

CITY OF STRUTHERS

AGREEMENT FOR THE PERFORMANCE OF
ENGINEERING, ARCHITECTURAL, AND PLANNING SERVICES
CALENDAR YEAR 2020

This is an Agreement for the performance of engineering, architectural, and planning services executed at Youngstown, Ohio as of January 8, 2020, by and between the City of Struthers, Ohio, hereinafter referred to as the "OWNER", and **ms consultants, inc.**, an Ohio Corporation, with its principal office at 333 East Federal Street, Youngstown, Ohio, hereinafter referred to as the "ENGINEER."

Recitals

The OWNER, recognizing a need for engineering, architectural, and planning services to assist the OWNER, adopted a resolution on January 8, 2020, authorizing an agreement for professional engineering, architectural, and planning services for the OWNER.

The ENGINEER desires to perform the aforesaid engineering, architectural, and planning services, and the OWNER desires that the ENGINEER do so, all on the terms and conditions hereinafter set forth.

Provisions

SECTION I. SERVICES TO BE PERFORMED BY ENGINEER

1.1 Description of Basic Services. When authorized in writing by the OWNER'S authorized representative, the ENGINEER shall:

- (a) Furnish engineering, architectural, and planning services as may be needed by the OWNER for improvements to be let by Contract or by force account. Such services may include, but shall not be limited to, conducting studies and preparing maps, reports, profiles, layouts, drawings, grades, specifications, and cost estimates.
- (b) Assist the OWNER in obtaining and evaluating bids or negotiating proposals and

preparing construction contracts.

- (c) Consult with and advise the OWNER as to the acceptability of contractors and other persons and organizations proposed by the construction contract for those portions of construction work as to which such acceptability is required by bidding documents.
- (d) During the construction phase of any improvement:
 - (i) Make periodic visits to the construction site to observe the progress and quality of the executed work, and report its findings and recommendations to the OWNER as to whether the construction work is proceeding in accordance with the contract documents. It will not be required to make exhaustive or continuous on-site inspections to check the quality of quantity of work. It will not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions and programs incidental thereto. Its efforts will be directed towards providing assurance for the OWNER that the completed construction project will conform to the requirements of the contract documents, but it will not be responsible for the failure of Contractors to perform the construction work in accordance with the contract documents. During such visits, on the basis of its on-site inspection and observation as an experienced and qualified design professional, it will keep the OWNER informed of the progress of the work and endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor.
 - (ii) Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, results of tests and inspections and other data which any Contractor is required to submit and advise the OWNER as to conformance with the design concept of the project and compliance with the information given in the contract documents. It shall also receive and review maintenance and operating instructions, schedules, guarantees, bonds, and

certificates of inspection which are to be assembled by the Contractors in accordance with the contract documents.

- (iii) Based on its on-site observations as an experienced and qualified design professional, and on its review of the Contractor's applications for payment and supporting data, advise the OWNER, to the best of its knowledge, information and belief, as to whether or not the work has progressed to the point indicated and whether or not the quality of work is in accordance with the contract documents.

By reviewing applications for payment, the ENGINEER shall not be deemed to have represented that it has made any examination to determine how or for what purpose any Contractor has used the monies paid on account of the contract price.

- (iv) Conduct inspections and advise the OWNER as to whether the construction project is substantially complete, whether it has been completed in accordance with the contract documents, and whether each Contractor has fulfilled all of his obligations thereunder; provided, however, that the ENGINEER shall not be responsible for the acts or omissions of any Contractor, any Subcontractor of any Contractor's or Subcontractor's agents or employees or any other persons performing any of the work under the construction contract.

- (e) Attend Council meetings and other miscellaneous meetings as requested.
- (f) Keep the OWNER informed on any federal or state grants of any nature that may be available for engineering projects and assist the OWNER in the preparation of applications and supporting documents for governmental grants, loans, or advances.
- (g) Assist the OWNER in the preparation of Ohio Public Works Commission applications, Project Status Reports, update the OWNER's Capital Improvement Report and Maintenance of Effort reports.

1.2 Description of Supplemental Services. When authorized in writing by the OWNER'S authorized representative, the ENGINEER shall perform the following supplemental services:

- (a) Analyze operations, maintenance and overhead expenses; prepare rate schedules, earnings and expense statements, feasibility studies, appraisals and evaluations, detailed quantity surveys of materials, equipment and labor, audits of inventories, and operating or maintenance manuals; and instruct OWNER personnel in operating or maintenance techniques.
- (b) Furnish the services of special consultants.
- (c) Furnish renderings, exhibits, or models of any part or all of any project.
- (d) Serve as an expert witness in any administrative or judicial proceeding.
- (e) Travel to places other than the OWNER in connection with the performance of supplemental services.
- (f) Provide a full-time, resident project representative and assistant who will act as directed by the ENGINEER in order to provide more extensive representation at construction project sites during the construction phase of any project. The furnishing of such resident project representation shall not make the ENGINEER responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs, or for the Contractor's failure to perform the construction work in accordance with the contract documents.
- (g) Review subdivision plans and inspect subdivision improvements according to the Subdivision and Land Development Regulations for the OWNER.

SECTION II. THE OWNER'S RESPONSIBILITY

2.1 Funding. The OWNER shall:

- (a) Furnish the ENGINEER, at the time this Agreement is executed, with evidence that the execution hereof has been duly authorized by the proper authorities.
- (b) Furnish the ENGINEER, each time that the ENGINEER is requested to perform services under this Agreement, with evidence that the performance of such

additional services has been duly authorized by the proper authorities, and that the funds necessary to meet the OWNER'S obligations with respect to such services have been appropriated and are available.

2.2 Further Obligations of OWNER. The OWNER shall also:

- (a) Furnish the ENGINEER with full information as to its requirements with respect to any professional engineering and planning services to be performed hereunder.
- (b) Assist the ENGINEER by placing at its disposal all available information pertinent to any project upon which it is working, including previous reports and any other data relative to design and construction of the project.
- (c) Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required by the ENGINEER to perform its services under this Agreement.
- (d) Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the ENGINEER, and render in writing decisions pertaining thereto within a reasonable time so as not to delay performance of the services of the ENGINEER.
- (e) Designate in writing a person to act as OWNER'S representative with respect to work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the OWNER'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- (f) Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in any project, so that the ENGINEER may investigate and make recommendations to the OWNER.
- (g) Furnish approvals and permits from all governmental authorities having jurisdiction over any project undertaken hereunder and such approvals and consents from others as may be necessary for completion of the project.
- (h) Provide all legal, accounting, insurance counseling, and similar services that may be

required in connection with services performed under this Agreement.

- (i) Bear all costs incident to compliance with the requirements of this Section II.

SECTION III. PERIOD OF SERVICE

The term of this Agreement shall be based on the calendar year from January 2, 2020 through December 31, 2020 and be negotiated for the years thereafter. During the term of this Agreement, the ENGINEER'S representative to the OWNER shall be Gary J. Diorio, P.E.

SECTION IV. PAYMENTS TO THE ENGINEER

4.1 Methods of Payment for Services and Expenses of the ENGINEER.

- (a) The OWNER shall pay the ENGINEER for basic and supplemental services rendered under Section I, Paragraphs 1.1(e), 1.1(f), and 1.1(g) of this Agreement on amounts based upon hourly rates, as outlined on the attached Exhibit A per classification of personnel, plus all reimbursable expenses. The total costs for services under Paragraphs 1.1(e), 1.1(f), and 1.1(g) shall not exceed Twenty Four Thousand Dollars (\$24,000.00).
- (b) All other tasks described in Section 1 of this agreement shall be authorized by the OWNER in writing prior to the start of the task authorized in accordance with the Rate Schedule attached as Exhibit A to this agreement. The cost authorized by the OWNER shall be in addition to the total contract amount stated in Paragraph 4.1(a). The ENGINEER shall make available to the OWNER per written authorization for each assignment, the proper engineering, planning or architectural staff to complete said services.
- (c) On other engineering and planning projects requiring local, state or federal funding, a separate agreement may be negotiated by the OWNER and the ENGINEER within the guidelines of the state and federal agencies involved. The fee under such separate agreement shall be a lump-sum fee.

- (d) The OWNER shall pay the ENGINEER for the supplemental services referenced in Section I - Subsection 1.2(g) in an amount not to exceed the amount of funds collected by the OWNER for said engineering services from the appropriate developer.

4.2 Times of Payment.

- (a) The OWNER shall make prompt monthly payments in response to the ENGINEER'S detailed monthly statements for all categories of services rendered in this Agreement and for reimbursable expenses incurred hereunder.
- (b) If the OWNER fails to make any payment due to the ENGINEER on account of its services and expenses within thirty (30) days after receipt of the ENGINEER'S bill therefore, the amounts due the ENGINEER shall bear interest at the legal rate in force at the principal place of business of the ENGINEER. The ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement until it has been paid in full all amounts due it on account of its services and expenses.

SECTION V. GENERAL CONSIDERATIONS

5.1 Termination

- (a) This Agreement may be terminated by either party by forty-five (45) days advance written notice to the other party.

(b) If this Agreement is terminated, the ENGINEER shall be paid for services rendered to the date of termination, for reimbursable expenses incurred on or before such date, and if termination is not due to notice by or fault on the part of the ENGINEER, for all of its reasonable expenses resulting from such termination.

5.2 Insurance

5.2.1 ENGINEER shall procure and maintain insurance for protection claims under workers' compensation acts, claims 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 because of injury to or destruction of property including loss of use resulting therefrom.

5.2.2 Also ENGINEER shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by a negligent error, omission or act for which the insured is legally liable.

5.2.3 All policies of insurance relating to this Agreement shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against the parties, or any insureds, additional insureds, or loss payees thereunder.

5.2.4 The OWNER acknowledges and agrees that the OWNER has asked ENGINEER to provide certain professional services and ENGINEER has agreed to provide such services, and as such, shall have, to the extent necessary and permitted by applicable law, such governmental immunities statutory or common law as the OWNER may have from suit and from liability to third parties in connection with the providing of such services. Nothing herein shall or be construed to constitute any waiver by ENGINEER of any claim or defense of immunity of any kind permitted by law against any third party, and ENGINEER expressly intends to preserve and does preserve and retain all such rights.

5.3 Estimates. Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, its estimates of cost for any project undertaken hereunder are

to be made on the basis of its experience and qualifications and represent its best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids, or the project construction cost will not vary from cost estimates prepared by it.

- 5.4 Ownership of Documents. All documents, including original drawings, estimates, specifications, field notes, and data shall, upon payment therefore, become the property of the OWNER. OWNER acknowledges that such documents are not intended or represented to be suitable for use on any project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the project, on any other project, or for any other use or purpose, without written verification or adaptation by ENGINEER and that any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to its officers, directors, members, partners, agents, employees, and subconsultants.
- 5.5 Successors. This Agreement shall insure to the benefit of, be binding upon, and be enforceable by and against the successors and assigns of the respective parties hereto.
- 5.6 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.
- 5.7 Construction. The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it.
- 5.8 Waiver. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this

Agreement.

- 5.9 Severability. Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 5.10 Third Parties. There are no intended third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed duplicate counterparts of this Agreement on the date hereinbefore set forth.

ms consultants, inc.

WITNESS:

By: Gary J. Diorio

Megan R. Shorthouse

Title: Project Manager

CITY OF STRUTHERS, OHIO

ATTEST:

John N. Zomoida Jr.
APPROVED AS TO FORM

Catherine Cercone Miller
Mayor

Robert M. Norris
Safety – Service Director

Christina S. Bohl
Auditor

RATE SCHEDULE

**CITY OF STRUTHERS - ENGINEERING SERVICES RELATIVE TO TASKS UNDER
PARAGRAPH 1.1 AND PARAGRAPH 1.2
JANUARY 2, 2020 TO DECEMBER 31, 2020**

<u>Classification</u>	<u>Hourly Rate</u>
<i>Registered Professional:</i>	
Principal Engineer	\$360.00
Sr. Mechanical Engineer	\$146.00
Sr. Electrical Engineer	\$151.00
Sr. Structural Engineer	\$131.50
Sr. Foundation Engineer	\$158.00
Sr. Environmentalist (Water/Wastewater)	\$179.00
Sr. Environmentalist (Planner)	\$129.00
Sr. Architect	\$160.00
Sr. Urban and Rural Planner	\$150.00
Project Manager	\$165.00
Sr. Transportation Engineer	\$165.00
<u>Engineers</u>	
Civil	\$125.00
Electrical	\$85.00
Structural	\$85.00
Foundation	\$85.00
Environmentalist (Water/Wastewater)	\$110.00
Environmentalist (Planner)	\$85.00
Architect	\$95.00
Senior Engineering Technician	\$90.00
Technicians	\$75.00
Sr. Field Technicians	\$100.00
Draftspersons	\$80.00
Clerical	\$80.00
Registered Surveyor	\$140.00
Field Survey Crew – 2 men	\$180.00

All hourly rates include overhead on direct labor,
general and administrative, and profit.

The above will remain in effect through December 31, 2020. Reimbursable mileage and other miscellaneous expenses shall be invoiced in addition to the above hourly rates. Any subcontractor or other direct project costs will also be invoiced at actual cost plus 10%.