

**AGREEMENT BETWEEN
CONSTRUCTION MANAGER AND ASSOCIATE**

THIS AGREEMENT, made by and between, **Van Auken Akins Architects LLC** (hereinafter referred to as the "VAA") and **Turner Construction Company** (hereinafter referred to as the "Turner"), is hereby dated this 1st day of March, 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"	VAA Letter of Intent dated October 6 th , 2010.

**ARTICLE I
GENERAL SERVICES**

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

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- 1.2 VAA 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, VAA 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 VAA 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 Ozzane, and Jill V. Akins.
- 1.4 VAA 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 VAA acts in any way that is contrary to or deviates from the policies and procedures as established by Executive Committee, VAA shall be solely responsible for the results and consequences of such action. Actions taken by VAA 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 VAA 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 VAA 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 VAA 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 VAA shall enter into any other agreement with the Owner relating to the Prime Agreement or Project without modifying this Agreement to incorporate such work. Turner recognizes that VAA has an agreement with the Owner to perform LEED review services and the removal of the 1964 addition to Public Auditorium under a separate agreement.

ARTICLE 2

VAA'S RESPONSIBILITIES AND SERVICES

- 2.1 Turner has furnished VAA with the description of the Project and the scope of services required and VAA acknowledges being informed as to the nature and extent of services required,
- 2.2 VAA's services consist of those services performed by VAA and VAA's employees as enumerated in the Prime Agreement, and assigned as outlined herein and identified with the attached VAA Staff Rates & Fee sheet labeled as attachment "1".
- 2.3 VAA'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 VAA shall designate [REDACTED] as representative authorized to act in VAA'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

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- 2.5 VAA's services shall be performed in a manner, sequence and timing so that they are coordinated with those of Turner for the Project.
- 2.6 Unless otherwise authorized, VAA 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 VAA shall be coordinated by VAA and VAA 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 VAA 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 "I" is the sole responsibility of VAA and Turner for their respective staff. Any changes in VAA's estimated or actual staff ing hours shall be approved in advanced by Turner. Such approval is not a guarantee of an adjustment to VAA's compensation. Any potential increase in staff costs shall be accompanied by a plan to maintain contracted budgets.
- 2.9 VAA understands that the time period for providing services is subject to modification that is outside the control of Turner; and VAA agrees that Turner has the flexibility to adjust its schedule as required to meet the needs of the Project.

ARTICLE 3
VAA'S ADDITIONAL SERVICES

- 3.1 Additional service hours shall be provided by VAA as required to complete all services required of VAA, whether or not these hours are compensated for by the Owner to Turner or by Turner, unless the original scope of work changes pursuant to Article 3.2.1 of the Prime Agreement. VAA agrees that it shall not be entitled to any increase in the Contract Sum or compensation except to the extent that Turner has received corresponding reimbursement under the Prime Agreement. In the case of disputes, VAA 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 VAA'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 VAA in order to avoid unreasonable delay in the orderly and sequential process of VAA'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 VAA of such termination
- 5.2 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.
- 5.3 Unless the termination is the fault of VAA, VAA 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 VAA as follows:

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

Rates for all VAA 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 VAA for the Project 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 VAA.

For any additional services authorized on the Project, VAA 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 30 months starting January 1st, 2011. The cost associate with this lump sum amount include the following cost associated with VAA's employees both assigned to the project and based at VAA'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
- VAA staff training expenses
- Business related expenses
- Marketing expenses

6.4 **Time of Payment:** VAA 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 VAA's invoices to be processed.

6.6 For VAA's services and Reimbursable Expenses, VAA 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 VAA for the accepted statements of services in the same proportion that payments received from the Owner bear to the total payment due to Turner. VAA'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 VAA will be enrolled in Turner's CCIP Insurance program.

7.2 VAA 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, Project Management Consultants and Turner shall be named on the Certificate of Insurance. All such insurance policies shall provide that coverage shall not be canceled or revised without thirty (30) days written notice to VAA. VAA shall provide proof of all insurance coverage prior to the first invoice for services. Turner may request to review the actual policy.

7.3 To the fullest extent permitted by law, VAA shall indemnify, and hold Turner harmless from any and all claims, liability, regulatory fines and penalties, costs, damages, (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 VAA'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 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

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suppliers.

- 7.4 To the fullest extent permitted by law, Turner shall indemnify, and hold VAA harmless from any and all liability, regulatory fines and penalties, costs, damages, (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 VAA. 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 VAA shall at all times be considered an independent consultant in its provision of services under this Agreement. It is further agreed and understood by VAA that the employees of VAA 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 VAA 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. VAA 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 VAA under this Agreement.
- 8.4 Any controversy or claim between the staff of Turner and VAA 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 VAA 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 VAA and may be amended only by a written instrument signed by both Turner and VAA.
- 8.7 VAA understands that Turner may engage the consulting services of other consultants for the Project. VAA agrees to work with the information provided by Turner and Turner's other consultants in order to accomplish the Services under the Prime Agreement.
- 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

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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 VAA 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 VAA's work as necessary in connection with the proposed Project without incurring any obligation or additional compensation to VAA. Nothing in this section prohibits VAA 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 VAA, 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:

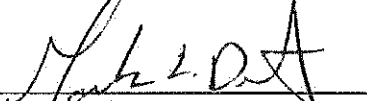
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VAA: Jill V. Akins, AIA
Van Auken Akins Architects LLC
29325 Chagrin Blvd.
Suite 205
Cleveland, Ohio 44122

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

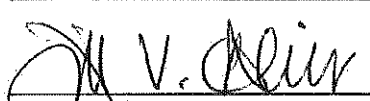
THIS AGREEMENT ENTERED INTO 3-1-11

TURNER CONSTRUCTION



Mark L. Dent

Van Auken Akins Architects LLC



Jill V. Akins