

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2022 – 176

By: Mayor Perciak and All Members of Council

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR OWNER'S REPRESENTATIVE PROFESSIONAL SERVICES IN CONNECTION WITH THE TOWN CENTER ENHANCEMENT AND WALKABILITY INITIATIVE PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to plan for, facilitate and retain Owner's Representative Professional Services for the Town Center Enhancement and Walkability Initiative Project in the City of Strongsville, in order to provide new community amenities and improve the connectivity and walkability within the Town Center area (hereinafter referred to as the "Project"); and

WHEREAS, the City, therefore, needs to retain the services of an Owner's Representative who will be responsible for assisting the City generally in the planning, scheduling, programming, and other related matters for establishing such a project; and

WHEREAS, in that regard, by and through Resolution No. 2022-149, Council authorized the Mayor to advertise a request for qualifications and proposals for such Owner's Representative Professional Services; and

WHEREAS, the City has negotiated a contract with RFC Contracting, LLC, the firm ranked most qualified to perform the required services; and

WHEREAS, the City is desirous of entering into a contract for such services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1. That the Mayor be and is hereby authorized and directed to execute and enter into a contract with **RFC CONTRACTING, LLC** for Owner's Representative Professional Services, a copy of which is attached hereto as Exhibit "A" and, which, in all respects, is hereby approved.

Section 2. That the funds for the purposes of said contract have been appropriated and shall be paid from the Town Center Fund.

Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and of any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of

CONSULTANT AGREEMENT FOR OWNER'S REPRESENTATIVE SERVICES

This Consultant Agreement for Owner's Representative Services ("Agreement") between the **CITY OF STRONGSVILLE** ("CITY" or "OWNER") and **RFC CONTRACTING, LLC** ("OWNER'S REPRESENTATIVE" or "OR") is entered effective as of the date signed by the Owner at the end of this Agreement for the services described in this Agreement.

BACKGROUND INFORMATION

1. The City recently launched the "Strongsville Town Center Enhancement and Walkability Initiative" in order to provide new community amenities, and improve the connectivity and walkability within such Town Center area (the "Project").
2. The City has retained the services of Brandstetter Carroll, Inc. (referred to as "Design Professional" or "Architect") to provide architectural design and consulting services in connection with the Project.
3. The City wishes to use the services of an Owner's Representative to assist it during the Project for the preconstruction, construction, and close-out of the Project as described in this Agreement.

In consideration of the promises and commitments described in this Agreement, the City and Owner's Representative agree as follows:

1. Summary of services to be provided by Owner's Representative:
 - A. Basic Services. The following Basic Services will be provided by Owner's Representative for the Project:
 1. Design Phase
 - a. Assist Owner in coordination and administration of facilities and consultants.
 - b. Develop a proposed master schedule to submit to City for approval, with a proposed method to track the project through completion.
 - c. Update the master schedule to reflect milestones and scheduling requirements.
 - d. Develop an estimate/budget for the project.
 - e. Monitor the master schedule during construction and report status of progress for the work on the Project; provide recommendations to maintain the schedule or suggest adjustments to the schedule for City approval in coordination with the Design Professional(s).
 - f. Meet with City designees as needed and requested.
 - g. Explore construction alternatives that may provide cost savings and share information with the Design Professional(s), and City.

- h. Explore material alternatives that will provide cost savings and maintain the City's performance requirements for each project and share information with the Design Professional(s) and City.
 - i. Provide value engineering and constructability input.
 - j. Update estimate/budget for the project.
 - k. Assist in obtaining state, federal, county, and local approvals and permits.
 - l. As needed, attend Project team meetings conducted by Design Professional(s).
 - m. Submit monthly reports identifying critical issues, including design and budget issues as well as scheduling progress to City.
2. Construction Documents Phase
- a. Assist with value engineering options to be utilized on each project.
 - b. Update and finalize the estimate/budget.
 - c. Monitor and update conformance to the master schedule.
 - d. Monitor specifications and drawings to identify issues that will impact the budget and schedule.
 - e. Assist City and Design Professional(s) with the identification of long lead items.
 - f. Develop, in consultation with the Design Professional(s), a list of items to pre-purchase to avoid delays in the construction schedule.
 - g. Review system designs and verify that equipment conforms to City's standards.
 - h. As needed, attend Project team meetings conducted by Design Professional(s).
 - i. Work with City's legal counsel and the Design Professional(s) on front end documents to ensure compliance with the Ohio Revised Code, local regulations, and other applicable requirements.
3. Bidding or Negotiation Phase
- a. Review and submit to City a final cost estimate, prepared by the Design Professional(s) prior to bidding the work utilizing the completed construction documents package.
 - b. Track long lead items to assure on-time deliveries.
 - c. Confirm that all approvals and permits required for the start of construction have been obtained.
 - d. Review and assist in finalizing bidding procedures and bid packages for work that is procured through competitive bidding process.
 - e. Conduct with the Design Professional and City a pre-bid meeting for potential contractors and any meetings with the City related to the project.

- f. Participate with the Design Professional in the review of proposed substitutions submitted by bidders prior to the receipt of bids for the work and respond to questions and requests for information submitted by bidders.
 - g. Assist the City and Design Professional in issuing addenda.
 - h. Monitor bid activity to ensure adequate contractor and vendor participation.
 - i. Review and analyze bids with the Design Professional and make a recommendation to the City of the lowest and best bid.
 - j. Review bid alternates and assist the Design Professional(s) and City with recommendations of items to accept at the time the contract is awarded or to consider for addition by change order later during construction.
4. Construction Phase
- a. Conduct, in coordination with the City and Design Professional(s), construction start-up meeting with contractor.
 - b. Assist City, in coordination with the Design Professional(s), with constructability issues.
 - c. Assist City by coordinating with job site superintendent(s) and project manager(s) with the implementation and monitoring of safety plans.
 - d. Monitor and assist, in coordination with Design Professional(s), schedules, including all direct and state or joint purchasing program purchases.
 - e. Monitor and comment on shop drawings, fabrication, and delivery schedules. Provide comments to Design Professional who is responsible for review and approval of such items.
 - f. Monitor and track long lead items.
 - g. Submit monthly reports identifying critical issues to City, including design and budget issues, as well as scheduling progress.
 - h. Conduct Project team meetings with the Design Professional(s) and City.
 - i. Monitor shop drawing submittals and track Design Professional review and approvals.
 - j. Provide monthly or bi-weekly progress reports to City regarding adherence to the schedule.
 - k. Monitor field clarifications and directives and assist and advise City on each.
 - l. Review, analyze, and provide input on change order requests and change orders prepared, in consultation with Design Professional(s) and City.
 - m. Review and confirm that all construction testing requirements per the specifications are processed and recorded.
 - n. Monitor construction to identify issues that will impact budget and schedule.

- o. Assist with the scheduling and coordination of new and re-used furniture, fixture, and equipment delivery.
- p. Submit monthly reports identifying critical issues to City, including design and budget issues, as well as scheduling progress.
- q. Review and comment on all monthly applications for payment, including all required attachments (e.g. waiver of liens, affidavit of subcontractors, certified payroll reports, etc.) and provide comments to the City, and Design Professional. The Design Professional is responsible for certifying all payment applications prior to City issuing payment.
- r. Visit project site weekly to confirm construction progress and quality or more often if requested based upon the stage of work in progress and any issues with quality and progress of work.

5. Post Construction Phase

- a. Assist job-site superintendent(s) and project manager(s) and Design Professional(s) in managing as-built drawings and their acceptance and collection of these for the Project records, as well as equipment warranties and information, operation and use manuals, and other close-out documentation required by specifications.
- b. Assist job-site superintendent(s) and project manager(s) and Design Professional(s) in monitoring and enforcing punch list completion.
- c. Schedule and manage equipment acceptance utilizing a predetermined methodology for the commissioning of all electronic and mechanical building systems.
- d. Manage all regulatory compliance issues that will be necessary to secure the certificate of occupancy and any other permits and licenses needed to move into and operate the completed facility.
- e. Schedule required training of City staff on all electronic, electrical, and mechanical building systems.

B. Not Part of Owner's Representative's Services. The following services are not part of the Owner's Representative's services.

- 1. Owner's Representative will not approve final plans, schedules, budgets, and estimates provided and recommended by the Design Professional(s) and any contractor to the City.
- 2. Owner's Representative will not authorize or approve any contractor bid or cost proposal, any contract bidding documents, or award of contract.
- 3. Owner's Representative will not consider or approve any amendments, Bulletins, Field Work Orders, or Change Orders that substantially modify a construction contract, the Architect's Agreement for design services, or an amendment to a construction contract.
- 4. Owner's Representative will not undertake any of the responsibilities of the Design Professional, or the City, including the design of the Project and the coordination, scheduling, and oversight of the contractors or, unless authorized by the Owner, or separate contractors.

5. Owner's Representative will not advise on, issue directions regarding, or assume control over or charge of any aspect of the design or the means, methods, techniques, sequences, or procedures of construction.
6. Owner's Representatives will not advise on, issue directions regarding, or assume control over or charge of safety precautions and programs in connection with the Work during construction.
7. Owner's Representatives will not expedite the Work of any contractor or any subcontractor and/or material suppliers.
8. Owner's Representative will not reject Work of a contractor or any subcontractor or require special inspection or testing but will consult with the City regarding any such decisions.
9. Owner's Representative will not participate in specialized field or laboratory tests or inspections conducted by others during construction, except as specifically authorized in writing by the City.
10. Owner's Representative will not order the Design Professional(s) or any contractor, or any subcontractor or material suppliers, to stop the Work or terminate a contractor, or any portion thereof.

C. Additional Services.

Additional Services will be provided only with prior written approval of the City subject to approval by City Council. The written approval will be in the form of an amendment to this Agreement, which will state the amount to be paid or an allowance from which payments will be made for the Additional Services.

2. Principal Contact / Staffing. Owner's Representative has identified the following individuals to provide services for the Project:

Individual	Role
Roger Riachi	Project Executive
Ryan Naymik	Project Manager

Owner's Representative agrees that Roger Riachi will be the point person and principal contact.

3. Term of Agreement: This Agreement will be effective for a period of fourteen (14) months. City and Owner's Representative will meet ninety (90) days prior to expiration of this Agreement and determine if there is a need for an extension of the term, the parties will negotiate the compensation for services to be provided by OR during such extended term and amend this Agreement to reflect the added term and compensation for services.
4. Compensation for Services: The parties agree that compensation for the Basic Services to be provided by the Owner's Representative for the Project will be One Hundred Sixty-One Thousand and 00/100 Dollars (\$161,000.00) to be paid in Eleven Thousand Five Hundred and 00/100 Dollar (\$11,500.00) monthly payments of each. This amount includes all related

reimbursable costs and expenses incurred by Owner's Representative to provide the Services required by this Agreement.

5. Payment: Payment for Basic Services and any approved Additional Services incurred by the Owner's Representative in connection with this Agreement will be made within 30 days of submission of monthly invoices by the Owner's Representative. The City is also not obligated to pay for work and services which, in the City's determination, were not performed in a timely, satisfactory, or competent manner.
6. Dispute Resolution: Any dispute arising under this Agreement may be resolved by mediation, under terms mutually agreeable to the parties hereto, or any other mutually agreed to form of informal or formal dispute resolution.
7. Relationship of Parties:
 - A. Independent Contractor. The Owner's Representative is an independent contractor and not an employee of the City. The City is interested only in the results obtained under this Agreement. Nothing in this Agreement is to be construed to constitute the Owner's Representative as a partner, employee, or general agent of the City or of the City, nor will any of them have any authority to bind the other in any respect. The manner and means of handling the activities and services to be provided under this Agreement are under the exclusive control of the Owner's Representative.
 - B. Expenses; Employee Benefits; Taxes: The City will not provide to the Owner's Representative nor any of the Owner's Representative's employees or agents any of the benefits provided by the City to any of its employees, including, without limitation, health benefits, compensation insurance, and unemployment insurance. The City is not responsible for the payment or withholding of any taxes, including without limitation, income tax or FICA contributions, whether federal, state, or local in origin in connection with the Owner's Representative's performance of its duties hereunder. Unless otherwise provided herein or by the express written consent of the City, Owner's Representative is solely responsible for all expenses incurred in the performance of its duties hereunder, and the City will not reimburse Owner's Representative for any such expenses. Owner's Representative will pay all its own expenses and taxes properly and lawfully associated with doing business as an independent contractor in Ohio.
8. Notices: All notices given related to this agreement will be addressed as follows, unless a party notifies the other of a change in name of the principal contact and any contact information:

City
Thomas P. Perciak, Mayor
City of Strongsville
16099 Foltz Parkway
Strongsville, Ohio 44149
tom.perciak@strongsville.org

Owner's Representative
Roger Riachi, President
RFC Contracting, LLC
13477 Prospect RD, Ste 105
Strongsville, Ohio 44149
rriachi@rfccontracting.com

Notices may be delivered by personal delivery to the representative identified, by a delivery service (evidenced by a written receipt showing delivery), by certified mail/return receipt requested using the United States Postal System, or by email.

9. Indemnification: Owner's Representative will protect, indemnify, and hold harmless the City and its members, administrators, employees, and agents from any and all claims, losses, fines, penalties, and damages for injury to the person or property of Owner's Representative or any

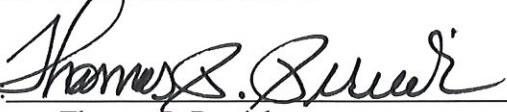
other individual or entity directly or indirectly caused by or resulting from Owner's Representative's performance of services under this Agreement. This provision does not eliminate, limit, or reduce any other immunity or defense that the City or its members, administrators, employees, or agents may be entitled to under Ohio Revised Code Chapter 2744 or any other applicable state or federal law.

10. Compliance with Law: Both parties will comply with all applicable Federal, State, and Local laws, ordinances, codes, regulations, and policies.
11. Breach: If either party breaches a provision of this Agreement, the non-breaching party must provide the breaching party with written notice of said breach. If the breach is not remedied within 10 days of receipt of the breach notice, the non-breaching party has the right to terminate this Agreement upon expiration of said remedy period. If this Agreement is terminated due to a breach, the breaching party is liable for all damages, including but not limited to any incidental and consequential damages, incurred as a result of said breach. However, neither party will be responsible to the other for any losses or failure to perform its respective obligations under this Agreement when such loss or failure is caused by conditions beyond the party's control, such as fire, explosion, water, act of God, civil disorder or disturbance, labor dispute, vandalism, war, riot, sabotage, weather or energy related closing, governmental regulations, or other similar causes.
12. No Waiver: No failure of either party to exercise any power reserved to it by this Agreement or to insist upon strict compliance by the other party with any obligation or condition hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand strict compliance with any of the terms of this Agreement. Waiver by either party of any particular default shall not affect or impair either party's right to exercise any or all of its rights and powers herein, nor shall that constitute a waiver by that party of any right hereunder, or of its right upon any subsequent breach or default to terminate this Agreement prior to the expiration of its term.
13. Amendment: This Agreement may not be altered or modified in any way by any practice or course of dealing but may be modified or amended only by a written amendment signed by both parties.
14. Assignment: Neither party may assign or otherwise transfer, voluntarily or by operation of law, this Agreement without the prior written consent of the other party.
15. Entirety: This Agreement contains the entire agreement between the parties, and there are no oral promises or other representations inducing its execution or qualifying its terms. Any prior contract or similar type of agreement between the parties, oral or written, is hereby superseded and terminated.
16. Governing Law: The laws of the state of Ohio shall govern the validity, performance, and enforcement of this agreement.
17. Severability: Each article, paragraph, provision, term and condition of this Agreement, and any portions thereof, is severable. If, for any reason, any portion of this Agreement is determined to be invalid or contrary to any applicable law, rule, or regulation, the remaining portions of this Agreement will be unimpaired, remain binding on the parties, and continue to be given full force and effect.
18. Section Headings: The section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
19. Owner's Representative certifies that it has complied with all applicable laws to perform work in the United States for itself and each of its employees.

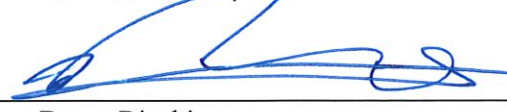
20. Ethics: Owner's Representative represents that it is familiar with all applicable ethics law requirements, including without limitation Ohio Revised Code Sections 102.04 and 3517.13, and certifies that is in compliance with such requirements.
21. Findings for Recovery: Owner's Representative is not subject to any findings for recovery by the Ohio Auditor of State, or if it is subject to such a finding, it has taken or is in the process of taking all required steps to address the finding.

Agreed to as of the date signed by the City below.

CITY OF STRONGSVILLE

By: 
 Thomas P. Perciak
 Its: Mayor
 Date: Nov. 21, 2022

RFC CONTRACTING, LLC

By: 
 Roger Riachi
 Its: President
 Date: 11/18/2022

CERTIFICATE OF DIRECTOR OF FINANCE

I hereby certify that the amount of money required to meet the expenditures called for by the above Agreement has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit to an appropriate fund free from any previous encumbrance and not appropriated for any other purpose.

November 21, 2022
 Date


 Eric R. Dean, Director of Finance

CERTIFICATE OF THE LAW DIRECTOR

I have hereby reviewed and approved the form of the foregoing Agreement this 21st day of November, 2022.


 Neal M. Jamison, Law Director