

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2021, by and between the City of Gahanna, Ohio ("City"), an Ohio Municipal Corporation with offices located at 200 South Hamilton Road, Gahanna, Ohio 43230 and Glaus, Pyle, Schomer, Burns & DeHaven, Inc. dba GPD Group("Consultant") located at 520 S. Main Street, Suite 2531, Akron, Ohio 44311.

The Consultant will provide services in connection with the 2022 Street Rebuild and Waterline Replacement Project ("Project") which are more fully described in the Attached Exhibit A (Consultant's Proposal).

The following Terms and Conditions will apply to this Agreement:

1.1 Contract Type: This contract shall be in form and content satisfactory to the City and shall include, this agreement and its attachments, the terms and conditions provided for in the RFP and such other terms and conditions as the City deems necessary and appropriate. The standard of performance for the Project shall be in accordance with the applicable professional standards in the industry. This contract shall include professional and field services on a not to exceed basis. The initial contract price will be based on prices submitted by the Consultant, subject to contract negotiations with the City, and shall remain firm for the initial term of the contract.

1.2 Contract Term / Termination: This contract shall be effective upon the date the contract is signed by both the City and the Consultant and shall expire upon completion of the Services covered by the contract. The resulting contract may be terminated by the City upon thirty (30) days written notice of such termination. In the event of the City's termination of the resulting contract, there shall be no further obligation on the part of the City to the Consultant save and except for payment of sums due and owing for expenses and work incurred by the Consultant prior to the date of termination, minus any City incurred damages if such termination is for cause. In the event of any termination, Consultant shall agree to cooperate in connection with any necessary transition services and shall be reimbursed for such transition services at Consultant's standard rates. Additional detail regarding the schedule of the Project has been included in the Consultant's Proposal (Exhibit A).

1.3 Payment Terms: Compensation for Services provided under this Agreement shall be in accordance with the Consultant's Proposal (Exhibit A). Payment for work items will be based on actual work performed. For all services performed for this Project, except any work covered through Contract Changes, the Consultant's 'not to exceed' fee shall be **\$302,045**.

1.4 Contract Changes: Written requests for price changes in a resulting term contract after the firm price period must be submitted in writing to the City at least thirty (30) days prior to the commencement of any extension period. Any proposed price increase will be based on the Consultant's actual cost increase only, as shown in written documentation

provided to the City. All requests for price increases must be in writing, must not constitute increases in profit, and must contain data establishing or supporting the increase in cost. In connection with any Consultant request for price increases in term contracts after the firm price period, at the option of the City, (1) the request may be granted; (2) the contract may be cancelled by either party; or (3) the contract may be extended without change with the consent of both parties.

The City will accept or reject all such written requests within fifteen (15) days of the date of receipt of Consultant's request for price increase or receipt of proper written documentation, whichever is later.

If a price increase is approved, the City will issue an amendment to the contract specifying the date the increase will be effective. The Consultant will be required to send notice to all users of the contract. All Services and related accessories are to be billed at prices in effect at the time the service was rendered, or order was placed. All contract changes will be effective only on written agreement signed by both parties.

1.5 Contract Approval: The City's obligation will commence only following the City's and the Consultant's execution of this Agreement. Upon written notice to the Consultant, the City may set a different starting date for the contract. The City will not be responsible for any work done or expense incurred by the Consultant or any subcontractor, even such work was done or such expense was incurred in good faith, if it occurs prior to the contract start date set by the City.

1.6 Contract Dispute: In the event of contract dispute, dispute proceedings will be held in the State of Ohio. Mediation, subject to written agreement of the parties, will be a mandatory first step in the event of a dispute, prior to any legal action as set forth in the contract.

1.7 Confidential Information: Any written, printed, graphic, electronic, or magnetically recorded information furnished by the City for the Consultant's use are the sole property of the City. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning City employees, products, services, prices, operations, security measures, and subsidiaries.

The Consultant and its employees shall keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with City approval, and then only to the extent necessary to perform the work under the contract. These confidentiality obligations also apply to the Consultant's employees, agents, and subcontractors and Consultant shall be liable for a breach of the confidentiality obligations by any such party. On termination of the contract, the Consultant, its employees, agents, and subcontractors will promptly return any confidential information in its possession to the City.

1.8 Insurance Requirements: Consultant shall, at Consultant's expense, secure and maintain in effect throughout the duration of the contract, insurance of the following kinds

and limits set forth in this Section. The Consultant shall furnish a certificate of insurance and endorsements in a form acceptable to the City before starting work or within ten (10) days after the notice of award of the contract, which ever date is reached first. All insurance policies, except professional liability insurance, shall be written with insurance companies licensed to do business in the State of Ohio and having a rating of at least A-VII, according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless fifteen (15) days prior written notice is given to the City.

The following provision shall also be stated on each applicable certificate of insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail fifteen (15) days' written notice to the certificate holder named to the left." Consultant shall require any of its subcontractors to secure and maintain insurance as set forth in this Section and indemnify, hold harmless and defend the City, its officers, employees, attorneys and volunteers.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

A. Commercial General Liability:

- i. Coverage to include, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:
 - a. General Aggregate \$1,000,000.00
 - b. Each Occurrence \$1,000,000.00
 - c. Personal Injury \$1,000,000.00
- iii. Coverage for all claims arising out of the Consultant's operations or premises, anyone directly or indirectly employed by the Consultant.

B. Professional Liability:

- i. Per Claim/Aggregate \$1,000,000.00
- ii. Coverage for all claims arising out of the Consultant's operations or premises, anyone directly or indirectly employed by the Consultant, and the Consultant's obligations under the indemnification provisions of the contract to the extent same are covered.

C. Workers' Compensation:

- i. Workers' compensation insurance shall be in accordance with the provisions of the laws of the State of Ohio, including occupational disease provisions, for all employees who perform work pursuant to the contract, and in case work is subcontracted, the Consultant shall require each subcontractor similarly to provide Workers' Compensation Insurance. All such policies of workers' compensation insurance shall include a waiver of subrogation in favor of the City. In case employees engaged in hazardous work under the contract are not protected under said worker's compensation insurance, the Consultant shall provide, and shall

cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

D. Comprehensive Automobile Liability:

i. Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury, and property damage.

ii. Limits:

a. Combined Single Limit \$1,000,000.00

E. Umbrella:

i. Limits:

a. Each Occurrence/Aggregate \$1,000,000.00

F. The City, its officials, officers, employees, agents, and volunteers shall be named as an additional insured on all insurance policies identified herein except Workers' Compensation and Professional Liability. All such insurance shall be primary and non-contributory coverage as respects a covered loss. The Consultant shall be responsible for the payment of all premiums and deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents, and employees.

Consultant understands and agrees that, except as to Professional Liability, any insurance protection required by the contract or otherwise provided by the Consultant, shall in no way limit the Consultant's responsibility to indemnify, keep and save harmless, and defend the City, its officers, employees, agents as herein provided.

1.9 Conflict of Interest: Consultant shall at all times observe and comply with all federal, state, and local laws, ordinances, and regulations including all amendments and revisions thereto, which in any manner affect Consultant or the services and/or items to be provided, specifically and not limited to any laws relating to conflicts of interest. Failure to comply with any applicable laws may result in: i) the termination of the contract; ii) the forfeiture by Consultant of all benefits of the Contract; iii) the retainage by City of all Services performed by Consultant and iv) the recovery by City of all consideration, or the value of all consideration, paid to Consultant pursuant to any awarded contract.

1.10 Pending and Recent Litigation: Consultant must disclose any pending or recent litigation they are involved in as a company. Recent is defined as the past three (3) years. Information provided should include the timeline of the litigation history, the subject of the litigation, and the current status of the litigation.

1.11 Rights to Submitted Material: It shall be understood that all Proposals, responses, inquiries, or correspondence relating to or in reference to this Project, and all reports, charts, and Proposals or referencing information submitted in response to this

Project, shall become the property of the City, and will not be returned. The City will use discretion with regards to disclosure of proprietary information contained in any response but cannot guarantee information will not be made public. As a government entity, the City is subject to making records available for disclosure.

1.12 Indemnity; Hold Harmless: The Consultant shall indemnify, and hold and save the City and all officials, officers, employees and volunteers of City harmless from and against liabilities, claims, costs, or expenses whatsoever arising out of the negligence of Consultant or any officers, agents, servants, employees, or subcontractors of Consultant, including without limitation, any liabilities, claims, costs or expenses arising directly or indirectly, from any patented or otherwise protected invention, software, intellectual property, process, article, or appliance implemented or used in the performance of the contract, including its use by the City.

1.13 Statutory Information: Any contract or agreement resulting from this Project shall be construed in accordance with the laws of the State of Ohio. Any litigation between the parties arising out of, or in connection with, the contract shall be initiated and prosecuted in any federal or state court in Ohio. Mediation, subject to written approval of both parties, will be a mandatory first step in the event of a dispute, prior to any legal action as set forth in the contract.

All Project Vendors, participants, consultants, engineers, and subcontractors must comply with all applicable federal, state, and local laws pertaining to contracts entered into by governmental agencies, including, without limitation, non-discriminating employment. Contracts entered into on the basis of submitted Proposals are revocable if contrary to law.

1.14 Non-Discrimination Clause: During the performance of the contract, the Consultant and all subcontractors will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. The Consultant and all subcontractors will take affirmative action to ensure that all employment practices are free of such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

1.15 ADA: The Consultant and all subcontractors agree to comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of, employment in its services, programs, or activities. The Consultant and all subcontractors agree to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees, and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Consultant and any subcontractor.

1.16 Laws: The Consultant and all subcontractors will comply with all applicable local, state, and federal laws, ordinances, and regulations in the performance of the contract. The contract will comply with and be governed by all laws of the State of Ohio. Any violation shall constitute a material breach of the executed contract.

1.17 Force Majeure: Neither Party shall be in default by reason of any failure in performance of the resulting contract if such failure is proximately caused by causes beyond their reasonable control and without the fault or negligence of said Party including, without limitation, unforeseeable acts of nature; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions ("force majeure").

If either Party is delayed at any time in the progress of the work governed by the contract by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the cause(s) of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

1.18 Policy Compliance: The Consultant shall, as a condition of being considered for award of the contract, require each of its agents, officers, and employees to abide by the City's policies prohibiting sexual harassment, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on City property at all times while performing duties pursuant to the contract. The Consultant agrees and understands that a violation of any of these policies or rules will constitute a breach of the contract and will be sufficient grounds for immediate termination of the contract by the City.

1.19 Public Information: It shall be understood that all Proposals, responses, inquiries, or correspondence relating to or in reference to this Project, and all reports, charts and Proposals or referencing information prepared by the Consultant through this this Project, shall become the property of the City, and will not be returned. The City will use discretion with regards to disclosure of proprietary information contained in any response but cannot guarantee information will not be made public. As a governmental entity, the City is subject to making records available for disclosure pursuant to applicable public record disclosure laws, and Proposers, including the Consultant ultimately awarded the contract, shall cooperate in complying with such public disclosure laws at no additional cost to the City.

1.20 Ownership of Data and Transition: Any and all City data stored on the Consultant's servers or within the Consultant's custody, is the sole property of the City. The Consultant, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the City's data in any manner, or provide to any entity or person outside of the City without the express written authorization of the City.

In the event resulting Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth, the Consultant shall:

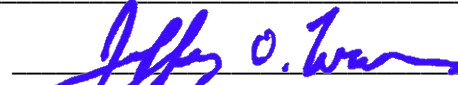
- a. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the City;
- b. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition; and
- c. Make available to the City, at no cost, all City data stored within the system, stored on the Consultant's servers, or within the Consultant's custody, within fifteen (15) days of termination or City request.

In the event resulting Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth, the City shall retain ownership of all data, work products and documentation created pursuant to the resulting Agreement, to the extent City has paid for such.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement

Glaus, Pyle, Schomer, Burns & DeHaven, Inc., dba GPD Group

Date: 11.19.21 _____

By:  _____

Signature
Jeffrey D. Evans _____

Printed Name

Vice President _____

Title

CITY OF GAHANNA, OHIO

Date: _____

By: _____

Signature

Printed Name

Title

Approved as to Form:

Raymond J. Mularski, City Attorney