

AGREEMENT

ENGINEERING SERVICES FOR THE PREPARATION OF CONSTRUCTION PLANS FOR
THE IMPROVEMENT OF A PORTION OF PARK STREET IN THE CITY OF OBERLIN,
LORAIN COUNTY, OHIO

This Engineering Agreement, entered into at Oberlin, Ohio this 9th day of July, 2008 by and between the City of Oberlin, Ohio, acting by and through the City Public Works Director, hereinafter referred to as the CITY, and Shaffer Pomeroy, Ltd., organized, duly licensed and existing under the laws of the State of Ohio for the practice of engineering and surveying, hereinafter referred to as the CONSULTANT, with offices located at 909 South Main Street, Mansfield, Ohio 44907.

WITNESSETH

That the CITY and the CONSULTANT, for the mutual consideration herein contained and specified, have agreed and do hereby agree as follows:

CLAUSE I - WORK DESCRIPTION

Except as modified or otherwise provided, the CONSULTANT agrees to perform all engineering and adjunct services for the improvement of a portion of Park Street by replacing the present bridge over Plum Creek on the existing vertical and horizontal alignment with a new superstructure, abutments and approaches.

The WORK will be divided into two parts: the Preliminary Engineering Study Report (Part 1) and Construction Plans (Part 2).

Part 1 of the WORK will be the development of a Preliminary Engineering Study Report which will include the consideration of all reasonable structure type alternatives as well as vertical

and horizontal roadway alignment, their various impacts on the environment and comparative costs. These will be determined by engineering studies and possible public input which will reduce the alternatives to the most feasible one. Preliminary Design Plans will contain the title sheet, typical section, plan and profile, cross sections and preliminary bridge site plan sheets. In addition, a hydraulics backwater analysis report and a preliminary construction cost estimate will be prepared. The Preliminary Study Report will be submitted for CITY and Ohio Department of Transportation (ODOT) approval.

With the CITY and ODOT approval of this submission, the preparation of the Construction Plans (Part 2) will commence. The WORK of the Construction Plans will include the preparation of the Stage 2 Design Plans, the final Detail Design Plans, right of way plans and legal descriptions, construction cost estimates for Stage 2 and final Detail Design Plans and the Categorical Exclusion Document. Included are all meetings, reviews, revisions and changes required to obtain CITY and ODOT approval. Acceptance of the final Construction Plans (Part 2) by the CITY and ODOT will constitute completion of the WORK.

CLAUSE II - TIME SCHEDULE

As authorized by the CITY, the CONSULTANT agrees that the WORK to be performed under this Engineering Agreement shall adhere to and comply with the following schedule:

COMMENCEMENT: Within ten (10) days after receipt of written Notice to Proceed.

PRELIMINARY ENGINEERING STUDY REPORT DUE: Three months following written Notice to Proceed.

STAGE 2 SUBMITTAL TO ODOT DISTRICT 3 DUE: Four months following written CITY and ODOT acceptance of Preliminary Engineering Study Report.

TRACINGS TO ODOT DISTRICT 3 DUE: Eight months following written CITY and ODOT acceptance of Stage 2 Submittal.

CLAUSE III - PRIME COMPENSATION

The CITY agrees to compensate the CONSULTANT for the performance of the WORK specified in this Engineering Agreement on the basis of the following:

PART 1 – PRELIMINARY ENGINEERING STUDY REPORT

A fee based on actual costs plus a net fee of Three Thousand Eight Hundred Forty-Five Dollars (\$3,845.00). However, the Maximum Prime Compensation shall not exceed Forty-Eight Thousand Nine Hundred Twenty-Five Dollars (\$48,925.00) for “Authorized” items or a total of Fifty-Five Thousand Two Hundred Thirty-Five Dollars (\$55,235.00) including all “If Authorized” items.

PART 2 – CONSTRUCTION PLANS

A fee based on actual costs plus a net fee of Six Thousand Eight Hundred Sixty-Seven Dollars (\$6,867.00). However, the Maximum Prime Compensation shall not exceed Seventy-Three Thousand Eight Hundred Seventy-One Dollars (\$73,871.00) for “Authorized” items or a total of Seventy-Eight Thousand Seventy-One Dollars (\$78,071.00) including all “If Authorized” items.

TOTAL COMPENSATION

A fee based on actual costs plus a total net fee of Ten Thousand Seven Hundred Twelve Dollars (\$10,712.00). Total Maximum Prime Compensation shall therefore not exceed One Hundred Twenty-Two Thousand Seven Hundred Ninety-Six Dollars (\$122,796.00) for “Authorized” items or a total of One Hundred Thirty-Three Thousand Three Hundred Six Dollars (\$133,306.00) including all “If Authorized” items.

The CITY, upon properly and adequately supported request by the CONSULTANT, may re-negotiate the "Maximum Prime Compensation" to cover justifiable costs not within the purview of the scope and costs of services originally contemplated herein, and not due to lack of diligence or capability on the part of CONSULTANT - such costs may arise from significant changes in the scope and character of such services, the establishing or evolving of unusual complexities in the requirements to accomplish the job fulfillment, or from unforeseeable circumstances or delays beyond the control of the CONSULTANT.

CLAUSE IV - ADDITIONAL COMPENSATION

The CONSULTANT agrees to perform the following services, if such services are requested by subsequent written authorization by the CITY, and the CITY agrees to pay the CONSULTANT for the performance of such services as follows:

1. Changes or Additions requiring Additional-Fee Payments:
As may be negotiated at the time required.
2. Subsurface Investigation Report, Environmental Studies and Documentation
(Environmental Alternatives Analysis, Cultural Resource – Phase 1, Section 4(f)/6(f) – Park/Recreation/Refuges, Ecological Surveys – Levels 1 and 2, Section 404 Nationwide Permit or Preconstruction Notification Documentation with the U.S. Army Corps of Engineers) and Right of Way Acquisition or other special Investigations or Studies:
To be provided by subconsultant(s) at the CITY'S expense after CONSULTANT obtains proposals and the CITY'S authorization as a part of the WORK in
CLAUSE I.
3. Appearances and Conferences subsequent to final Acceptance of WORK:

Principal Engineer or Project Manager - \$800.00 per day

Appearance fees shall include all costs except unusual transportation expenses, if any.

It is mutually understood and agreed that the fees, set forth in CLAUSE III – Prime Compensation, of this Engineering Agreement, are totally separate and independent of the CONSULTANT'S fees which may be earned under the CITY'S optional and independent authorization of this CLAUSE IV.

CLAUSE V - INCORPORATION BY REFERENCE

Chapters 1 and 2 of the Ohio Department of Transportation's publication dated January, 1998, entitled "Specifications for Consulting Services," herein sometimes referred to as Specifications, are hereby incorporated and made a part of this Engineering Agreement by reference as though expressly written herein. All applicable engineering services and provisions not defined in this Agreement shall be as set forth in the above Chapters of the Specifications. Reference to the STATE in the above documents shall be construed to mean the CITY of Oberlin or the Ohio Department of Transportation as it applies.

Also incorporated by enclosure hereto is the "LPA Scope of Services Form," revised July 3, 2007, which was discussed in the telephone conversation between the CITY and the CONSULTANT on May 22, 2008.

CLAUSE VI - METHOD OF PAYMENT – COST PLUS NET FEE

Any "Cost Plus Net Fee" for the CONSULTANT'S services in the performance of the WORK required under this Engineering Agreement and modifications or supplements hereto, if

applicable, shall be made in the following manner:

1. The CITY shall pay or cause to be paid to the CONSULTANT or his legal representatives, prior to Acceptance of the WORK on billings (invoices for service performed) submitted not more frequently than once each month, partial fee payments equal to the amount of the total cost incurred to date provided such costs have not exceeded the maximum fee set forth in Clause III – Prime Compensation, less the total of all previous partial fee payments paid or in the process of payment.
2. The amount of the final payment shall be equal to one hundred percent (100%) of the total costs earned to date not to exceed the maximum fee set forth in Clause III – Prime Compensation, less the total of all previous partial payments paid or in the process of payment; and such final fee payment shall be due upon the filing and acceptance of the WORK.
3. The “Net Fee” as provided in Clause III herein, shall be partially paid to CONSULTANT in connection with the billings for “actual costs” as provided in paragraph “a” of this Clause VI, as follows: CONSULTANT shall include in each billing for “actual cost” a bill for a pro rata share of the net fee; i.e., the percent of the net fee to be billed would be in the same proportion to the total net fee as the percent of “actual costs” is to the total estimated “actual costs.” The amount of the final net fee payment shall be equal to one hundred percent (100%) of the total fixed fee, less the total of all previous partial payments paid, or in the process of payment.
4. The CONSULTANT shall submit all billings in triplicate to the CITY, with adequate supporting data.

5. The CITY shall process the CONSULTANT'S billings with thirty (30) days following submission; or if a billing is not acceptable, the CITY shall provide the CONSULTANT a clear statement regarding its ineligibility or the deficiencies to be eliminated prior to Acceptance and processing.

No approval given or payment made under this Engineering Agreement, and supplements hereto, shall be conclusive evidence of the performance of said agreement(s) either wholly or in part, and no payment shall be construed to be an acceptance of defective WORK or improper materials.

IN WITNESS WHEREOF, the parties hereto have caused this Engineering Agreement to be executed, in triplicate, as of the day and year first above written.

SHAFFER POMEROY, LTD.

Witness: Jeffrey S. Kennedy By: Roger L. Stevens
Roger L. Stevens, P.S.
Managing Principal

CITY OF OBERLIN

Eric Norenberg
Eric Norenberg, City Manager

Attest: Mary J. Bann Eric R. Severs
Eric R. Severs, Law Director

CERTIFICATE OF FISCAL OFFICER

Contract No. _____

Oberlin, Ohio 07-8-08 (Date)

I hereby certify the amount mentioned in the foregoing contract between the City of Oberlin and Shaffer Pomeroy, Ltd., amounting to ^{Not to Exceed} 133,306 is in the Treasury of the City of Oberlin or in the process of collection, free from any previous encumbrances, to the credit of the Income Tax Capital Improv appropriation, from which it is to be drawn and not appropriated for any other use.

I. Salvatore Talarico
I. Salvatore Talarico, Finance Director

I hereby certify that I have examined the contract between the City of Oberlin and Shaffer Pomeroy, Ltd. and find the same to be in accordance with the provisions of law, and the same is hereby approved.

Eric R. Severs
Eric R. Severs, Law Director