

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 070

By: Mayor Perciak and Mr. Schonhut

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH HERSCHMAN ARCHITECTS, INC. FOR PROFESSIONAL ARCHITECTURAL SERVICES IN CONNECTION WITH THE BUILDING CODE OF THE CITY OF STRONGSVILLE AND THE OHIO BUILDING CODE, AND DECLARING AN EMERGENCY.**

WHEREAS, the Building Department of the City is a Certified Building Department pursuant to the rules and regulations for Certification of the Ohio Board of Building Standards to accept, examine, approve and inspect plans and specifications and construction of buildings and structures regulated by the Ohio Building Code; and

WHEREAS, the City has and will continue to have in its employ full-time personnel meeting the specific requirements of the Board of Building Standards to enforce the provisions of the Ohio Building Code for approval of plans and specifications; and

WHEREAS, the City is desirous of contracting for the services of qualified Certified Plans Examiners to enforce the provisions of the Ohio Building Code relating to approval of plans and specifications, in order to assist the Building Department.

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

**Section 1.** That the Mayor be and is hereby authorized and directed to enter into an Independent Contractor Agreement for the year 2014 with **HERSCHMAN ARCHITECTS, INC.** to provide for the personal services of **DAVID SCHERRY**, an Ohio Certified Plans Examiner, in the nature of plans examination services in connection with the Building Code of the City of Strongsville and the Ohio Building Code, in the form attached hereto as Exhibit A.

**Section 2.** That the funds for the purpose of said contract have been appropriated and shall be paid from the General 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 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 necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is immediately necessary to enter into said contract in order to assist the Building Department in carrying out the provisions of the Ohio Building Code, to provide more efficient plans review and to thereby facilitate various projects within the City. Therefore, provided this Ordinance receives the unanimous affirmative vote of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Michael Daymut  
President of Council

Approved: Thomas B. Bruud  
Mayor

Date Passed: April 7, 2014

Date Approved: April 7, 2014

	<u>Yea</u>	<u>Nay</u>
Carbone	<u>✓</u>	<u>_____</u>
Daymut	<u>✓</u>	<u>_____</u>
DeMio	<u>✓</u>	<u>_____</u>
Dooner	<u>✓</u>	<u>_____</u>
Maloney	<u>✓</u>	<u>_____</u>
Schonhut	<u>✓</u>	<u>_____</u>
Southworth	<u>✓</u>	<u>_____</u>

Attest: Aimee Pientka  
Clerk of Council

ORD. No. 2014-070 Amended: \_\_\_\_\_  
1st Rdg. 04/07/14 Ref: \_\_\_\_\_  
2nd Rdg. suspended Ref: \_\_\_\_\_  
3rd Rdg. suspended Ref: \_\_\_\_\_

Pub Hrg. \_\_\_\_\_ Ref: \_\_\_\_\_  
Adopted: 04/07/14 Defeated: \_\_\_\_\_

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR PLANS EXAMINER SERVICES**

**THIS AGREEMENT**, by and between the **CITY OF STRONGSVILLE**, located at 16099 Foltz Parkway, Strongsville, Ohio 44149, hereinafter called the "City", and **Herschman Architects Inc.**, located at **25001 Emery Road #400, Cleveland, Ohio 44128** hereinafter called the "Consultant", with **David Scherry being the Ohio Certified Plans Examiner**.

WHEREAS, the Building Department of the City is a Certified Building Department pursuant to the rules and regulations for Certification of the Ohio Board of Building Standards to accept, examine, approve and inspect plans and specifications and constructions of buildings and structures regulated by the Ohio Building Code; and

WHEREAS, the City has and will continue to have in its employ full-time personnel meeting the specific requirements of the Board of Building Standards to enforce the provisions of the Ohio Building Code for approval of plans and specifications; and

WHEREAS, the City is desirous of contracting for qualified Assistant Certified Plans Examiners to enforce the provisions of the Ohio Building Code relating to approval of plans and specifications in order to assist its full-time personnel in performing their normal plans examining duties; and

WHEREAS, by and through Ordinance No. 2014-\_\_\_\_, the Council of the City of Strongsville authorized the Mayor to enter into a contract for professional architectural services in connection with the Building Code of the City;

**NOW, THEREFORE**, in consideration of these premises and the mutual covenants hereinafter set forth, it is agreed as follows:

**SECTION I - SCOPE OF SERVICES**

Upon request of the Building Commissioner, the Consultant agrees to provide to the City, on a priority basis, professional services as a certified plans examiner to review and examine construction documents submitted to the Building Department of the City to determine compliance with the Ohio Building Code and pursuant to the provisions of the Ohio Administrative Code throughout the duration of this Agreement.

**SECTION II - TERM OF AGREEMENT**

The term of this Agreement shall commence on the date of execution of this Agreement, and shall terminate on the **31<sup>st</sup> day of December, 2014**, unless extended by the parties.

### **SECTION III - PAYMENT**

The City agrees to pay the Consultant plan review fees based upon the State fee structure utilizing the Building Valuation Data method as published by the International Code Council Building Safety Journal. **The maximum TOTAL review fees paid per project shall not exceed 12% of the calculated "Building Permit Fee" established through formulary adopted within the Strongsville Codified Ordinances. In no case will the hourly rate charged exceed \$120.00 per hour.** Invoices setting forth these charges shall be submitted as accrued on a regular basis. The Consultant will be fully and solely responsible for his payment of all taxes and other charges on his compensation as required by federal, state or local law, including but not limited to all City of Strongsville municipal income taxes.

### **SECTION IV - AGENCY**

It is expressly understood and agreed that in the performance of services under this Agreement, Consultant shall act as agent of the City for purposes of certifying various plans review in accordance with State law. However, in every other respect, the Consultant will be an independent contractor and neither party shall be deemed a servant, employee or representative of the other.

### **SECTION V - PLANS AND DOCUMENTS**

All applications, construction documents, reports, design notes, inspection records and all other documents submitted to or prepared by the City, its employees and the Consultant, which are in the possession of the Consultant, shall be and remain public records of the City and shall be furnished or returned to the Building Department immediately upon request of the Building Commissioner.

### **SECTION VI - SUSPENSION OR TERMINATION OF PERFORMANCE**

The Mayor may at any time, and for any reason, direct Consultant to stop work under this Agreement for any period of time. Such direction shall be in writing and shall specify the period during which work shall be stopped. Consultant shall resume work upon the date specified in such direction, or upon such other date as the Mayor may thereafter specify in writing.

The Mayor may at any time, and for any reason, terminate this Agreement by written notice to Consultant specifying the termination date, which shall not be less than seven (7) days from the date such notice is given. In the event of such termination, Consultant shall be paid such amount as shall compensate him for the portion of the work satisfactorily performed prior to the termination date. Such amount shall be subject to approval by the Mayor. Termination under this section shall not give rise to any claim against the Mayor or the City for damages or for the compensation in addition to that provided hereunder.

**SECTION VII - PERSONAL SERVICES OF CONSULTANT**

It is the intent of this Agreement to secure the personal services of Consultant. Failure of Consultant for any reason to make such personal service available to the City to the extent necessary to perform the services required skillfully and promptly shall be grounds for termination of this Agreement.

**SECTION VIII - ASSIGNMENT**

Consultant shall not assign, transfer, convey, pledge, sublet or otherwise dispose of this Agreement without the prior written consent of the Mayor and Council, if required by law.

**SECTION IX - TIME OF PERFORMANCE**

The work to be performed under this Agreement shall commence promptly and shall be pursued diligently and completed promptly and within the time parameters established for the performance of such work in the applicable provisions of the Ohio Building Code and in accordance with requests of the City's Building Commissioner. Time is of the essence in the performance of all phases of this Agreement.

**SECTION X - AUDIT AND REVISION**

This Agreement and all payments hereunder shall be subject to audit and revision by the Mayor and the Director of Finance, or their designated representatives.

**SECTION XI - FUNDING SOURCE**

All payments shall be paid by the City out of such monies as may be reserved by the Director of Finance of the City for the purposes herein provided. The Mayor and any other person or agency duly authorized to act for and on behalf of the City shall not by virtue of such authority or action be liable in any manner whatsoever to Consultant.

**SECTION XII - INSURANCE**

Consultant will secure and maintain during the life of this Agreement the following insurance, limits and conditions:

Comprehensive General Liability coverage including personal injury coverage and contractual liability coverage with minimum limits of \$1,000,000.00, respectively.

Comprehensive Automobile Liability coverage including, nonowned, and hired coverage. The minimum limits shall be \$500,000.00 for bodily injury and \$250,000 for property damage liability.

Professional Liability Insurance in the amount of \$500,000.00 as the minimum limit to cover sums which Consultant shall become legally obligated to pay as damages by reason of any negligent act, error or omission committed or alleged to have been committed by Consultant or any person or organization for whom Consultant is legally liable.

Compliance with the Ohio Workers' Compensation Act and Ohio Unemployment Compensation law for all employees engaged in work under this Agreement.

All required insurances shall be maintained with responsible insurance carriers qualified to do business in the State of Ohio and approved by the State Superintendent of Insurance. As soon as practical upon execution of this Agreement and before commencing any performance hereunder, Consultant shall deposit, with the Mayor, the original policies or insurance, or certificates therefore, bearing notations or accompanied by other evidence satisfactory to the Mayor of the payment of premiums and thereafter not less than ten (10) days before the expiration dates of the expiring policies.

### **SECTION XIII - AMENDMENTS**

Amendments, modifications, or changes to this Agreement shall not be effective unless in writing and approved by the Mayor and, when required by law, the Council.

### **SECTION XIV - NOTICES**

Except as otherwise provided herein, any notice, approval, acceptance, request, bill, demand or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a U.S. mailbox in a postage-prepaid envelope, addressed to the other party. Either party may at any time change such address by delivering or mailing, as aforesaid, to the other party a notice stating the change and the changed address.

### **SECTION XV - CONFLICT OF INTEREST/DISCLOSURE**

Consultant covenants that he has no interest, nor shall he acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of this Agreement.

The Consultant affirms that Consultant has not agreed to make any valuable gift whether in the form of service, loan, thing or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide plans review services to the City. A voluntary campaign contribution made pursuant to law shall not be considered as a valuable gift for the purpose of this Agreement.

**SECTION XVI - DISCRIMINATION PROHIBITED**

In performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of gender, race, color, religion, national origin or ancestry, age or physical handicap.

**SECTION XVII - EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated Agreement between the City and the Consultant, and supersedes any and all prior negotiations, representations or agreements, either written or oral. It shall not be changed, amended, or modified without the prior written approval of both parties hereto, including the City's Mayor and when required by law, the Council.

**SECTION XVIII - EFFECTIVE AND BINDING**

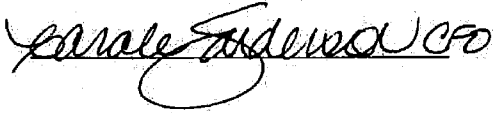
This Agreement shall not become effective or binding upon the City unless and until the Council shall have authorized the Mayor to execute the same, thereafter the Director of Finance of the City shall have endorsed hereon his certificate of availability of funds applicable to this Agreement. Evidence of said authorization and certification of funds shall be issued to Consultant by the City before Consultant will proceed with the work.

**SECTION XIX - CAPTIONS AND HEADNOTES**

The captions or head notes on articles or sections of this Agreement, and marginal notes are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect the Agreement.

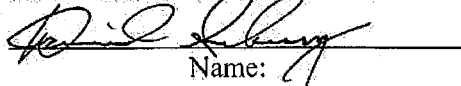
IN WITNESS WHEREOF, the parties hereunto set forth their hand this \_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in the presence of:

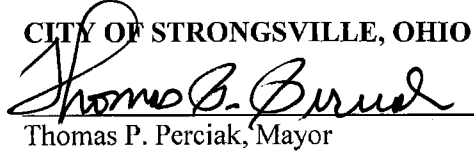
  
Sarah Anderson CFO

  
Aimee Pietro

CONSULTANT  
HERSCHMAN ARCHITECTS INC

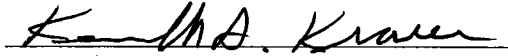
  
Name: David J. Long

CITY OF STRONGSVILLE, OHIO

  
Thomas P. Perciak, Mayor

**CERTIFICATE OF LAW DIRECTOR**

I hereby certify that I have reviewed and approved the form of the foregoing Agreement this 8<sup>th</sup> day of April, 2014.

  
Law Director

**CERTIFICATION OF FUNDS**

It is hereby certified that the amount required to meet the obligations of this Agreement in the fiscal year in which the Agreement has been made has been lawfully appropriated for the purposes of the agreement and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances, obligations or certificates now outstanding.

April 8, 2014  
Date

  
Director of Finance