

RESOLUTION RECORD
COUNCIL OF THE CITY OF BRECKSVILLE

5343

Resolution No. _____

**A RESOLUTION ACCEPTING THE PROPOSAL OF
SIXMO ARCHITECTS + ENGINEERS FOR PROFESSIONAL
SERVICES FOR THE COMMUNITY CENTER POOL PUMP
PROJECT; AND DECLARING AN EMERGENCY**

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

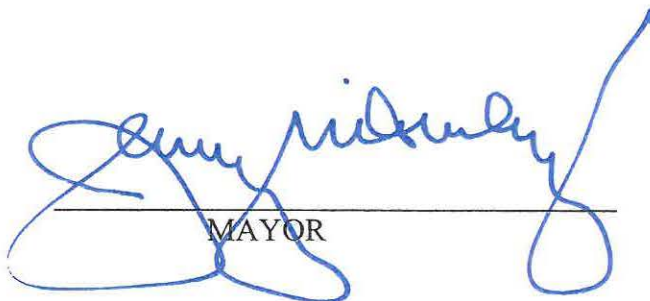
SECTION 1. The proposal of Sixmo Architects + Engineers for professional services for the Community Center Pool Pump Project in an amount not to exceed five thousand dollars (\$5,000.00) as set forth in their proposal dated September 8, 2022, a copy of which is attached hereto as Exhibit "A" be, and the same hereby is, accepted. Further, the Mayor be, and is hereby authorized on behalf of the City of Brecksville, to execute the necessary Work Authorization form.

SECTION 2. The Council hereby appropriates sufficient funds to effectuate the provisions contained in Section 1 hereof and the Director of Finance is hereby authorized to transfer the funds necessary to complete this expenditure from the available funds of the City. The Director of Finance be and is hereby further authorized to issue the fiscal officer's certificate necessary to make the expenditures as described in Section 1 hereof, and is further directed to issue vouchers of this City in the amounts and for the purposes expressed in Section 1 hereof, said amounts to be charged to the appropriately designated Fund.

SECTION 3. The Council declares this Resolution to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is the need for professional services, therefore, said Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

PASSED: _____ September 20, 2022

APPROVED: _____ September 20, 2022



MAYOR



CLERK OF COUNCIL



Brecksville Community Center Pool Pump
City of Brecksville
Proposal Number 50410122
September 8, 2022

- + **Architects**
- + **Engineers**
- + **Planners**
- + **Code Compliance**

Cleveland Office

1101 Auburn Avenue
Cleveland, Ohio 44113
216-767-5400

Zanesville Office

534 Market Street
Zanesville, Ohio 43701
740-452-7434

Marietta Office

204 Front Street
Marietta Ohio 45750
740-809-2400



September 8, 2022

Tony Graham, Building Engineering Supervisor
City of Brecksville
9069 Brecksville Road
Brecksville, Ohio 44141
440.526.7133
tgraham@brecksville.oh.us

Re: Professional Services Proposal Number 50410122
Brecksville Community Center Pool Pump

Mr. Graham,

We appreciate the opportunity to provide you with this professional services proposal regarding the above referenced project. We have reviewed the information you provided in an effort to develop a thorough understanding of the project parameters. This understanding is reflected in the following proposal for professional services.

Please review this document and feel free to contact me if you have any questions or comments in its regard. I am generally available between 7:30 AM - 5:00 PM EST in our office at 216-767-5400, extension 100, and always available via email at pthornton@sixmoae.com.

Sincerely,

Patrick E. Thornton, AIA
Principal
Sixmo, Inc.

Architects

Engineers

Code Compliance

City Services

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PROJECT UNDERSTANDING

The City of Brecksville (Client) intends to replace the existing circulation pump for the existing indoor pool at the Community Center building. The intent of the Client is to install a new pump and variable frequency drive (VFD). The Client is also interested to determine if the existing pool circulation system is currently designed optimally/properly based on the current attached equipment and the proposed new pump and VFD.

The project should first determine the scope of work required to make the system work optimally, and then assign a budget to the work. Then, as directed by the Client, develop construction documents suitable for permitting (with local authorities and Ohio Department of Health), procurement, and ultimately installation.

Sixmo Inc. (Client) will provide professional services as described in the following section.

SCOPE OF SERVICES

The scope of professional services for this project shall include the following:

1. Field observations of existing conditions
2. Review of existing documentation
3. Develop existing conditions diagrams
4. Specify replacement pump / VFD
5. Develop scope of improvements
6. Review scope with Client
7. Revise scope based on Client commentary
8. Develop budget for scope
9. Deliver bound document describing recommended improvements
 - a. Upon acceptance of this phase, Sixmo will develop a cost proposal for the development of construction documents for the project.

DELIVERABLES

Consultant shall provide PDF files and high-resolution images suitable for reproduction for all deliverables, transmitted via email. Additional hard copies of deliverables are available to the Client at Consultant's cost of reproduction and labor, plus 10%.

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CLARIFICATIONS AND EXCEPTIONS

The following clarifications and exceptions refine Sixmo's understanding and offering to this project:

1. Plan review and permit fees are excluded.
2. Deliverables will be completed on a Consultant title block utilizing Consultant graphic and design standards, such as layers, font styles, line colors, etc. Work will be completed utilizing Autodesk Revit or AutoCad.
3. Changes to the design that are not initiated by the Consultant after the beginning of the development of construction documents shall be included in the design and the changes shall be executed as an additional service. Design changes recommended by the Consultant shall be reviewed with the Client prior to integration and executed as negotiated additional services.
4. Coordination with design professionals executing work related to the services provided by the Consultant shall be the responsibility of the Client. Consultant will endeavor to coordinate work with other disciplines but shall accept no responsibility for conflicts resulting from the Client's or other design professional's or vendor's lack of coordination, communication, quality, omissions or errors.
5. The development of construction documents is not included in this initial phase of the work.

SCHEDULE

A mutually agreeable schedule will be established once a signed proposal is received.

PROFESSIONAL FEES

The professional services outlined herein shall be provided as follows:

Total Lump Sum Amount of: **\$5,000**

Additional Services will be charged at an hourly rate of \$200.00. Additional services will only be executed upon written direction from the Client. Consultant can provide the Client with an estimate to complete for all hourly additional services prior to the initiation of any task.

These fees are based on the language included in this professional services proposal. Any requested alterations to the language of this agreement may result in an adjustment to the proposed fee.

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EXPENSES

Expenses included in the professional fees above include:

1. Reproduction of deliverables and in-house progress documents required to execute our services.
2. Mileage/Travel costs related to project meetings, and other local travel required to execute the scope of work.

Expenses that will be considered reimbursable, shall include:

- Reproductions not included in the base scope of services.
 - Reproductions produced in-house will be billed at the following rates:
 - 8-1/2 x 11: \$.25 per page (single or double sided, color or B&W)
 - 11 x 17: \$.50 per page (single or double sided, color or B&W)
 - Large Format: \$1 per square foot
- 3. Mileage/Travel over and above that specifically indicated as included in the base scope of services. This includes mileage and travel expenses incurred resulting from any additional services not specifically addressed above.
- 4. Postage/shipping costs for other than normal day-to-day firm operations, including the cost of shipping hard copies of construction documents and revisions to authorities having jurisdiction and to the Client.

Additional expenses, besides those described above, will be invoiced based on cost +10%. This includes additional subconsultant fees over and above the base services of this scope of work; the payment of permit and application fees that are not specifically included in the base scope of services, and other miscellaneous expenses incurred at the direction of the Client. Additional expenses will only be incurred upon written direction from the Client.

METHOD OF PAYMENT

Payment for the proposed professional services will be invoiced monthly, in proportion to services provided and expenses incurred between the first and last day of the month, or upon completion of the scope of services. Payments are due **Net 30 Days** from their receipt.

Client agrees that any non-payment of the professional fees under this Agreement will result in interest being charged at the rate of eighteen percent (18%) per annum or the highest amount legally to be charged. Client also agrees that it will be responsible for any costs or fees, including attorney's fees, in the collection of any unpaid professional fee.

If the Client fails to make payments to Consultant in accordance with this agreement, such failure shall be considered substantial non-performance and cause for termination; or, at Consultant's option, cause for

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suspension of performance of services under this agreement. If Consultant elects to suspend services, Consultant shall give seven days' written notice to the Client before suspending services. In the event of a suspension of services, Consultant shall have no liability to the Client for delay or damage caused the Client because of such suspension, and any expenses incurred in the interruption and resumption of Consultant's services. Consultant's fees for the remaining services and the time schedules may be equitably adjusted.

STANDARD OF CARE

In providing services under this agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant will perform its services as expeditiously as is consistent with professional skill and care, and the orderly progress of Consultant's part of the Project. Regardless of any other term or condition of this Agreement, Consultant makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

DEFECTS IN SERVICE

The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

CONSTRUCTION ACTIVITIES

The Consultant shall not be responsible for the acts or omissions of any person performing any construction work, or for instructions given by the Client or its representatives to anyone performing any construction work, nor for construction means and methods or job-site safety.

COPYRIGHTS AND LICENSES

The Consultant and the Client shall warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

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The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including drawings and specifications, and shall retain all common law, statutory and other reserved rights, including copyrights.

Upon execution of this agreement, the Consultant grants the Client a nonexclusive license to utilize the instruments of service solely for the project, provided that the Client performs its obligations, including payment based on the terms of this document.

If the Instruments of Service are used without retaining the Consultant or without the written permission of the Consultant, the Client releases the Consultant and Consultant's subconsultants from any and all claims and causes of action arising from such use. Any unauthorized use of the Instruments of Service shall be at the Client's risk and without liability to the Consultant.

The Instruments of Service shall be defined as any representation, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and their subconsultants under their respective professional services agreements.

DISPUTE RESOLUTION

Any claim or dispute between the Client and the Consultant shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator, the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.

CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, subject to Risk Allocation below, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

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THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

RISK ALLOCATION

In recognition of the relative risks and benefits of the Project to both the Client (**City of Brecksville**) and the Consultant (**Sixmo Inc.**), the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the Consultant's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

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ACKNOWLEDGEMENT

Please acknowledge acceptance of this proposal by signing below and returning a copy to the Consultant. Authorization to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition or deletion.

**Acknowledgement
and Acceptance:
(Consultant)**

Sixmo Inc.

By: Patrick E. Thornton, AIA

Title: Principal

Date: September 8, 2022

**Acknowledgement
and Acceptance:
(Client)**

City of Brecksville

By: Jerry N. Hruby

Title: Mayor

Date: September 20, 2022

ACCOUNTS PAYABLE

By accepting and acknowledging the terms of this proposal, the Client designates the following individuals to receive invoices and issue payment to Consultant for services rendered on this project.

Direct all invoices to:

Name: _____

Title: _____

Email: _____

Phone: _____

Carbon copy all invoices to: (optional)

Name: _____

Title: _____

Email: _____

Phone: _____

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