEMENT

Please acknowledge acceptance of this proposal by signing below and returning a copy to the Consultant. Authorization to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition or deletion.

Acknowledgement  
and Acceptance:  
(Consultant)  
Sixmo Inc.



By: Patrick E. Thornton, AIA

Title: Principal

Date: April 1, 2022

Acknowledgement  
and Acceptance:  
(Client)  
City of Avon Lake

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## ACCOUNTS PAYABLE

By accepting and acknowledging the terms of this proposal, the Client designates the following individuals to receive invoices and issue payment to Consultant for services rendered on this project.

### Direct all invoices to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

### Carbon copy all invoices to: (optional)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_