

ENGINEERING AGREEMENT

This ENGINEERING AGREEMENT entered into at, Gahanna, Ohio this ____ day of ____, 2011 by and between City of Gahanna hereinafter referred to as the OWNER and **ms consultants, inc.** a corporation duly licensed and existing under the laws of the State of Ohio for the practice of engineering, hereinafter referred to as the ENGINEER with an office located at 2221 Schrock Road Columbus, Ohio 43229.

WITNESSETH:

That, the OWNER and the ENGINEER, for the mutual considerations herein contained and specified, have agreed and do hereby agree as follows:

SECTION 1

Services of the Engineer

- 1.1 Perform Professional Engineering Services per Exhibit "A" as attached herein and per Parts 1&2 of the detailed cost proposal dated May 26, 2011.

Hamilton Road Widening

Johnstown Road (US 62) to Rocky Fork Creek.

Standard of Care

- 1.2 The standard of care for all professional engineering services performed under this Agreement will be the skill and care ordinarily exercised by members of the engineering profession performing under similar circumstances.

SECTION 2
Period of Services

- 2.1 The ENGINEER agrees to commence work upon receipt of written authorization to proceed by the Owner and complete as per the schedule included in the detail cost proposal dated May 26, 2011.

SECTION 3
Payments to the Engineer

- 3.1 The OWNER agrees to compensate the ENGINEER for the performance of the work specified in this Agreement as follows:

3.1.1 For Services rendered under Paragraph 1.1, as described in Exhibit A and subject to Section 4.1, a Cost Plus Fee of (\$742,732).

- 3.2 The ENGINEER shall submit a monthly statement for services rendered based upon the ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. The OWNER shall make prompt monthly payments.

- 3.3 The compensation set forth in this Agreement may be renegotiated to cover costs not within the purview of the Scope of Services originally contemplated herein. Such costs may arise from significant changes in the extent of the PROJECT or its design, including but not limited to, changes in size, complexity, OWNER's schedule, or character or construction or methods of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are due to causes beyond the ENGINEER's control.

SECTION 4
Remaining Provision

4.1 Termination

The OWNER shall have the right to terminate this Agreement for any reason at any time with a two (2) week written notice sent certified mail or overnight delivery to the ENGINEER. In the event of such notice the ENGINEER shall immediately cease all performance of the terms of the Agreement and the OWNER shall pay to the ENGINEER within sixty (60) days after the submission of the final statement all amounts due for services performed by the ENGINEER. The amount of services which the ENGINEER has performed and for which the OWNER shall be obligated to pay, as aforesaid, shall be through the date of termination and include the time required to deliver and project materials to the OWNER. In no event shall the OWNER be obligated for the payment of any services defined in this Agreement which have not yet been performed by ENGINEER at the time of the receipt by the ENGINEER of any such notice of termination, any other provisions of this Agreement to the contrary notwithstanding.

4.2 Reuse of Documents

All documents, including drawings and records prepared by the ENGINEER pursuant to this Agreement, are instruments of service in respect of the PROJECT. They are not intended or represented to be suitable for reuse by the OWNER or others on extensions of the PROJECT or on any other project. Any reuse, without written verification or adaptation by the ENGINEER for the specific purpose intended, will be at the OWNER's sole risk and without liability or legal exposures to the ENGINEER. The OWNER agrees to indemnify, defend, save and hold harmless the ENGINEER for any or all reuse of instruments without such written verification.

4.3 Insurances

The ENGINEER shall provide and maintain during the life of this Agreement the following insurances: Comprehensive General Liability, Comprehensive Automobile Liability, Workers Compensation and Professional Liability.

4.4 Successors and Assigns

4.4.1 The OWNER and the ENGINEER each binds the corporation or himself their, successors, executors, administrators and assigns, to the other party of this Agreement, and to the, successors, executors, administrators, and assigns of such other party, in respect to all covenants, agreements and obligations of this Agreement.

4.4.2 Neither the OWNER nor the ENGINEER shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in Paragraph 4.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this Paragraph shall prevent the ENGINEER from employing such independent consultants, associates, and subcontractors as it may deem appropriate to assist him in the performance of services hereunder.

4.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

4.4.4 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the OWNER, ENGINEER or any public body which may be a party hereto.

4.4.5 Jurisdiction

This agreement shall be interpreted under the laws of the state of Ohio.

4.5 Discrimination Clause

The ENGINEER agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, disability, or color, including, but not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

4.6 Confidentiality

The OWNER agrees to keep confidential and not to disclose to any person or entity, other than OWNER'S employees sub-consultants, contractor and sub-contractor, if appropriate, any data or information with the exception of such data or information that is demonstrated to have been in the public domain, or in compliance with an order by a court or required by law. If such information includes proprietary information Section 4.7 of this agreement shall govern.

4.7 Proprietary Information

The OWNER agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the consultant pertaining to this project or this agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third-party without the express written consent of the ENGINEER.

4.8 Dispute Resolution

In an effort to resolve any conflict or dispute that may arise in the course of performing professional services under this agreement or following the completion of this Agreement, the OWNER and ENGINEER agree that all disputes between them arising out of or relating to this Agreement or the project

shall be submitted to nonbinding mediation unless the parties mutually agree in writing otherwise. Should nonbinding mediation fail to resolve the conflict or dispute the OWNER and ENGINEER reserve all rights, claims, defenses in law and/or equity and to have the claim resolved in a court of competent jurisdiction.

4.9 Indemnification

To the fullest extent permitted by law, the ENGINEER shall indemnify and hold harmless, OWNER, employees and agents from and against any and all claims, costs, losses and damages caused by the negligent acts of the ENGINEER in the performance and furnishing of ENGINEER's services under this Agreement. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees and agents and ENGINEER's Consultants from and against any and all claims, costs, losses caused by the negligent acts of the OWNER or OWNER's officers, directors, partners, employees, agents and OWNERS consultants (other than the ENGINEER) with respect to this Agreement or the Project.


IN WITNESS WHEREOF, the parties hereto have caused this ENGINEERING AGREEMENT to be executed, in duplicate, as of the date and year first above written, by affixing the signature of the duly authorized officer of ENGINEER, and by signature of the duly authorized officers of City of Gahanna, Ohio.

ms consultants, inc.

Witness



By:



Title

COO

Date

6/15/11

Witness

City of Gahanna

By:

Title

Date

EXHIBIT "A"

Summary of Proposal For Design Services

City of Gahanna Hamilton Road Widening Johnstown Road (US 62) to Rocky Fork Creek

Project Description

The proposal for this project includes planning and design services and the preparation of construction plans for the widening and reconstruction of Hamilton Road from the north side of the existing bridge over Rocky Fork Creek, northerly to tie in with the recently constructed south leg of the US62 (Johnstown Rd.) intersection - approximately 1 mile in length. The widened roadway will include 5 lanes (4x11' lanes and 10' center turn lane) with curb and gutter, drainage improvements, sidewalk & multiuse path, and street lighting. The project will include the replacement of the County bridge over Sycamore Run and the widening of a box culvert and the design of two small retaining walls. Two new roundabout intersections will be designed, one at Clark State Road and the other at the County School property.

Proposed Project Design Costs**

Phase 1 –	Environmental Services	\$394,306
	Preliminary Roadway Design	
	Preliminary Right of Way Plans	
Phase 2 -	Final Roadway Design	\$348,426
	Final Right of Way Plans	

Total Proposed Design Costs	\$742,732
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** per detailed cost proposal dated May 26, 2011

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