

September 21, 2011

The Honorable Rebecca W. Stinchcomb
Mayor
City of Gahanna
200 S. Hamilton Road
Gahanna, OH 43230

Subject: NPDES Storm Water Small MS4 Phase II Program Assistance

Dear Mayor Stinchcomb:

Thank you for the opportunity to submit this proposal for services to assist the City with its NPDES program. We have prepared the following project understanding and scope of work to be provided by Orchard, Hiltz & McCliment, Inc. (OHM) based on our previous discussions with Jeff Feltz and Karl Wetherholt. It also notes compensation, our standard contract terms and conditions, and an hourly rate schedule. To indicate your acceptance, please have both copies of this agreement signed by the appropriate officials and have one returned to us at your earliest convenience.

PROJECT UNDERSTANDING

The City wishes to enter into an agreement with a consultant to provide continuing assistance with the implementation of its ongoing NPDES Phase II program. The existing general permit was renewed by Ohio EPA on January 30, 2009 (OHC000002).

The project consists of applying our detailed understanding of the Ohio EPA's requirements of the NPDES Phase II program, along with the specific requirements of the City's General Permit for Small MS4s, to assist the City with implementing the vision of the Phase II program.

SCOPE OF WORK

OHM will provide as-needed services, at the request of the City's Water Resource Engineer, to implement the Phase II program in accordance with the latest permit renewal. These services shall consist of, but are not limited to:

1. Attend meetings with City staff, Franklin Soil and Water Conservation District, and others as requested by the City.
2. Provide assistance to ensure that the NPDES Phase II program is being implemented in accordance with permit requirements.
3. Refine and coordinate required tasks with implementation schedule.
4. Provide miscellaneous program training to City staff.
5. Assist the City with required audits.
6. Assist the City with the review and development of program related codes and ordinances.
7. Review and provide comments on the City's existing Storm Water Master Plan.
8. Assist the City with preparation of the Ohio EPA General Permit Annual Report.
9. Other program related services as requested.

SCHEDULE

OHM is prepared to begin the project immediately upon notification to proceed by the City of Gahanna. The project schedule will be based upon the compliance schedule specified in the City's permit. OHM will provide these services to the City for the remainder of 2011 and a portion of 2012.

PROPOSED COMPENSATION

The services outlined above will be performed on an hourly basis for the not to exceed amount of nine thousand nine hundred sixty five dollars (\$9,965.00), inclusive of all reimbursable expenses. This amount is based on the assumptions listed above. The City will be invoiced on a monthly basis. An hourly rate schedule is also attached.

AUTHORIZATION

If you find this proposal to be acceptable, please provide OHM with authorization to proceed by signing below, along providing a signature on the attached Standard Terms and Conditions, and returning a copy of the signed proposal to us. We appreciate the opportunity to provide the City this proposal and look forward to working with you on this important project. Should you have any questions or desire additional information, please do not hesitate to contact me at (614) 418-0600.

Sincerely,
Orchard, Hiltz & McCliment, Inc.

James M. Houk, ASLA, AICP
Vice President

Rhonda M. O'Connell, PE
Director of Engineering Services

Attachments: 2011 Hourly Rate Schedule
 Standard Terms and Conditions

**City of Gahanna
NPDES Storm Water Small MS4 Phase II Program Assistance**

Signature

Date

Honorable Rebecca W. Stinchcomb
Name

Mayor
Title

STANDARD TERMS and CONDITIONS

1. THE AGREEMENT – These Standard Terms and Conditions and the attached Proposal or Scope of Services, upon their acceptance by the Owner, shall constitute the entire Agreement between Orchard, Hiltz & McCliment, Inc., dba Bird Houk, a division of OHM, (BH), and the Owner, City of Gahanna. The Agreement shall supersede all prior negotiations or agreements, whether written or oral, with respect to the subject matter herein. The Agreement may be amended only by mutual agreement between BH and the Owner and said amendments must be in written form.

2. SERVICES TO BE PROVIDED – BH will perform the services as set forth in the attached Proposal or Scope of Services, dated 9/19/11, which is hereby made a part of the Agreement.

3. SERVICES TO BE PROVIDED BY OWNER

– The Owner shall at no cost to BH:

- a) Provide BH personnel with access to the work site to allow timely performance of the work required under this Agreement.
- b) Provide to BH within a reasonable time frame, any and all data and information in the Owner's possession as may be required by BH to perform the services under this Agreement.
- c) Designate a person to act as Owners representative who shall have the authority to transmit instructions, receive information, and define Owner policies and decisions as they relate to services under this Agreement.

4. SATISFACTION WITH SERVICES –

Payment of services will be taken to mean that the Owner is satisfied with our services to date of payment and is not aware of any deficiencies in those services. BH will take all measures to insure that our services performed are consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

5. PERIOD OF SERVICE – The services called for in this Agreement shall be completed within

the time frame stipulated in the Proposal or Scope of Services, or if not stipulated shall be completed within a time frame which may reasonably be required for completion of the work. BH shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this agreement resulting from any cause beyond BH's reasonable control.

6. COMPENSATION – The Owner shall pay BH for services performed in accordance with the method of payment as stated in the Proposal or Scope of Services. Method of compensation may be lump sum, hourly; based on a rate schedule, percentage of the construction cost, or cost plus a fixed fee unless specified otherwise in Scope of Services. The Owner shall pay BH for reimbursable expenses in connection with the project which include, but are not limited to: sub consultant services, equipment rental, travel, printing and reproduction and courier services at cost plus 15%. If any permit or review fees are required during the course of project development, these fees will be paid directly by the Owner unless separate arrangements have been made with BH. If BH will be securing the documents, the cost plus 15% will be invoiced to the Owner.

7. TERMS OF PAYMENT – Invoices shall be submitted to the Owner not more often than monthly for services performed during the preceding period. Owner shall pay the full amount of the invoice within thirty days of the invoice date. If payment is not made within thirty days, the amount due to BH shall include a charge at the rate of one percent per month from said thirtieth day. If payment has not been received within sixty (60) days after invoice date, BH reserves the right to stop work on the project and retain all documents. In the event of non payment of fees and expenses due under this Agreement, the Owner agrees to pay all customary and reasonable attorney fees, collectors' fees, court costs and interest incurred until time of payment.

8. DISPUTED INVOICE – If the Owner objects to any portion of an invoice, the Owner shall notify BH in writing within fifteen (15) days of

receipt of the invoice. The Owner shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay the portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. All efforts shall be used to resolve the disputed amounts in an equitable and fair manner.

9. LIMIT OF LIABILITY – The Owner understands that all planning studies, zoning documents, conceptual or schematic design studies and contract document progress prints are not to be used for construction. In as much, the Owner agrees to indemnify and hold harmless BH, the design professional, due to the consultant professional negligent acts, errors or omissions, against any and all claims, damages, awards and cost of defense which may arise out of the use of these documents for construction. BH shall perform professional services under this Agreement in a manner consistent with the degree of care and skill in accordance with applicable professional standards of services of this type of work. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability in the aggregate, of BH and its Officers, Directors, Partners, employees, agents, and subconsultants, and any of them, to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages of any nature whatsoever arises out of, resulting from or in any way related to the project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of BH or BH's Officers, Directors, employees, agents or subconsultants, or any of them shall not exceed the amount of \$250,000 or BH's fee, whichever is greater.

10. INSURANCE LIABILITY – BH shall carry and maintain General Liability Insurance of at least \$1,000,000 each occurrence and \$2,000,000 general aggregate. BH shall carry and maintain Professional Liability Insurance of at least \$2,000,000 each claim and \$2,000,000 aggregate. BH will carry Worker's Compensation Insurance as required by law.

11. ASSIGNMENT – Neither party to this Agreement shall transfer, sublet, or assign any duties, rights under or interest in this Agreement

without the prior written consent of the other party.

12. NO WAIVER – Failure of either party to enforce, at anytime, the provisions of this Agreement shall not constitute a waiver of such provisions or the right of either party at any time to avail themselves of such remedies as either may have for any breach or breaches of such provisions.

13. GOVERNING LAW – The laws of the State of Ohio will govern the validity of this Agreement, its interpretation and performance.

14. DOCUMENTS OF SERVICE – The Owner acknowledges BH's reports, plans and construction documents as instruments of professional services. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the Owner upon completion of the work and payment in full of all monies due BH, however, BH shall have the unlimited right to use such drawings, specifications and reports and the intellectual property therein. The Owner shall not reuse or make any modifications to the plans and specifications without prior written authorization by BH. In accepting and utilizing any drawings or other data on any electronic media provided by BH, the Owner agrees that they will perform acceptance tests or procedures on the data within 30 days of receipt of the file. Any defects the Owner discovers during this period will be reported to BH and will be corrected as part of BH's basic Scope of Services.

15. ELECTRONIC DATA – Electronic data transferred to the Owner shall be used solely for the purpose of the coordination and expediting of work, for the current project and for no other purpose. Except for the preceding purpose, no alterations shall be made whatsoever to said electronic data without written consent and at the direction of BH. BH makes no warranty either expressed or implied, as to the quality or content of information contained in said electronic data. Further, said electronic data shall not be assigned to any other party. BH cannot be guaranteed electronic data to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, incomplete or contain viruses. The Owner agrees that all electronic files are an instrument of services rendered by BH. By accepting

electronic data, the Owner acknowledges these risks and agrees to waive any and all claim.

16. TERMINATION – Either party may at any time terminate this Agreement upon giving the other party 7 calendar days prior written notice. The Owner shall, within 45 days of termination, pay BH for all services rendered and all costs incurred up to the date of termination in accordance with compensation provisions in this Agreement.

17. BH'S RIGHT TO SUSPEND ITS SERVICES – In the event that the Owner fails to pay BH the amount shown on any invoice within 60 days of the date of the invoice, BH may, after giving 7 days notice to the Owner, suspend its services until payment in full for all services and expenses is received. BH shall have no liability whatsoever to the Owner for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Owner. Upon payment in full from the Owner or settlement of the breach in Agreement to the satisfaction of BH, we shall resume services under this Agreement. The time schedule and compensation shall be reviewed and adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for BH to resume performance.

18. OPINIONS OF PROBABLE COST – BH's preparation of Opinions of Probable Cost represent BH's best judgment as a design professional familiar with the industry. The Owner must recognize that BH has no control over costs or the prices of labor, equipment or materials, or over the contractor's method of pricing. BH makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual cost.

19. JOB SITE SAFETY – Neither the professional activities of BH, nor the presence of BH or our employees and subconsultants at a construction site shall relieve the Contractor or any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequences, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and the health or safety precautions required by any regulatory agency. BH has no authority to exercise any control over any construction

contractor or any other entity or their employees in connection with their work or any health or safety precautions. The Owner agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made clear in the Owners agreement with the Contractor. The Owner also agrees that BH shall be indemnified and shall be made additional insured under the Contractors general liability insurance policy.

20. DISPUTE RESOLUTION – In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Owner and BH agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

21. PROPRIETARY INFORMATION – The Owner agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by BH pertaining to this Project or this Agreement shall be considered confidential and proprietary. This information shall not be released or otherwise made available to any third party without the express written consent of BH.

22. CONFIDENTIALITY – BH shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent BH from establishing a claim or defense in an adjudicatory proceeding. BH shall require sub consultants to maintain the confidentiality of information specifically designated as confidential by the Owner.

23. CHANGED CONDITIONS – If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to BH are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, BH may call for re-negotiation of appropriate portions of this Agreement. BH shall notify the Owner of the changed conditions necessitating re-negotiation. BH and the Owner shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate

this Agreement, in accordance with the
Termination provision hereof.

ACCEPTED
BIRD HOUK, A DIVISION OF OHM

ACCEPTED

James M. Houk, ASLA, AICP
Managing Principal
Bird Houk, A division of OHM
600 Creekside Plaza
Gahanna, Ohio 43230



2011 RATE SCHEDULE

Professional Engineer IV/Architect IV	\$ 140.00
Professional Engineer III/Architect III.....	\$ 120.00
Professional Engineer II/Architect II.....	\$ 115.00
Professional Engineer I/Architect I	\$ 100.00
Graduate Engineer III.....	\$ 105.00
Graduate Engineer II	\$ 97.00
Graduate Engineer I	\$ 92.00
Technician IV.....	\$ 103.00
Technician III.....	\$ 93.00
Technician II.....	\$ 80.00
Technician I.....	\$ 62.00
Engineering/Architectural Aide	\$ 48.00
Professional Surveyor III.....	\$ 125.00
Professional Surveyor II.....	\$ 110.00
Professional Surveyor I	\$ 100.00
Graduate Surveyor	\$ 90.00
Surveyor III.....	\$ 88.00
Surveyor II.....	\$ 85.00
Surveyor I.....	\$ 68.00
Surveyor Aide.....	\$ 48.00
Project Manager.....	\$ 105.00
Senior Planner.....	\$ 110.00
Planner	\$ 70.00
Planner Aide.....	\$ 48.00
Graduate Architect II/Landscape Architect II.....	\$ 80.00
Graduate Architect I/Landscape Architect I	\$ 65.00
Graphic Designer	\$ 90.00
Data Base Developer	\$ 165.00
IT Technician III	\$ 160.00
IT Technician II	\$ 130.00
IT Technician I.....	\$ 85.00
Public Program Specialist	\$ 80.00
Administrative Support.....	\$ 50.00
Clerical Aide	\$ 42.00
Principal	\$ 160.00
Senior Associate	\$ 150.00
Associate	\$ 145.00
3-Man Survey Crew w/Equipment.....	\$ 200.00
2-Man Survey Crew w/Equipment.....	\$ 170.00
1-Man Survey w/Robotic Equipment	\$ 130.00