



TO: Bonnie Teeuwen, Director, Department of Public Works
FROM: Edward FitzGerald, County Executive
DATE: November 13, 2013
SUBJECT: Contracts and Purchasing Board Approval – November 12, 2013

Contracts and Purchasing Board Approval No. CPB2013-889

Department of Public Works, recommending an award on RQ29140 and enter into a contract with David V. Lewin Corp. in the amount not-to-exceed \$90,600.00 for geotechnical services for the Convention Center Hotel Project for the period 11/12/2013 - 12/31/2014.

Edward FitzGerald, County Executive

A handwritten signature in black ink that reads "Ed FitzGerald/epc".

Approved: _____

2013-12-12 11:42:20



ENCUMBRANCE NO. CE1300535

REQUISITION NO. RQ 29140

CONTRACT/AGREEMENT

CUYAHOGA COUNTY, OHIO

FOR

Geotechnical Services for Convention Center Hotel

WITH

CONTRACTOR	David V. Lewin Corp.
FEDERAL ID	██████████ 26 U.S.C. § 6103
REMITTANCE ADDRESS	812 Huron Road, Suite 340 Cleveland, OH 44115
CONTACT PERSON	Duane Schreiber
TELEPHONE NUMBER	216-696-8151
TIME PERIOD	November 12, 2013 – December 31, 2014
CONTRACT/AGREEMENT PRICE	\$ 90,600.00

Suffix	Time Frame	Index Code	Object Code	User Code	Grant/Detail	Project/Detail	Amount
01		CC768267	0278				\$90,600.00

I hereby certify that the money required for the County's proportion of this Contract/Agreement in the sum of \$90,600.00 is in the Treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose.

MARK A PARKS, JR., DIRECTOR OF SPECIAL PROJ

Mark A Parks Jr

Mark A. Parks, Jr., Acting County Fiscal Officer or designee
2013-12-13 11:21:22

I hereby approve of the legal form and correctness of the within Contract/Agreement.

ANKA M DAVIS, ASSISTANT LAW DIRECTOR

Anka M. Davis
Majeed G. Makhlof, Director of Law
2013-12-13 10:00:35
By Assistant Law Director

**CONSULTANT ENGINEERING SERVICES AGREEMENT
FOR THE CONVENTION CENTER HOTEL PROJECT**

Contract No. CE1300535

This CONSULTANT ENGINEERING SERVICES AGREEMENT (this "Agreement") is made this 12th day of November, 2013 ("Effective Date"), by and between THE COUNTY OF CUYAHOGA, OHIO, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the Effective Date (the "County") on behalf of the Department of Public Works ("DPW"), and the engineering consulting firm known as DAVID V. LEWIN Corp., with principal offices located at 812 Huron Rd E, Cleveland, OH 44115 (the "Consultant").

WITNESSETH:

WHEREAS, the County has determined to engage the Consultant to perform certain professional engineering services relating to the convention center hotel project (the "Project"), and

WHEREAS, in response to the RFQ#29140, the Consultant submitted a Proposal and a Scope of Services on November 1, 2013, which pursuant to a selection process, was determined by DPW to be the most suitable for this Agreement; and

WHEREAS, the Consultant has agreed to the terms and conditions for the consideration indicated herein below.

NOW THEREFORE, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the County and the Consultant hereby agree as follows:

ARTICLE ONE – SCOPE OF AGREEMENT

Section 1 – Scope of Services:

The Scope of Services to be performed under this Agreement are set forth on Exhibit A (the "Services"), which is hereby incorporated into and made part of this Agreement as though expressly rewritten herein.

The parties agree that the provisions of this Agreement shall govern additional work items not included in the original scope of work described in Exhibit A in the event of any variance between the language of Exhibit A and the provisions of this Agreement.

The Consultant will not supervise, direct or have any control or charge of, and shall not have any responsibility for construction means, methods, techniques, procedures or sequences selected by contractors or others not under the control of the Consultant, nor for such parties' health and safety procedures or programs. The Consultant shall not be responsible for any acts or omissions

of contractors or others not under the control of the Consultant. The Consultant's observation of portions of the work on the Project, or review of reports by others, shall not relieve such other parties of their responsibility for performing their work in accordance with the Project plans, specifications and applicable laws, codes, rules, regulations or safety requirements.

Section 2 – Schedule of Completion/Project Work Schedule:

The Consultant shall start work on the various phases of this Agreement within three (3) days after the Effective Date or receipt of a notice to proceed on a specific phase, whichever occurs first. The County has produced a schedule for performance of the Services, which schedule is attached hereto as Exhibit B ("Schedule"), and is hereby incorporated into and made part of this Agreement as though expressly rewritten herein. Any modifications made to the Schedule will only be made by mutual agreement from both the County and the Consultant. The County may update or revise the Schedule when a task/phase milestone has been completed or approved. Any permission for the extension of a task duration shall not constitute a change in scope without the County's prior written approval.

**ARTICLE TWO – GENERAL CONDITIONS, TERMINATION OF AGREEMENT,
INSURANCE AND INDEMNIFICATION**

Section 1 – General Conditions, the County's Responsibilities:

The County shall:

- A). Provide written approvals, as specified in Article One of this Agreement, or as mutually agreed to by the County and Consultant, in a timely manner. Reports, plans and specifications shall be approved by the County as to scope, form, content and method of presentation prior to final acceptance by the County; and
- B). Make available to the Consultant all existing structural plans, aerial photographs, topographic maps and any other pertinent data on file in the office of the County which are applicable to the Services; and
- C). Serve notice, within fourteen working days, for any required rights-of-entry which the Consultant may require to perform their contractual obligations of this Agreement, upon written request of the Consultant; and
- D). Provide right of entry for the Consultant and for all necessary equipment in order for the Consultant to complete its Services.

Section 2 – General Conditions, the Consultant's Responsibilities:

The Consultant shall:

- A). Provide at its own expense all technical and professional services, labor, equipment and materials required for the completion of this Agreement, except as enumerated otherwise

and elsewhere in this Agreement. In addition, the Consultant shall employ registered professional surveyors, engineers, and other professionals, as necessary, to be responsible for the gathering of data, design of and checking of the work covered by this Agreement. Any Services that require the stamp of a registered or certified professional shall be stamped with the appropriate seal of the registered or certified professional in the State of Ohio; and

- B). Provide and make arrangements for the traffic control and/or notify the proper local authorities if the activities of the Consultant and/or its subconsultant shall, in any way, interfere with the flow of traffic or pose any hazards to the public; and
- C). Accept responsibility for Consultant's own recommendations, plans and specifications embodied in the final products of this Agreement and properly endorse its final products with the signature and seal of a registered professional engineer in the State of Ohio who was in charge and responsible for all such final products; and
- D). Comply with all Federal, County, State and municipal laws, ordinances, resolutions and policies applicable to the work to be done under this Agreement. The Consultant shall obtain Federal, State, County and/or local licenses, permits and/or clearances necessary to fulfill its obligations of this Agreement; and
- E). Perform all Services under the direction and supervision of one of the officers or principals of the Consultant; and
- F). Have an officer, principal or project manager of the Consultant in attendance at all meetings called by recognized public agencies or civic organizations to discuss this Project, whenever such attendance is reasonably requested by the County; and
- G). Monitor the qualifications, capabilities and capacities of its subconsultants to perform those items of the scope of Services which have been delegated to them. Should the Consultant be required to change or add subconsultants through the course of this Agreement, the Consultant must receive prior written approval from the County. The Consultant will be required to notify the County why a change or addition is required, how the change, addition or deletion will affect the Consultant's original proposal, and how the change, addition or deletion will affect the Consultant's ability to meet any other requirements of the County before receiving written approval. Replacement of a subconsultant from those identified in the Consultant's proposal does not qualify as a reason for additional compensation per "Article 3, Section 4 Scope Changes" of this Agreement; and
- H). Not engage the services of any person or persons in the employment of the County or any other public body in the State of Ohio for any of the work covered by the terms of this Agreement, without the specific written permission of the County; and

- D). Retain all soil and rock samples for six months after completion of the Services. If requested by the County, the Consultant shall store or transfer to the County such soil and rock samples at the County's sole cost and expense.

Section 3 – Termination of Agreement:

- A). This Agreement may be terminated by the County at its sole discretion. In that event, the compensation to be paid to the Consultant by the County shall be determined by the County on the basis of Services completed, usable maps and data available to the County. In no event shall the Consultant be entitled to receive compensation for unperformed Services.
- B). This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if the substantial failure has been remedied before expiration of the seven (7) day period. In the event of termination, the Consultant shall be paid for Services performed prior to receipt of the termination notice date, but not overhead or profit on unperformed Services. In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by this Agreement, the Consultant may complete such analyses and records as are necessary to complete the Consultant's files and may also complete a report on the Services performed to the date of notice of termination or suspension.

Section 4 – Insurance:

The Consultant shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Agreement:

- A). Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

If the Consultant has employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

B). Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

C). Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

D). All Risk Equipment Insurance covering all risk of physical damage to equipment provided for use by the Consultant.

E). Professional Liability Insurance providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$1,000,000 per claim;
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Agreement. The Consultant shall keep such insurance in effect for a period of not less than five (5) years after the date of completion of the Consultant's Services for the Project.

F). Contractors Pollution Liability Insurance with a limit of liability not less than:

\$1,000,000 per claim;
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis, however, if written on a claims made-basis, the claims-made retroactive date on the policy shall be prior to the commencement of any work related to this Agreement.

Requirements for All Insurance Coverage

- A). The insurance policies of the Consultant required for this Agreement, with the exception of the Professional Liability Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an additional insureds and shall contain the following provisions:
 - i) Thirty (30) days prior notice of cancellation or material change;
 - ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- B). The insurance required for this Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- C). These insurance provisions shall not affect or limit the liability of the Consultant stated elsewhere in this Agreement or as provided by law.
- D). The Consultant shall require any and all of its subconsultants and subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
- E). The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
- F). The Consultant shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Agreement.

Section 5 -- Indemnification

- A). The Consultant hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result solely from (a) the Consultant's negligent errors or omissions in any drawings or specifications, other documents, or the Consultant's negligent performance under this Agreement, or from the negligent performance, errors and omissions of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by the Contractor under any terms or provisions of this Agreement.
- B). The Consultant acknowledges that, as an political subdivision of the State of Ohio, the County does not indemnify any person or entity. The Consultant agrees that no provision

of this Agreement or any other contract or agreement between the Consultant and the County may be interpreted to obligate the County to indemnify or defend the Consultant or any other party.

- C). Section 4 (Insurance) and Section 5 (Indemnification) of this Article 2 shall survive the completion of the Services to be performed hereunder and the termination of this Agreement.

Section 6 — Standard of Care

Services performed by the Consultant under this Agreement shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made. The County recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by the Consultant and that the data, interpretations and recommendations of the Consultant are based solely on the information available to the Consultant. The Consultant shall be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

Section 7 — Limitation of Liability

The Consultant's liability for damages due to error, omission, or other professional negligence in the performance of the Services shall be limited to the available proceeds of insurance required under this Agreement.

Section 8 — Miscellaneous Engineering Items

- A). The County reserves the right to inspect any and all equipment, materials and technical data used or developed for the scope of this Agreement.
- B). The County reserves the right to inspect the Consultant's and/or its subconsultant's facilities and to conduct interviews of personnel previously and/or currently assigned to the project to assure the quality and progress of all authorized work.
- C). For the purpose of this Agreement, the agent for the County and liaison officer on the matter contained herein shall be the DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS and/or such members of his/her staff as designated.
- D). The County reserves the right to use all or any part of the reports, plans, specifications, files, data, and other documents contemplated by this Agreement in conjunction with, supplemental to, or otherwise as the County sees fit, in connection with any studies, reports, plans and undertakings of a professional engineering character which the County now or later may undertake of its own volition or through others in connection with any or all of the improvements hereinbefore described, provided, however, that inasmuch as such studies and/or plans are not intended or represented to be suitable for reuse without

specific written adaptation or verification will be at the sole risk of the County and without liability or legal exposure to the Consultant.

- E). The Consultant hereby agrees that there will be no charge to the County for any patent rights which it controls and which may be involved in the work under this Agreement unless such charges have been specified and included in the fees enumerated in Article Three of this Agreement. The Consultant shall advise the County of any process or patent rights which are not held or controlled by the Consultant, but which in the Consultant's opinion may be involved in the work contemplated herein.
- F). All final plans, reports, specification and any other records developed by the Consultant in the performance of this Agreement, shall remain the sole property of the County. The Consultant shall not copy or use such records except to develop contracted work associated with this Agreement. In addition, the Consultant shall not transfer any such records to any other party not involved with this Agreement. All of the above shall be delivered to the County upon completion of this Agreement.
- G). During the performance of this Agreement, the Consultant agrees to itself, its assignees, subconsultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of the County, relative to equal employment, affirmation action and Small/Women/Minority Business Enterprise requirements which are herein incorporated by reference and made a part of this Agreement. Failure to comply with any of the aforementioned laws, resolutions, regulations and/or policies may result in the termination of this Agreement.
- H). The Consultant warrants and represents that it has not employed or retained any company, firm or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, firm or person, other than a bona fide employee working for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, brokerage fee, or contingent fee.
- I). The Consultant, its employees and subcontractors shall perform all work pursuant to this agreement as independent contractors and not as employees of the County.

ARTICLE THREE – FEES, PROGRESS REPORTS, FEE PAYMENTS AND SCOPE CHANGES

Section 1 - Fees

In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Consultant agrees to accept, the following fees in full compensation for services, labor, material, and equipment necessary to perform the Services herein specified, including overhead,

profit and expenses of every kind incurred in connection with the undertaking and performing of said work, except those items specifically exempted herein and furnished by the County, as part of this Agreement.

The DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS reserves the right, at his/her discretion, to fund approved increases in scope from various phases of work that will be non-performed or have unspent balances upon completion of that category of work, provided that such transfer of funds do not cause the total upset maximum fee of this Agreement to be exceeded.

Upon written notice to proceed by the DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS to the Consultant, the County agrees to pay the Consultant for the services provided for within this Agreement, as set forth on Exhibit C attached hereto.

It will be the responsibility of the Consultant to interpret, explain, clarify and answer questions about the plans, reports and specifications in relation to the Service provided at no additional fee to the County.

The maximum Fee for the services set forth in Exhibit A shall not exceed \$70,600.00.

Section 2 – Progress Reports and Fee Payment:

The fees for the Services shall be paid by the County as follows:

- A). Partial payments of fees shall be made as the Services progress and as outlined in this Agreement and the Consultant's proposal dated November 1, 2013. Invoices shall be prepared and submitted to the County ENGINEER for payment based on the Services performed since the previous invoice or notice to proceed, all of which are subject to audit by the County or others and possible revision. Each invoice shall include a written progress report that, at a minimum, contains a narrative describing the Services performed since the last invoice and the percentage completion of the Services.
- B). The Consultant shall submit monthly invoices in a format that is recommended and acceptable to the County. Sample copies of this invoicing format shall be provided to the Consultant by the County DEPARTMENT OF PUBLIC WORKS.
- C). Invoices for any portion of the Services shall not be submitted more frequently than monthly; and
- D). If the Consultant does not submit an invoice to the County for three consecutive months, the Consultant must submit a written progress report updating the County accordingly; and
- E). Invoices for those portions of the Services paid on the basis of costs incurred shall show the name and classification of employee, dates and hours worked, current hourly rate and overhead plus direct costs;

- F). The County shall pay all undisputed amounts within thirty (30) days after the County's receipt of the Consultant's invoices pursuant to this Article 3, Section 2.

Section 3 – Scope Changes:

It is understood and agreed by and between the parties hereto that only those situations, as documented by the Consultant, and agreed to by the County ENGINEER shall constitute a scope change. Fee adjustments for documented scope changes may be appraised and adjusted by mutual agreement of the County and the Consultant.

Until the County has agreed that a scope change is in effect, the Consultant shall continue to proceed with the Services necessary to complete the authorized aspects of this Agreement as hereinbefore outlined. That is, a scope change request shall not constitute a reason for the Consultant to delay or suspend Services on authorized tasks unless the Consultant has been so directed by the DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS. A change in scope of Services is defined as any of the following:

- A). The addition, deletion or substantial alteration of the Services that was not included in the scope of Services attached hereto as Exhibit A, scope meeting minutes or addenda to the scope meeting minutes, all of which are incorporated into this Agreement, if such substantial changes are beyond the control of the Consultant.
- B). A substantial revision to any reports, sheet layouts, plans, specifications, cost estimates, etc. which have been previously approved by the DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS or are a result of a radical change in policy.
- C). Unavoidable delays or hindrances beyond the control of the parties to this Agreement which will require extending the Schedule.

The Consultant shall submit to the County a written request for any additional service or change in scope, and provide to the County a cost breakdown for such additional service or change in scope on a cost plus fee basis. If the County agrees with the request, then the County will authorize the Consultant to proceed with the scope change or additional service.

The total amount for changes in scope or additional services shall not exceed \$20,000.00.

Section 4 – Total Contract Amount

The total contract amount for the Services listed in Exhibit A and scope changes or additional services defined in Section 3 above (if any) shall not exceed \$90,600.00.

ARTICLE FOUR – MISCELLANEOUS CONTRACT ITEMS

- A). Assignment. Neither the County nor the Consultant shall delegate, assign, sublet or transfer its duties or interest in this Agreement without the written consent of the other party.
- B). Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts. The Consultant hereby agrees not to challenge any provision in this Agreement, including this Governing Law and Jurisdiction section, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.
- C). Notices. Any notice to be given under this Agreement by either party to the other may be effected either by personal delivery in writing or by certified mail, postage-prepaid, return receipt requested. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below:

To the County: Director of Department of Public Works
2100 Superior Viaduct
Cleveland, Ohio 44113

With a copy to: Attn: Cuyahoga County Director of Law
Cuyahoga County Department of Law
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113

To Consultant: DUANE J. SCHREIBER, DAVID V. LEWIN CORP.
812 HURON, SUITE 390
CLEVELAND, OHIO 44115

- D). Entire Agreement. This Agreement constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Agreement shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.
- E). No Apparent Authority/Proper Approvals. The Consultant recognizes and agrees that no public official or employee of Cuyahoga County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

- F). Parties Bound and Benefited. This Agreement shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- G). Non-Waiver. The County's failure to require performance of any provision of this Agreement, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Agreement shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.
- H). Contract Interpretation and Construction. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Agreement.
- I). Counterparts and Facsimile/Electronic Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.
- J). Severability. If any provision of this Agreement is invalid or unenforceable for any reason, this Agreement shall be divisible as to such provision and the remainder of this Agreement shall be and remain valid and binding as though such provision was not included.
- K). Public Records. All parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.
- L). Electronic Signatures. **THE CONSULTANT AGREES THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. THE CONSULTANT ALSO AGREES TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY, OHIO.**

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

DAVID V. LEWIN CORPORATION

By: *[Signature]* 11/8/13

COUNTY OF CUYAHOGA, OHIO

By: *[Signature]*
Edward FitzGerald, County Executive

Approved as to Legal Form and Content:
Cuyahoga County Department of Law
[Signature]
By: *[Signature]* Date: 11/14/13

Exhibit A
Scope of Services

Scope of Geotechnical Information

Cuyahoga County Convention Center Hotel
Cleveland, Ohio

**MAGNUSSON
KLEMENCIC**
ASSOCIATES

Geotechnical - Civil Engineers

The following outlines the scope of geotechnical information required by Magnusson Klemencic Associates (MKA) and Barber & Hoffman (B&H) to accomplish the structural design for the project. Also included is the information anticipated to be required to accomplish the shoring and civil design, which will be performed by others. This scope does not contain data requirements for any environmental analyses that may be advised or required for the site.

The geotechnical engineer shall confirm that all relevant design information is being supplied and shall recommend any supplemental information as appropriate. Attached as Figure 1 is a preliminary boring plan. This plan shall be reviewed by the geotechnical engineer and either implemented as shown or adjusted/expanded as necessary to ensure that the required testing is performed so that the required design information can be supplied.

GENERAL SITE CONDITIONS

Provide the following information regarding general site conditions:

- Project location.
- Geological description of the site.
- Measured or estimated groundwater elevation, including dates of measurement and anticipated seasonal fluctuations.
- Recommendations for permanent dewatering, if necessary.
- Identification of any hazardous waste materials on the site.
- General soil conditions, such as logs indicating pertinent variations and geological conditions.
- Results of all laboratory investigations and tests.
- Determination of the existence of loosely consolidated or expansive materials subject to excessive settlement or expansion. If present, recommend remedial measures.
- Maximum frost depth, if any.
- Identification of Site Class in accordance with the 2011 Ohio Building Code (based upon the 2009 International Building Code).
- Identification of potential geological and seismic hazards, including slope instability, liquefaction, differential settlement, and surface displacement due to faulting or lateral spreading. If present, list recommended mitigation measures.

CONSTRUCTION PROCEDURES

- Determine maximum slope of embankments during construction.
- Provide any observable information pertinent to construction procedures or problems that should be evaluated in the design phase and passed on to the contractor through the construction documents.
- Review all earthwork-, foundation-, or shoring-related specifications prior to bids.

FOUNDATION RECOMMENDATIONS

General

- Recommend type(s) of foundation system(s) (e.g., spread footings, mats, driven or cast-in-place deep foundation elements, etc.).
- Review preliminary and final foundation loads and/or bearing pressures.
- Report anticipated differential and total foundation settlements.
- Recommend subsurface drainage system to be used for slabs on grade, footings, and basement/cantilever walls.
- Advise regarding suitability of on-site materials or requirement for off-site materials for compacted fills under building slabs, along with recommended specification for compacted fill material.
- Recommend compaction criteria.
- Provide specification for controlled low-strength material (CLSM) and preparation of the site prior to placement of CLSM.
- Determine laboratory and field test methods for CLSM.
- Indicate subgrade preparation and modulus of subgrade reaction for slabs on grade.
- Determine hydrostatic uplift forces for basement construction below the water table.
- Determine whether capillary water break, moisture/vapor barrier, etc., are required.
- Provide soil pressures (active, at rest, and passive) to be used for the design of cantilevered and basement-type retaining walls, along with recommended surcharge loadings. Also provide lateral pressures on foundation or retaining walls due to earthquake motions.
- Determine whether native or imported fill material is expected to be reactive with normal cements.
- Determine whether soil design parameters can be increased for short-term loadings (wind/earthquake).

Shallow Foundations

If shallow foundations are recommended, supply the following data:

- Allowable soil bearing pressure. The report should indicate if net or gross values are being supplied.
- Coefficient of friction for sliding, and whether it can be combined with passive pressure values.
- Vertical and horizontal modulus of subgrade reaction and spring constants for shallow foundations where more exact displacement analysis is required.
- Anticipated factors of safety for design values.

Deep Foundations

If deep foundations are recommended, supply the following data:

- Size/Type of deep foundation elements to be recommended. (Note: Any limitations for displacement-type deep foundation elements of adjacent buildings, equipment, etc., subject to damage by use of this type of element should be identified.)
- Allowable end bearing.
- Allowable skin friction.

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- Depths to bearing stratum, including recommendations regarding penetration into bearing stratum.
- Estimated settlements (total and differential).
- Allowable uplift loads.
- Minimum element spacing and minimum time period between placement of elements.
- Allowable lateral loads and corresponding lateral displacements for both fixed and pinned pile cap conditions. Also provide moment and shear diagrams over the pile length consistent with the peak allowed lateral displacement for both fixity conditions.
- Soil properties required to perform a lateral analysis using the program LPILE.
- Values for pile cap resistance to lateral forces, including passive pressures, side frictional resistance, and base friction.
- Batter pile recommendations, including installation slopes.
- Axial and/or lateral capacity reductions due to group action, where necessary.
- Load test requirements.
- Deep foundation installation, monitoring, inspection, and testing requirements.
- Requirements related to elements installed in subsiding soils.
- Suitability of deep foundation materials for the intended environment and recommended protective measures, where needed.
- Anticipated factors of safety for design values.

SITE-SPECIFIC GROUND MOTIONS

- Review earthquake historical data and site-specific geological hazards.
- Review history or evidence of faults, subsidence, or earth slides.
- Determine at-grade design ground motion spectrum according to Section 11.4.7 of ASCE 7-05 with a design response spectrum at 5-percent damping.

TEMPORARY SHORING SYSTEM

- Specify means, methods, and types of temporary shoring for all foreseen shoring conditions.
- Recommend tieback anchor friction values, geometry of no-load zone, and minimum anchor lengths.
- Provide lateral earth pressures and diagrams for temporary shoring system. Include a cantilever/single tieback condition and a multiple tieback condition. If different soil types are encountered, provide appropriate pressure coefficient for each soil type.
- Provide required soldier pile minimum embedment lengths, end-bearing values, and side friction values above and below the base of excavation.
- Specify horizontal spring constant (i.e., subgrade modulus for passive pressure below base of excavation).
- Specify lagging design criteria.
- Determine surcharge pressures on shoring system due to adjacent structures.
- Recommend temporary dewatering during construction.

- Recommend shoring monitoring during construction.
- Determine proof-loading requirements for all production tieback anchors.
- Recommend number and loading criteria for tieback performance tests.
- Identify tributary area of active pressure above and below base of excavation.
- Identify tributary area of passive pressure below base of excavation.

BUILDING SUBGRADE

- Recommend building subgrade preparation. Address requirements for proof-rolling and removal of unsuitable or unsatisfactory and organic material.
- Provide recommendations on use of native material for subbase or imported structural fill material to improve subgrade values. Provide specification and gradation of imported material and depth of material to be placed or methods for the modification of native soils, if useable. Review and, if viable, recommend alternate methods of subgrade improvement, such as soil stabilization of native material.
- Provide recommendations on use of a capillary water barrier, vapor barrier, and sand below slabs-on-grade. Include specification and gradation of the capillary water barrier, material, and sand. Also include specification for the vapor barrier.
- Provide recommendation for foundation drainage systems. Include requirements for minimum pipe size, specification for filter fabric, specification and gradation of foundation drain backfill material, and recommended location of filter fabric with respect to the backfill material.
- Address the need for underslab drainage system. If required, include requirements for minimum pipe size, specification for filter fabric, and recommended location of filter fabric with respect to backfill material. Provide specification and gradation of underslab drain backfill material and address whether this material can meet the same specification as the capillary water barrier.
- Provide estimated flow rate of the foundation drainage and underslab drainage systems.
- Provide compaction criteria for all materials below slabs-on-grade and foundations, including foundation drain backfill material.

SITE EARTH-RETAINING SYSTEM

- Specify means, methodology, and types of earth-retaining systems appropriate for site conditions, such as cantilevered retaining walls, mechanically stabilized earth walls, rockeries, etc.
- Provide active and/or passive pressures to be used in the design of cantilevered retaining walls. Provide recommended surcharge loads and dynamic seismic lateral soil loads.
- Provide allowable foundation bearing pressures, sliding coefficients, and anticipated factors of safety.

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- Recommend wall backfill material. Include specification and gradation of material to be used for backfill. Also provide compaction criteria for wall backfill material.
- Recommend wall drainage system, such as weep holes or piped drainage. If a piped system is recommended, include information regarding minimum pipe size, specification for filter fabric, and specification and gradation of the wall drain backfill material.

PAVEMENT

- Provide recommendations for preparation of the pavement subgrade. Address requirements for proof-rolling, removal of unsuitable or unsatisfactory and organic material, or the use of geotextile fabrics.
- Provide recommendations on the use of native material for subbase or imported structural fill material to obtain improved subgrade values. Provide specification and gradation of imported material and depth of material to be placed or methods for modification of native soils. Review and, if viable, recommend alternate methods of improving subgrade, such as soil stabilization of native material.
- Determine California Bearing Ratio (CBR) and Modulus of Subgrade Reaction (k) for the recommended subgrade and subbase for design of asphalt and concrete pavements, respectively.
- Provide recommendations for pavement underdrain systems, if required. Include information on pipe sizes, filter fabric, and drainage backfill material gradation.
- Recommend specification and gradation of pavement base course.
- Recommend asphalt and concrete pavement thicknesses.
- Provide compaction criteria for all components of pavement sections, including subbase, base course, and asphalt pavements.

STORM DRAINAGE AND UTILITIES

- Specify design infiltration rate to be used in storm water management design.
- Provide recommendations on the use of native material for trench backfill. If native material is not useable, provide specification and gradation for material to be used.
- Provide compaction criteria for trench backfill and bedding material.
- Identify corrosive properties of the soils on metallic piping. If soils are found to be corrosive, provide recommendations for protection of utilities.

The language set forth above in this Exhibit A is hereby modified and acknowledged by the parties to include the clarifications set forth below:

- Identification of hazard waste material is beyond the scope and our expertise. We will, however, notify you if questionable material or odor is encountered during drilling such as a petroleum product.
- We will provide a Lateral Subgrade Modulus and other soil parameters to be used in LPILE computer program. We will not evaluate or analyze lateral capacity of piles or drilled piers.
- With regard to seismic analysis, we will only provide a seismic site classification.
- We will not specify means and methods of construction. We will recommend and suggest means and methods based on our experience in downtown Cleveland as well as the subsurface information obtained during the investigation.
- Specialty contractors are usually in a better position to design and implement temporary retaining structures. We would be available to review proposed temporary retaining structure designs with regard to soil properties considered.
- We will not provide specifications. We can provide guidelines or recommendations that could be incorporated into the specifications.
- We will not evaluate infiltration rate or design as part of the investigation. We will provide soil permeabilities that can be used by a dewatering contractor. A groundwater study, if necessary, can be done at a later date.

As discussed in our qualifications we will drill 9 borings. Prior to demolition we will drill 8 borings. We will obtain 6 to 8 undisturbed, Shelby Tube, samples. We will install two water monitoring wells, piezometers, so that groundwater levels can be monitored during the investigation period. Soil samples obtained in the borings will be brought to our laboratory for testing and evaluation. Test will include, when appropriate, moisture content, unconfined shear stress, and unit weight. Consolidation test will be done on representative clay samples. Grain size analysis will be done on representative granular soil samples. As mentioned in our qualifications, we will perform a feasibility study while the drilling and laboratory work is being done. We will prepare a geotechnical report which presents our findings and recommendations.

Exhibit B
Schedule

Drilling	December 2 to 17, 2013
Laboratory testing	December 4, 2013 to January 3, 2014
Hotel foundation feasibility	November 18, to December 18, 2013
Engineering analysis	November 18, 2013 to January 7, 2014
Final report completion	January 17, 2014

**Exhibit C
Consultant's Compensation**

Consultant shall be paid by the County in accordance with the following rate schedule:

SCHEDULE OF FEES

Clerical	\$ 39.00 per hour
Draftsman	47.00 " "
Technician	52.00 " "
Senior Technician	63.00 " "
Laboratory Testing	59.00 " "
Engineer or Geologist	79.00 " "
Project Engineer	115.00 " "
Principal Engineer – Consultations	152.00 " "
Senior Consultant – Consultations	250.00 " "
Mileage	0.55 per mile
Out-of-Pocket Expenses (Drilling, reproductions, travel, subsistence, etc.)	Cost plus 15 percent

Hourly rates are based on a normal 8 hour day, 40 hour week. Field work in excess of normal hours, including Saturdays, will be billed with a multiplier of 1.33 for laboratory, technician, engineer, or geologist personnel. Sundays and holidays will be billed with a multiplier of 2.0. No premium for overtime work will be billed for project or principal engineers.

Note that the above hourly rates include all field tests, including the use of Nuclear Equipment to determine moisture contents and in-place densities of compacted fill and backfill within the State of Ohio. A charge of \$60.00 per day will be billed for use of a nuclear gauge outside of Ohio.

The Consultant shall not exceed the following estimates for the Services set forth in Exhibit A without first notifying the County in writing:

Soil drilling and piezometer installation and co-ordination	\$43,000
Laboratory testing	\$ 9,000
Meetings, 16 hours @ \$152/hour	\$ 2,400
Engineering Analysis and Report Preparation	\$13,500
Drilling and laboratory testing after building demolition	\$ 2,700
Total	\$70,600

Additional drilling, including laboratory testing, will be charged at \$35 per foot. Coring of the bedrock is not included as part of the investigation. If drilled piers, caissons, are to be used, pre-coring of the rock will be done by the caisson contractor. If piles are use, pile tests, either static or dynamic, are to be done by the pile contractor. The cost to core 10 feet of rock in one boring at the time of the investigation will be \$2,500. The above assumes the driller will not be impeded by others working on the site and that any spoils can be left on site.

INCUMBENCY CERTIFICATE

The undersigned, being all of the Shareholders and Directors of David V. Lewin Corp., an Ohio professional corporation ("Corporation"), hereby certify that each of the following named individuals is an officer of the Corporation, and that the signature set forth opposite his name is his true and genuine signature, and such individuals have been officers of the Corporation for the current year and up to and through the date of this Certificate.

Name and Title

Signature

Duane J. Schreiber,
President, Treasurer
and Assistant Secretary



Joseph A. Recktenwald,
Vice President, Secretary
and Assistant Treasurer



IN WITNESS WHEREOF, the undersigned has set his hand this 12th day of November, 2013.




OKSANA PETRIV
Notary Public, State of Ohio
My Commission Expires Aug 22, 2018
Recorded in Cuyahoga County

11-12-2013


Duane J. Schreiber


Joseph A. Recktenwald