



September 25, 2023

Fort Smith Public Schools  
Mr. Craig Tecmire  
3205 Jenny Lind Road  
Fort Smith, AR 72901

RE: Proposal for Peak Innovation Center Document Analysis, Fort Smith, Arkansas  
FTN No. R22060-3306-001

Dear Mr. Tecmire:

FTN Associates, Ltd. (FTN) appreciates the opportunity to submit the following proposal to provide consulting services related to the construction document analysis for the Peak Innovation Center located Fort Smith, Arkansas (the Project).

Our Basic Services will generally consist of review of the construction documents and providing a guidance document for use on future projects, all as set forth in the printed Scope of Work for Basic Services (Exhibit A) and subject to the Standard Terms and Conditions (Exhibit B), which are attached to this letter. We will also furnish such Additional Services as you may request.

You are expected to furnish us with full information as to your requirements including any special or extraordinary considerations for the Project or special services needed and also to make available all pertinent existing data. In addition, we request that you provide information concerning the potential health and/or physical hazards present at the facility to which FTN employees could be exposed. This information (e.g., Safety Data Sheets, etc.) is needed to ensure FTN's compliance with the OSHA Hazard Communication Standard.

Our fee for Basic Services will be based on time and materials using the Client Rates in Exhibit C for services rendered by our principals and employees engaged directly on the Project. The total fee for Basic Services will not exceed \$15,000 without prior approval from you. Any Additional Services will be charged on the basis of time and materials (Exhibit C).

We will bill you monthly for Services and Reimbursable Expenses with invoices to be paid within 30 days. Unless other arrangements are made, invoices will be sent to the Client electronically via email. Payments paid electronically through Automatic Clearing House (ACH) system are preferred, however, other methods will be accepted. If you are paying by check, please make the check payable to FTN Associates Ltd and mail to Dept 6552, FTN Associates LTD, PO Box 11407, Birmingham, AL 35246-6552. The above financial arrangements are on the basis of prompt payment of our bills and the orderly and continuous progress of the Project.

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If there are protracted delays for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of our compensation taking into consideration the impact of such delays, including but not limited to changes in price indices and pay scales applicable to the period when services are in fact being rendered.

This proposal, which includes Exhibits A, B, and C consisting of 6 pages, represents the entire understanding between you and us with respect to the Project and may only be modified in writing signed by both of us. If it satisfactorily sets forth your understanding of our agreement, we would appreciate your printing a complete copy of this letter, signing in the space below and initialing each page, and returning it to us. This proposal will be open for acceptance until November 1, 2023, unless changed by us in writing.

Thank you very much for the opportunity to present this proposal. Please do not hesitate to call me or Paul Crawford, PE, PG, if you have any questions relating to this proposal or additional services offered by FTN.

Respectfully submitted,  
FTN ASSOCIATES, LTD.

Accepted this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023



Jeremy A. Brooks, PE  
Project Engineer

By \_\_\_\_\_

Authorized Representative  
Fort Smith Public Schools

JAB/tas

Attachments



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## EXHIBIT A

### Scope of Work for Basic Services Fort Smith School District Peak Innovation Center Document Analysis Fort Smith, Arkansas

Attached to and made part of the Letter Agreement dated September 25, 2023, between FTN Associates, Ltd. (FTN) and Fort Smith Public Schools (the Client) with respect to the Project described therein. The specific tasks and assumptions are provided below.

#### PROJECT DESCRIPTION

The Peak Innovation Center (Peak) site was donated to the Client for use a school facility by a previous owner in 2019. The previous owner utilized the structure as a warehouse for shipping and receiving of commercial goods. The date of the original construction is unknown; however, based upon satellite imagery the building had not been materially altered since before 1994 prior to Client's possession. Following acquisition in 2019, the Client retained the services of a design team including architecture and engineering firms to retrofit and update the building to suit Client's desired needs for educational services. Following the completion of construction and occupancy of the building several issues related to storm water drainage in and around the facility were noted and brought to the attention of the design team. We understand the original design team is in the process of addressing these noted issues and preparing and executing repairs to meet the immediate needs of the site. To develop an understanding of how these issues occurred and to develop guidance to minimize risk of similar issues in the future Client has sought an independent engineering review of construction documents and contracts for the Peak Innovation Center and development of guidelines for FSPS use.

FTN will complete the requested tasks as outlined below.

#### TASK 1 – DOCUMENT ANALYSIS

1. FTN will review plans, specifications, and contract documents provided by Client as well as publicly available information including school board meetings related to the storm water drainage issues encountered.
2. The following items have been provided to date and will be included in the review:
  - Guaranteed Maximum Price Amendment No. 1 of 9/22/2020.
  - Guaranteed Maximum Price Amendment No. 3 of 2/19/2021.
  - Guaranteed Maximum Price Amendment No. 4 of 6/23/2021.
  - PEAK Exterior Plan Set consisting of 120 pages of drawings as issued 8/5/2020 .
  - PEAK Interior Plan Set consisting of 225 pages of drawings as issued 12/22/2020 .
  - PEAK Specifications (267 total files) with multiple versions of some sections included. Where multiple versions have been provided it will be assumed that the section with the last sequential date governs.
  - FSPS Board Meeting 5/22/2023 – RE: Site drainage discussions with consultants.
  - FSPS Board Meeting 6/19/2023 – RE: Building systems and exterior drainage discussions with consultants.



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3. The following documents have not been provided to date but are anticipated to be provided and included in the review:
  - Original Contract AIA A133 Agreement 9/22/2020, and
  - Guaranteed Maximum Price Amendment No. 2 (Date Unknown)
4. Documents which have not been provided but would be beneficial for review if available:
  - Project correspondence related to site or building drainage (emails, memos, letters, etc.);
  - Project submittals and approvals including Request for Information, product submittals and approvals, progress meeting agendas and minutes, and payment applications;
  - Construction observation reports from Engineers, Architects, or Inspectors.
  - Documents related to the transfer of the property to FSPS including contracts, disclosure statements, inspection reports, etc;
  - As-Built plans from remodeling;
  - Design plans from original construction; and
  - As-Built plans from original construction.
5. A total of 40 man-hours of document review time has been budgeted for the items listed in Task 1 Items 2 and 3. Due to the unknown final quantity of information to be provided for review in Item 4 additional time may be required if the 40 hours is inadequate to include this additional information. If required, FTN will request pre-authorization for additional services before proceeding.

## **TASK 2 - TECHNICAL MEMORANDUM**

FTN will prepare a technical memorandum with a summary of our findings as related to industry standard practices.

1. The focus of the technical memorandum will be identification of issues which may have contributed to the problems experienced related to the storm water drainage by creating an overview of the design and construction processes.
2. This analysis WILL NOT attempt to find fault or liability for any party. Additionally, FTN will not participate in any legal action on behalf of Client within this scope of services.
3. Recommendations for future projects to minimize risk of recurrence of similar events will be prepared for Client use and attached to the memorandum. These may be formatted at checklists and may include
  - a. Site identification
  - b. Pre-purchase inspection
  - c. Conceptual design
  - d. Final design



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- e. Construction management and third-party inspection
- f. Final acceptance
- g. Warranty inspection

### **TASK 3 - MEETINGS**

FTN will attend up to two virtual meetings with Client to discuss the results of the work. It is anticipated that one of these meeting will be a daytime meeting and the second will be a regularly scheduled evening meeting of the schoolboard. A total of 4 hours of meeting time has been budgeted

### **TASK 4 – COORDINATION**

Perform general project coordination including progress reports and invoicing, project emails and impromptu telephone calls with the Client.

### **PROJECT SCHEDULE**

We expect to start our services approximately two weeks after receipt of your acceptance of this proposal and receipt of all available pertinent data not previously provided (see Task 1 Items 3 and 4). We expect to provide the technical memorandum within 4 to 6 weeks after commencing.

Task 3 meetings will be initiated at a mutually agreeable time between FTN and the Client. We anticipate this will be in December, 2023 or January 2024 depending on the schedule of the board.

## EXHIBIT B

### Standard Terms and Conditions For FTN Contracts

1. Standard of Care The services provided by FTN shall be performed in accordance with generally accepted professional practice at the time when and the place where the services are rendered.
2. Independent Contractor FTN is an independent contractor and not an employee or agent of CLIENT. CLIENT is not responsible for any of its activities. Any taxes, licenses, permits, required filing of forms or any other conditions imposed upon or required to render FTN Services shall be satisfied by FTN at FTN's expense.
3. Insurance FTN shall procure and maintain insurance for protection from claims under workers' compensation acts. FTN shall procure and maintain liability insurance against claims based on FTN's negligence for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages based on FTN's negligence because of injury to or destruction of property including loss of use resulting therefrom.
4. Indemnification
  - a. FTN does hereby indemnify and save harmless CLIENT from and against any and all liability and claims of liability of any and every kind and nature, including without limitation bodily injury, death and property damage, arising out of any negligent act by FTN, and FTN, at FTN's sole expense, shall handle all such claims, defend all lawsuits filed against CLIENT therein, and reimburse CLIENT in cash for all reasonable expense incurred by CLIENT on account thereof, provided, that if CLIENT elects to retain independent counsel, FTN shall reimburse CLIENT for all costs reasonably incurred by CLIENT to defend itself through attorneys of CLIENT's choice. There is hereby excepted from the foregoing any and all liability and claims of liability solely attributable to acts of CLIENT's direct payroll employees, and there is hereby further excepted from the foregoing any and all liability and claims of liability for environmental pollution which are not the result of negligence on the part of FTN in FTN's performance of this contract.
  - b. CLIENT does hereby indemnify and save harmless FTN from and against any and all liability and claims of liability of any and every kind and nature including without limitation bodily injury, death, property damage and claims for environmental pollution which are not the result of negligence on the part of FTN in FTN's performance of this contract, and CLIENT, at CLIENT's sole expense, shall handle all such claims, defend all lawsuits filed against FTN on account thereof, pay all judgments rendered against FTN therein, and reimburse FTN in cash for all reasonable expense incurred by FTN on account thereof, provided, that if FTN elects to retain independent counsel, CLIENT shall reimburse FTN for all costs reasonably incurred by FTN to defend itself through attorneys of FTN's choice.
5. Electronic Deliverables Any use or reuse of original or altered computer files by CLIENT or others without written verification by FTN for purposes other than for the specific purpose intended will be at CLIENT's risk and full legal responsibility. Furthermore, CLIENT will, to the fullest extent permitted by law, indemnify and hold FTN harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting therefrom. Any verification of such adaptation by CLIENT will entitle FTN to additional compensation at the then current rate.



The submitted data files are intended to work only as described. The files are compatible only with the software and operating platform described. FTN makes no warranty as to the compatibility of these files for versions of the software other than for those stated. FTN is not responsible for uses of the data outside of or beyond the scope of the Agreement.

Because data stored on electronic media can deteriorate undetected or can be modified without FTN's knowledge, CLIENT agrees that FTN will not be held liable for the completeness or correctness of the electronic media, with respect to its originally intended use as defined in the agreement, after an acceptance period of 30 days after delivery of the electronic files. FTN stands by the accuracy of sealed drawings that accompany submittals.

The electronic files are submitted to CLIENT for a 30-day Acceptance Period. During this period, CLIENT may review and examine these files; any errors, relative to the intended use of the files, detected during this time will be corrected by FTN as part of the basic agreement. Any changes requested after the Acceptance Period will be considered additional services to be performed on a time and materials basis, at the then current rates plus terms and conditions.

6. Termination This agreement may be terminated at any time, for any cause by either party upon thirty days written notice to the other party. In such event, CLIENT shall forthwith pay FTN in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement. Notwithstanding the termination or expiration of this agreement, the indemnities provided in paragraph 4 hereof shall survive and remain in full force and effect.
7. Assignment This Agreement may not be assigned by either party without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
8. Limit of Liability It is understood that any and all professional liabilities incurred by FTN throughout the course of rendering professional services on this Project shall be limited to a maximum of the net fee received by FTN, not including reimbursable expenses and subconsultants, for all services rendered on the Project.
9. Confidentiality of Information No information concerning this Project shall be released by FTN.
10. Precedence These Standard Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition notice to proceed, or like document regarding FTN's services.
11. Severability If any of these Standard Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.
12. Survival These Standard Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.
13. Controlling Law This Agreement is to be governed by and construed in accordance with the laws of the State of Arkansas.



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## EXHIBIT C

### 2023 Fee Schedule<sup>1</sup> FTN Associates, Ltd.

| <u>Labor Category</u> | <u>Hourly Rate</u> |
|-----------------------|--------------------|
| Professional 7        | \$ 240.00          |
| Professional 6        | 215.00             |
| Professional 5        | 195.00             |
| Professional 4        | 175.00             |
| Professional 3        | 155.00             |
| Professional 2        | 135.00             |
| Professional 1        | 125.00             |
| Technician 4          | 120.00             |
| Technician 3          | 105.00             |
| Technician 2          | 95.00              |
| Technician 1          | 80.00              |
| Executive Assistant   | 85.00              |
| Word Processing       | 75.00              |

#### Direct Expenses

All direct project expenses will be invoiced at cost plus 10 percent. Direct project expenses include such items as travel, meals, lodging, shipping, supplies, consultants, subcontractors, etc. Vehicle mileage will be charged at standard IRS rates.

A charge of 2 percent is applied to the total labor amount to cover communication charges and computer expenses associated with computer applications, data storage and backup.

Should back-up data be requested for reimbursable expenses, it will be provided for an administrative fee.

#### Payment Terms

Unless other arrangements are made in writing, invoicing will be monthly for services completed and will be sent via email to the Client. Payment is due in full within 30 days of invoice and are preferred to be paid electronically through Automated Clearing House (ACH) system; however, other methods are acceptable. A service charge of 1.5 percent per month will be charged on all balances over 30 days. If you are paying by check, please make the check payable to FTN Associates Ltd and mail to Dept 6552, FTN Associates LTD, PO Box 11407, Birmingham, AL 35246-6552.

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<sup>1</sup>Effective January 1, 2023 – December 31, 2023



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