

October 3, 2013

Cooper Carry, Inc.
191 Peachtree Street, NE Suite 2400
Atlanta, GA 30303
Attention: Mr. Robert Neal

Re: Programming and Schematic Design Services for Convention Center Hotel

Gentlemen:

This letter is intended to outline the terms and conditions of the services (collectively, the "Initial Services") to be provided by Cooper Carry, Inc. ("Criteria Architect") to Cuyahoga County (the "County") in connection with the planning and design of the proposed new convention center hotel that will be constructed at the corner of Ontario St. and Lakeside Ave., Cleveland, Ohio (the "Project").

Pursuant to this interim letter agreement (this "Letter Agreement"), we wish to confirm the commencement of the Initial Services in accordance with the terms set forth below prior to finalizing the terms of a definitive agreement between the parties. Therefore, the remainder of this Letter Agreement sets forth the terms and conditions of our mutual understanding as to the Initial Services until the definitive agreement is consummated.

1. Scope of Services. Criteria Architect shall proceed with the planning, programming and schematic design services as more fully described in **Exhibit A** attached hereto and entitled "Scope of Initial Services".
2. Compensation for Services. Criteria Architect will be paid a lump sum of \$433,486, for the Initial Services, which will be invoiced to the County monthly based upon the percentage of work completed in the preceding month. Each application for payment submitted by Criteria Architect to the County shall be accompanied by reasonable documentation showing activities undertaken and tasks completed by identified personnel. Payment will be made within thirty (30) days after the County's receipt of a proper application. It is understood and agreed that the \$433,486 fee for Initial Services does not include fees, costs and expenses of consultants to be engaged by Criteria Architect to perform the Initial Services. In addition, Criteria Architect acknowledges that the \$433,486 fee will be credited against its overall fee of \$2,100,000 for the full scope of architectural and other services that will be set forth in the definitive agreement. The overall fee of \$2,100,000 does not include additional services that may be requested by the County or the fees, costs and expenses of consultants to be engaged by Criteria Architect (which will be identified in the definitive agreement).
3. Reimbursable Expenses. In addition the fee in Section 2, Criteria Architect shall be paid for reimbursable expenses incurred in connection with its performance of the Initial Services, which are estimated not to exceed \$100,000. Reimbursable expenses will

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include the following: transportation, lodging, and meals (but not alcoholic beverages) in connection with travel; long distance telephone calls, courier services and facsimile communications, telex, postage and delivery charges; reproduction costs; photographic production techniques; expense of renderings, models and mock-ups requested by the County; and automobile travel. Mileage charges for automobiles shall be at the prevailing rate established by the I.R.S. All reimbursable expenses shall be invoiced at cost plus one percent (1%), and Criteria Architect shall provide reasonable backup documentation of such expenses with each application for payment. The County shall have the right to audit Criteria Architect's books and records that pertain to the Initial Services and related reimbursable expenses.

4. Definitive Agreement. The parties shall negotiate in good faith the terms and conditions of a definitive agreement that will include Criteria Architect's total fee for services to be provided to the Project. All payments made pursuant to this Letter Agreement shall be credited towards the final fee set forth in the Definitive Agreement. Any Initial Services to be completed under this Letter Agreement that have not yet been completed upon execution of the Definitive Agreement shall be incorporated into the terms of the Definitive Agreement. The County shall prepare an initial draft of the Definitive Agreement for review and comment by Criteria Architect.
5. Standard of Care. Criteria Architect shall perform all services consistent with the standard of professional care, skill, diligence and quality that prevails among professional design firms engaged in the planning and design of projects of similar use, size, quality, complexity and detail, including the design of convention center hotels in metropolitan areas in the United States.
6. Ownership of Documents. Upon full payment of all undisputed amounts due Criteria Architect under this Letter Agreement, Criteria Architect shall transfer and assign to the County all of Criteria Architect's common law, statutory and other reserved rights (including copyrights) in all work product of Criteria Architect relating to the performance of the Initial Services for the Project, including drawings, specifications, preliminary plans and other documents prepared by Criteria Architect or its consultants and the design concepts contained therein, whether hard copy or on electronic media (collectively, "Work Product"). Upon any termination of the Initial Services or this Letter Agreement and the payment of all undisputed amounts for Initial Services rendered, all such Work Product will be delivered to the County within ten (10) days of such termination and payment. If the County subsequently uses such Work Product with a firm other than Criteria Architect, then the County shall remove all title block or information relating to Criteria Architect from the Work Product prior to reuse, and Criteria Architect shall not be responsible for damages, costs or expenses arising out of such subsequent use by the County. The County may use the Work Product in connection with both the marketing of the Project and the construction, maintenance and repair or modification of the Project, but not on any other project.

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Criteria Architect shall be permitted to retain copies, including reproducible copies of Work Product for information and reference, and may use any of the constituent parts of the Work Product on any other project, except for any unique or distinctive architectural and aesthetic components or effects, that, taken independently or in combination, would produce a project with a substantially similar overall appearance. In furtherance of the foregoing, Criteria Architect and its consultants hereby unconditionally and irrevocably transfer and assign to the County an exclusive, royalty-free license to the Work Product and the design concepts contained therein, including, without limitation, all patents, copyrights, trademarks, service marks and other intellectual property rights specific to the Project. Criteria Architect shall procure from its consultants such assignments or transfers of rights as necessary to effectuate the foregoing.

7. Insurance. Criteria Architect shall maintain the following insurance coverages for the work to be performed hereunder: (a) Workers' Compensation – Statutory limits required by state law and Employer's Liability – \$1,000,000; (b) Commercial General Liability – \$1,000,000 per occurrence; \$2,000,000 annual aggregate; and (c) Professional Liability – \$2,000,000 per claim and annual aggregate. The County shall be named as an additional insured under the commercial general liability policy. All of the required insurance policies may not be cancelled or materially modified without at least ten (10) days' prior written notice to the County. Criteria Architect shall, upon execution hereof, provide the County with certificates evidencing all such insurance coverage. The foregoing limits are stipulated solely for the purposes of this Letter Agreement and the definitive agreement may have more detailed insurance requirements and higher limits.
8. Assignment. The County and Criteria Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Letter Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Letter Agreement. Criteria Architect shall not assign this Letter Agreement without the written consent of the County, and Criteria Architect shall not unreasonably object to any assignment of this Letter Agreement by the County.
9. Consultants and Engineers. Criteria Architect shall not change any such consultants or engineers without the prior written consent of the County, nor will Criteria Architect engage other consultants or engineers, unless the County shall have approved the same in writing. Notwithstanding any subcontract or delegation of the Initial Services as permitted above, Criteria Architect shall remain fully responsible for all obligations hereunder, including, without limitation, the Initial Services provided by Criteria Architect's consultants and engineers. All of Criteria Architects' consultant agreements shall be fully assignable to the County or the County's designee and shall grant to the County the same rights in and to such consultant's work product as is set forth in Section 6 with respect to the Work Product. If Criteria Architect and the County do not enter into

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a definitive agreement, then, at the County's option, such subcontracts and purchase orders shall be assigned to the County or its designee.

10. Termination. This Letter Agreement shall terminate on November 13, 2013, or upon the completion of the Initial Services, whichever occurs later, unless extended by mutual written agreement by Criteria Architect and the County. This Letter Agreement may be terminated by the County without cause and for its convenience upon not less than ten (10) days' written notice to Criteria Architect. This Letter Agreement may be terminated by Criteria Architect upon ten (10) days' written notice to the County should the County fail substantially to perform in accordance with the terms hereof through no fault of Criteria Architect and provided that County has not cured such default within twenty (20) days after the expiration of the ten (10) day written notice. In the event of termination not the fault of Criteria Architect, Criteria Architect shall be compensated for services performed prior to termination, together with reimbursable expenses then due, calculated by multiplying the hours devoted by Criteria Architect in performing the Initial Services by Criteria Architect's standard hourly rates for the personnel in question, as set forth in **Exhibit B**. In no event shall the compensation payable under this paragraph exceed the total compensation payable under Section 2 hereof multiplied by the percentage of completion of the Schematic Design Documents (as defined in **Exhibit A** attached hereto) at the time of the termination. Notwithstanding anything to the contrary herein, upon any termination of this Letter Agreement, Criteria Architect shall deliver (or cause to be delivered) to the County copies of all Work Product in both hard copy and suitable electronic form.
11. Relationship of Parties. At all times hereunder, Criteria Architect shall be an independent contractor, and nothing herein shall be construed as creating any relation of principal and agent, partnership or joint venture between the parties. Except as otherwise expressly stated herein, nothing contained in this Letter Agreement shall be deemed to create a contractual relationship with, or a cause of action in favor of, any third party against Criteria Architect or the County.
12. Compliance with Laws. In performing the Initial Services, Criteria Architect shall exercise the standard of care set forth in Section 5 in incorporating all applicable federal, state and local laws.
13. Counterparts. This Letter Agreement may be executed in any one or more counterparts, including facsimile or electronic signature included in an Adobe PDF file, each of which, when so executed, shall be deemed an original, and all such counterparts together shall constitute the same instrument. Execution of this Letter Agreement at different times and places by the parties shall not affect the validity thereof.
14. Electronic Signature. The parties agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed

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by the County to this Letter Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Letter Agreement. The parties also agree that the County is bound by the provisions of Chapter 304 of the Ohio Revised Code (the "ORC") as it pertains to electronic transactions under Chapter 1306 of the ORC, and the County will comply with its electronic signature policy.

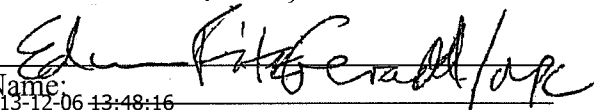
15. Entire Agreement. This Letter Agreement and its attachments constitute the entire agreement between the parties relating to the subject matter hereof, and all previous agreements, discussions, communications and correspondence are superseded by the execution hereof.
16. No Waiver of Regulatory Authority. Notwithstanding anything herein to the contrary, nothing set forth in this Letter Agreement shall serve as a waiver, impairment or compromise of the County's regulatory authority in the review, approval, permitting or inspection of the construction, marketing, or operation of the Project, and the County shall not be responsible for damages or delays resulting from the proper and timely exercise of its regulatory authority
17. Jurisdiction and Venue. This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Ohio and any claims and causes of action arising under or in connection with this Letter Agreement shall be brought before an Ohio court of competent jurisdiction.

Kindly sign below and return an executed copy of this letter to the undersigned to evidence your agreement with the foregoing.

THE COUNTY OF CUYAHOGA

Edward FitzGerald, County Executive

By:


Name: _____
2013-12-06 13:48:16
Title: _____

ACKNOWLEDGED AND AGREED:

COOPER CARRY, INC.

By:



Name: C. ROBERT NEAL
Title: PRINCIPAL

EXHIBIT A

SCOPE OF INITIAL SERVICES

I. INTRODUCTION

Criteria Architect shall perform the Initial Services in consultation with a Project development team consisting of the County and its representatives, the design-builder and other persons or entities to be identified by the County (the "Project Development Team").

II. SCOPE OF WORK

A. Programming/Conceptual Design

Criteria Architect shall perform the following services as required to establish design objectives, constraints and criteria for the Project, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements customarily included in a major convention center hotels.

Criteria Architect's programming and conceptual design services for the Project shall include, without limitation, the following:

1. Developing basic spatial criteria, such as dimensions, proportions and all such other criteria, for the Project and identify requirements with respect to parking, access, security, storage and utility requirements;
2. Identifying major requirements or constraints required or raised by applicable codes, regulations, or other legal requirements (including ADA and zoning);
3. Identifying relationship between the Project and existing buildings and the surrounding property and area, such as general landscaping criteria and pedestrian and vehicular access to the Project site;
4. Developing conceptual designs for the convention center hotel for the review and consideration of the County and other members of the Project Development Team prior to selection of the final conceptual design for the Project;
5. Developing with the County a preliminary budget for the Project based upon the programming requirements;
6. Identifying initial schedule for Criteria Architect's services and decision-making and Project design, documentation, contracting and construction; and
7. Identifying and dedicating all key and necessary personnel of Cooper Carry and its consultants required for the design team.

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8. Providing the County with a schedule for the completion of all other phases of design through completion of GMP documents, including the schedule for completing schematic design documents, design development documents, and GMP documents for the Project.
9. Coordinating required topographic survey and the geotechnical soils report as prepared or procured by the County and/or the Project Development Team;
10. Attending design committee meetings to present and discuss design concepts;
11. Identifying and developing a space program, that will include area and configuration requirements, adjacency requirements, loading and special structural requirements; and
12. Providing schematic design models and renderings as requested by the County.
13. Prepare and deliver to the County a 100% complete set of schematic design documents for the Project that shall describe the character, scope and intent of the work to be performed or furnished by the design-builder and its subcontractors (the "Schematic Design Documents"). The Schematic Design Documents shall include, at a minimum, preliminary plans and elevations for each element of the Project, criteria and information concerning the requirements for the Project, diagrammatic floor plan illustrating relationships, a statement of the basis of the design and the design objectives and constraints.

After the Schematic Design Documents have been prepared and delivered to the County hereunder, Criteria Architect shall, as requested by the County, meet with the County and/or the Project Development Team to review the Schematic Design Documents, and Criteria Architect shall revise the Schematic Design Documents to reflect any additions, deletions or other modifications requested or agreed to by the County.

The design-builder shall prepare an estimate of construction cost based upon the Schematic Design Documents (the "SD Estimate"). Criteria Architect shall review and evaluate the SD Estimate prepared by the design-builder at the completion of the Schematic Design Phase, and advise the County of any Project scope items that, in Criteria Architect's judgment, may have been in error or omitted from the SD Estimate prepared by the design-builder. If the SD Estimate exceeds the Project Construction Budget, the County may, in its sole discretion, increase the Project Construction Budget or require Criteria Architect to revise the scope and quality of the Project so that the SD Estimate is within the Project Construction Budget, and Criteria Architect shall make such revisions to the Schematic Design Documents.

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EXHIBIT B
HOURLY RATE SCHEDULE

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Cooper Carry
2013 Hourly Rate Schedule

Architecture

		<u>Rate</u>
Principal		275.00
Project Director		275.00
Project Manager	147.00 -	250.00 (Range)
Design Architect	135.00 -	200.00 (Range)
Project Architect	102.00 -	195.00 (Range)
Staff Architect	108.00 -	147.00 (Range)
Architectural Staff I-III	93.00 -	171.00 (Range)
Intern Architect	48.00 -	100.00 (Range)

Interior Design

		<u>Rate</u>
Principal		275.00
Director of Interior Design		275.00
Project Manager	195.00 -	200.00 (Range)
Project Interior Designer	105.00 -	135.00 (Range)
Sr. Interior Designer	105.00 -	135.00 (Range)
Staff Interior Designer	99.00 -	105.00 (Range)
Interior Designer II-III	90.00 -	174.00 (Range)
Interior Designer I	69.00 -	96.00 (Range)
Interior Design Student	50.00 -	75.00 (Range)

Landscape Architecture & Planning

		<u>Rate</u>
Principal		275.00
Director or Landscape Architecture/Planning		175.00
Project Manager	126.00 -	160.00 (Range)
Certified Planner	93.00 -	160.00 (Range)
Staff Landscape Architect/Planning Staff	96.00 -	150.00 (Range)
Landscape Designer I-II	96.00 -	150.00 (Range)
Intern Planner	69.00 -	99.00 (Range)
Intern Landscape Designer	69.00 -	99.00 (Range)

Graphic Design

		<u>Rate</u>
Principal		275.00
Sr. Graphic Designer	105.00 -	150.00 (Range)
Graphic Designer II	99.00 -	105.00 (Range)
Graphic Designer I	75.00 -	99.00 (Range)
Intern Graphic Designer	50.00 -	75.00 (Range)

Technical Services

	<u>Rate</u>
Specifications Manager	150.00
QA/QC	192.00
Specifications Coordinator	129.00

Consultant reserves the right to modify the hourly rates above for any compensation adjustments made while this Agreement is in effect, but no more than once per calendar year.

** Denotes levels which receive overtime pay. Any hourly billing for work performed by these levels on an overtime basis will be invoiced at 1.5 times the applicable billing rate.*

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