

**AGREEMENT BETWEEN
CONSTRUCTION MANAGER AND ASSOCIATE**

THIS AGREEMENT, made by and between, **Ozanne Construction Company** (hereinafter referred to as the "Ozanne") and **Turner Construction Company** (hereinafter referred to as the "Turner"), is hereby dated this 1st day of February, 2011 for Construction Management Services in support of the Design Builder Turner. Turner has entered into a Design Build Agreement on the 18th day of November, 2010 with MMPI Cleveland Development, LLC. (hereinafter referred to as the "Owner") to provide design build construction management services on the **Cleveland Medical Mart and Convention Center Project** (hereinafter referred to as the "Project") which agreement is hereinafter referred to as the Prime Agreement and which provides for professional construction management services in connection with the Project described therein. Copies of the Prime Agreement dated November 18, 2010 are available for review at Turner's main office. The Prime Agreement and all of its provisions are part of this Agreement.

Turner's Project No. 17110DO

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Attachment "2"	Prime Agreement dated 11-18-10 available for review at Turner's Office
Attachment "3"	Ozanne Letter of Intent dated October 14 th , 2010.

**ARTICLE I
GENERAL SERVICES**

- 1.1 Turner has furnished Ozanne with the description of the Project and the scope of the services required and Ozanne acknowledges being informed as to the nature and extent of services required.

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- 1.2 Ozanne shall provide for Turner the same professional services that Turner is required to provide for the Owner under the Prime Agreement. Subject to Construction Manager's prior approval, Ozanne will provide personnel with appropriate training, education, and experience as required to complete the work tasks and services as outlined in the Prime Agreement.
- 1.3 All services provided by Ozanne shall be at the direction of Turner. Turner and Associate will develop all policies and procedures to be employed on the Project. Turner and Associate have formed an Executive Committee that will develop all policies, procedures and staff assignments for the Project. The Executive Committee shall consist of Mark Dent, Dominic Ozanne and Jill V. Akins.
- 1.4 Ozanne will be responsible for the implementation of project administrative functions for its part of the Project in compliance with the policies and procedures as developed by Executive Committee and Turner. If Ozanne acts in any way that is contrary to or deviates from the policies and procedures as established by Executive Committee, Ozanne shall be solely responsible for the results and consequences of such action. Actions taken by Ozanne that are contrary to the policies and procedures established by the Executive Committee and Turner shall be considered grounds for termination of this Agreement.
- 1.5 Turner shall be the general administrator of the professional services for the Project and shall facilitate the exchange of information between Ozanne and Turner for the Project as necessary for the coordination of its parts of the Project.
- 1.6 Except as authorized by Turner, all communications between Ozanne and the Owner, Contractors or other Subcontractors for the Project shall be consistent with the policies and procedures established by the Executive Committee and Turner and shall be forwarded through Turner.
- 1.7 Ozanne shall provide its services in a professional, safe and workmanlike manner in accordance with generally accepted standards of good construction management practice including compliance with all applicable local, state and federal laws, codes and regulations having jurisdiction over the Projects.
- 1.8 Neither Turner nor Ozanne shall enter into any other agreement with the Owner relating to the Prime Agreement or Project without modifying this Agreement to incorporate such work.

ARTICLE 2

Ozanne'S RESPONSIBILITIES AND SERVICES

- 2.1 Turner has furnished Ozanne with the description of the Project and the scope of services required and Ozanne acknowledges being informed as to the nature and extent of services required,
- 2.2 Ozanne's services consist of those services performed by Ozanne and Ozanne's employees as enumerated in the Prime Agreement, and assigned as outlined herein and identified with the attached Ozanne's Staff Rates & Fee sheet labeled as attachment "1".
- 2.3 Ozanne's services shall be performed according to this Agreement in the same manner and to the same extent and standard that Turner is bound by the Prime Agreement to perform such services for the Owner.
- 2.4 Ozanne shall designate [REDACTED] as representative authorized to act in Ozanne's behalf with respect to its part of the Project. Turner has designated [REDACTED] as representative authorized to act in Turner's behalf with respect to its part of the Project
- 2.5 Ozanne's services shall be performed in a manner, sequence and timing so that they are coordinated with those of Turner for the Project.

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- 2.6 Unless otherwise authorized, Ozanne shall provide copies of the necessary information (reports, logs, etc.) to Turner for coordination and review prior to submission to the Owner Contractor or other Subconsultants. All aspects of the work administered by Ozanne shall be coordinated by Ozanne and Ozanne shall also become familiar with the Work administered by Turner and other sub consultants as necessary for the proper coordination of its part of the Project.
- 2.7 Ozanne shall support Turner in all aspects of providing Construction Management services on the project.
- 2.8 Adhering to the estimated staff hours to accomplish the defined services and tasks as detailed in Attachment "1" and are the sole responsibility of Ozanne and Turner for their respective staff. Any changes in Ozanne's estimated or actual staff ing hours shall be approved in advanced by Turner. Any potential increase in staff costs shall be accompanied by a plan to maintain contracted budgets.
- 2.9 Ozanne understands that the time period for providing services is subject to modification that is outside the control of Turner; and Ozanne agrees that Turner has the flexibility to adjust its schedule as required to meet the needs of the Project.

ARTICLE 3
OZANNE'S ADDITIONAL SERVICES

- 3.1 Additional service hours shall be provided by Ozanne as required to complete all services required of Ozanne. In the case of disputes, Ozanne shall continue to provide the required services on the Project as directed by Turner until the dispute is resolved.
- 3.2 Additional services requiring additional compensation above Ozanne's fee for Basic Services shall be provided if authorized in writing by Turner.

ARTICLE 4
TURNER'S RESPONSIBILITIES

- 4.1 Turner shall, with reasonable promptness, provide available information regarding the requirements for their part of the Project.

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4.2 Turner shall designate [REDACTED] as the representative authorized to act on Turner's behalf with respect to the Project. Turner or such authorized representative(s) shall render decisions in a timely manner pertaining to documents submitted by Ozanne in order to avoid unreasonable delay in the orderly and sequential process of Ozanne's services.

ARTICLE 5
TERMINATION

- 5.1 This Agreement shall be terminated at such time as the Prime Agreement is terminated. Turner shall promptly notify Ozanne of such termination
- 5.2 Turner may terminate this Agreement for material Breach of Contract.
- 5.3 This Agreement may be terminated by either party upon not less than fifteen (15) days prior written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 5.4 Unless the termination is the fault of Ozanne, Ozanne shall be compensated in the same manner as Turner under the Prime Agreement for all services performed prior to receipt of written notice from Turner of such termination.

ARTICLE 6
BASIS OF COMPENSATION

Turner shall compensate Ozanne as follows:

6.1 **Compensation:** For the services provided by Ozanne under this Agreement, compensation shall be computed as follows:

Rates for all Ozanne staff will be charged per Attachment "1"
The fee is included in the billing rates.

6.2 **Compensation for Additional Services:** Compensation for the estimated hours of service to be provided by Ozanne for the Projects shall not exceed the compensation detailed in the Prime Agreement without prior written approval from Turner. Changes to the Prime Agreement will be reflected as an adjustment to the estimated hours of service to be provided by Ozanne.

For any additional services authorized on the Project, Ozanne will be compensated on the same basis as set forth in Article 6.1 above.

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- 6.3 **Reimbursable Expenses:** Also referenced as general expenses in Attachment "1", will be billed @ a lump sum rate of [REDACTED] for 32 months starting January 1st, 2011. The cost associate with this lump sum amount include the following cost associated with Ozanne's employees both assigned to the project and based at Ozanne's home office:
- Telephones
 - Cell phones and blackberry devices
 - Computers & related IT and AV expenses
 - Copier expenses
 - Home office expenses
 - Travel and vehicle expenses
 - Expense reports
 - Ozanne staff training expenses
 - Business related expenses
 - Marketing expenses
- 6.4 **Time of Payment:** Ozanne will be paid monthly for services provided on the Project in accordance with the payment terms established in the Prime Agreement.
- 6.5 All monthly invoices shall be provided in the form, format and time frame agreed to by Turner and sent to the attention of Turner's project accounting office in Cleveland,OH. This requirement is mandatory in order for Ozanne's invoices to be processed.
- 6.6 For Ozanne's services and Reimbursable Expenses, Ozanne shall be compensated within Ten (10) days after Turner receives payment from the Owner. If Turner does not receive full payment when due from the Owner, Turner shall pay Ozanne for the accepted statements of services in the same proportion that payments received from the Owner bear to the total payment due to Turner. Ozanne's invoices shall be subject to timing for payment provisions in the Prime Agreement.
- 6.7 The payment provisions set forth in this Article are agreed to be conditions of actual payment in addition to provisions for timing of payment. The Consultant agrees to make no claims for payment other than under this Agreement.

ARTICLE 7

INSURANCE COVERAGES AND INDEMNITY

- 7.1 Ozanne will be enrolled in Turner's CCIP Insurance program.
- 7.2 Ozanne shall also maintain professional liability insurance for the duration of the Project. The limits of liability shall be at \$1,000,000.00 per claim, and \$2,000,000.00 aggregate for the policy year. MMPI, Cuyahoga County, and Turner shall be named as additional insured on the Certificate of Insurance. All such insurance policies shall provide that coverage and shall not be canceled or revised without thirty (30) days written notice to Ozanne. Ozanne shall provide proof of all insurance coverage prior to the first invoice for services. Turner may request to review the actual policy. Turner shall provide the same Professional Liability Insurance for the Owner.
- 7.3 To the fullest extent permitted by law, Ozanne shall indemnify, defend and hold Turner and its consultants and subcontractors harmless from any and all claims, liability, regulatory fines and penalties, costs, damages, reasonable attorney's fees and expenses (collectively, "Loss") asserted against it or which it incurs due to any claims or causes of action of any nature (whether in tort, contract, statutory, regulatory or otherwise) arising out of Ozanne's negligent acts or omissions in the performance of services with respect to this Agreement, the Project or the Work, or while performing its obligations under the Prime Contract, including those claims

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relating to its own subcontractors, suppliers or employees, or by reason of any claim or dispute of any person or entity for damages from any cause directly or indirectly relating to any negligent action or failure to act by the indemnifying party, its representatives, employees, subcontractors or suppliers.

- 7.4 To the fullest extent permitted by law, Turner shall indemnify, defend and hold Ozanne harmless from any and all liability, regulatory fines and penalties, costs, damages, attorney's fees and expenses (collectively, "Loss") it incurs due to any claims or causes of action arising from personal injury, property damage or wrongful death arising out of Turner's negligence with respect to the Project or the Work, including those claims relating to its own consultants, subcontractors, suppliers or employees (except Associate), or by reason of any claim or dispute of any person or entity for damages relating to such causes directly or indirectly relating to any negligent action or failure to act by the indemnifying party, its representatives, employees, subcontractors or suppliers.

ARTICLE 8
MISCELLANEOUS PROVISIONS

- 8.1 If personnel assigned on the Project are found by Turner at their sole discretion, to be unsatisfactory in their work performance, Turner will provide a written request for corrective action, up to and including a demand that such person be replaced on the Project. Such requested corrective action shall be acted upon immediately by Ozanne. In the event of a demand to replace an individual, a qualified replacement person must be presented for approval within thirty (30) business days. Turner will have the opportunity, in all cases, to review and approve the qualifications of any person proposed for assignment on the Project.
- 8.2 It is expressly agreed and understood that Ozanne shall at all times be considered an independent consultant in its provision of services under this Agreement. It is further agreed and understood by Ozanne that the employees of Ozanne providing services hereunder are not considered to be employees of Turner for any purpose including, but not limited to, compensation for services, employee's benefits or worker's compensation insurance. Nothing herein shall be construed to create an agency, partnership or joint venture.
- 8.3 Ozanne shall be responsible for the professional quality, technical accuracy, and coordination of all services by it under this Agreement. Neither Turner's review, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement. Ozanne shall perform duties and services for Turner in accordance with applicable law, and shall indemnify and save harmless Turner from claims, suits, actions, damages, and costs of every name and description to the extent resulting from the negligent performance of the services of Ozanne under this Agreement.
- 8.4 Any controversy or claim between the staff of Turner and Ozanne arising out of or relating to this Agreement, or the breach thereof, including but not limited to its formation and validity, shall be negotiated and attempted to be settled in good faith by submission to Turner. If Turner and Ozanne cannot resolve the matter, then either party may invoke and pursue the same dispute resolution process as that described in the Prime Agreement.
- 8.5 This Agreement, including any dispute or breach thereof, shall be interpreted and enforced in accordance with the laws of the State of Ohio.
- 8.6 This Agreement and its exhibits represent the entire and complete agreement between Turner and Ozanne and may be amended only by a written instrument signed by both Turner and Ozanne.
- 8.7 Ozanne understands that Turner may engage the consulting services of other consultants for the Project. Ozanne agrees to work with the information provided by Turner and Turner's other consultants in order to accomplish the Services under the Prime Agreement.

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- 8.8 In the event of a conflict between this Agreement and attachments, this Agreement shall govern. The illegibility or invalidity of any term or paragraph of this Agreement shall not affect the validity of the remainder of this Agreement, and this Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein. Any title or paragraph heading used in this Agreement is for convenience only, and shall not affect the interpretation of this Agreement.
- 8.9 All documents produced for the Project by Ozanne shall become the property of the Owner consistent with the Prime Agreement. It is understood that Turner, on the Owner's behalf, may make and distribute copies of Ozanne's work as necessary in connection with the proposed Project without incurring any obligation or additional compensation to Ozanne. Nothing in this section prohibits Ozanne from retaining copies of its work for its own personal use.
- 8.10 No information, including but not limited to, renderings, drawings, photographs, written or verbal statements, etc., shall be released by Ozanne, either before, during or after completion of the Project, for publication, news media or advertising, etc., without the prior written consent of Turner, which consent shall not be unreasonably withheld.

ARTICLE 9

NOTICES

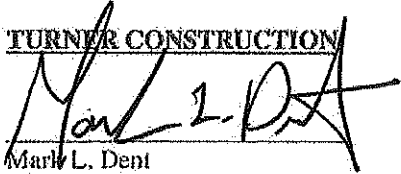
- 9.1 Any notice required by this agreement or other communication to either party shall be in writing and shall be deemed given when deposited in the U.S. mail, addressed as follow:

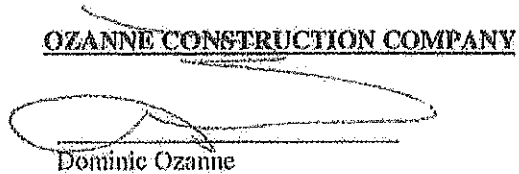
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Ozanne: Dominic Ozanne
President, Ozanne Construction Company
1635 E. 25th Street
Cleveland, Ohio 44114

Turner: Mark L. Dent, Vice President & General Manager
Turner Construction
1422 Euclid Ave.
Cleveland, Ohio 44115

THIS AGREEMENT ENTERED INTO 2-1-11

TURNER CONSTRUCTION

Mark L. Dent

OZANNE CONSTRUCTION COMPANY

Dominic Ozanne

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