

**AGREEMENT**

**CITY OF CANFIELD, OHIO**

**and**

**ms consultants, inc.**

**for**

**THE PERFORMANCE OF ENGINEERING SERVICES**

This AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Canfield, Ohio, hereinafter referred to as the OWNER, and **ms consultants, inc.**, Engineers and Planners, 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 offices located at 333 East Federal Street, Youngstown, Ohio, 44503.

**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 Provide the OWNER with BASIC ENGINEERING SERVICES (hereinafter referred to as the PROJECT) to include the following.
  - 1.1.1 Attend one (1) regularly scheduled City of Canfield Council meeting per month.
  - 1.1.2 Attend one (1) regularly scheduled City of Canfield Planning Commission meeting per month.
  - 1.1.3 Attend two staff meetings per month at the City of Canfield to discuss and review work to be accomplished for that month.
  - 1.1.4 Review plats, replats, and roadway dedications that are submitted for action by the City's Planning Commission. Review will be performed for general conformance with the City's Subdivision and Land Development Regulations.
  - 1.1.5 Keep the City informed on any federal or state grants of any nature that may be available for engineering projects and assist the City in the preparation of applications and supporting documents for governmental grants and / or loans.

- 1.1.6 Assist the City in the preparation of OPWC grant applications, represent the City at the District 6 Integrating Committee Project Scoring Meetings, and update the City's Capital Improvement Report Summary and Maintenance of Effort Report each year as required by the OPWC.
  - 1.1.7 Provide telephone consultation and other miscellaneous engineering services as may be required from time-to-time and which is NOT associated with a specific project or assignment including review of resident concerns and problem areas in the City.
  - 1.1.8 At no cost to the OWNER, the ENGINEER shall attend miscellaneous meetings with funding and planning agencies from time to time that are relative to the OWNER'S future projects. The ENGINEER shall also organize and conduct an annual Strategic Planning Meeting with the City to discuss the status of current projects, discuss future projects including funding alternatives, and have in attendance a senior level highway engineer, project manager, planner, environmental engineer and architect.
- 1.2 IF AUTHORIZED, provide the OWNER with the following supplemental engineering services. These services will be conducted either by a separate agreement or by a Task Order Request supplementing this contract as issued by the City under this agreement. The fees associated with each task are listed within this paragraph and are the costs based on the payment terms of this contract. These costs shall be in addition to the contract amount described in Paragraph 3.1. The hours for specific levels of personnel assigned to these tasks are attached to this contract as Exhibit C.
- 1.2.1 Attend a second regularly scheduled City of Canfield Council Meeting per month. The cost of this task per meeting shall not exceed \$268.00.
  - 1.2.2 Attend an additional staff meeting per week. The cost of this task per meeting shall not exceed \$335.00.
  - 1.2.3 Prepare the OEPA Storm Water Program Annual Report due each year by March 31<sup>st</sup>. The cost of the report preparation and submittal shall not exceed \$536.00.
  - 1.2.4 Prepare and submit the detailed Ohio Public Works Commission Capital Improvement Report for the year 2013 required for the submittal of a grant application to the local District 6 Integrating Committee. This detailed Capital Improvement Report shall be the required 5-year update of the report prepared in 2008. The cost of this task shall not exceed \$2,256.00.
  - 1.2.5 Update for the year 2013 the City's Zoning Map, Soil Map, Design Review Area Map, Historical Area Map, Thoroughfare Map, and Land Use Map and provide the required copies of these maps to the City. The cost of this task shall not

exceed \$1,032.00.

- 1.3 Provide the OWNER with the following supplemental engineering services. These services will be conducted either by a separate agreement or by a Task Order Request supplementing this contract as issued by the City under this agreement. The costs associated with the following tasks shall be negotiated at the time of authorization.
  - 1.3.1 Review new subdivision construction plans, roadway plans, utility plans, land development plans, and grading plans that are submitted to the City's Planning Commission. Review will be performed for general conformance with the City's Subdivision and Land Development Regulations.
  - 1.3.2 Furnish the services of special consultants as may be required and requested to meet specific project needs.
  - 1.3.3 Furnish renderings or exhibits as may be requested.
  - 1.3.4 Travel to places other than the Owner's Business office in connection with the performance of supplemental services.
  - 1.3.5 Serve as an expert witness in any administrative or judicial proceeding.
  - 1.3.6 Attendance at special meetings as requested by the OWNER.
  - 1.3.7 Other professional services as may be reasonably requested.
- 1.4 Engineer shall designate an individual as the lead engineering consultant to the Owner. In the event that the Owner is dissatisfied with the service of such individual, Engineer shall replace the lead engineering consultant to the Owner's satisfaction.

## SECTION 2

### Period of Services

- 2.1 The ENGINEER agrees to commence work immediately after receipt of this signed agreement, unless noted otherwise. The term of this Agreement is described in Exhibit A -- Project Schedule for Engineering Services.

### SECTION 3

#### Payments to the Engineer

- 3.1 The OWNER shall pay the ENGINEER for services rendered under Section 1, paragraphs 1.1.1 to 1.1.8, subject to Section 5.1, a fee calculated on a hourly basis per classification of those assigned to the tasks included in this agreement. For these Engineering Services, the total cost shall not exceed Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$37,500.00).
- 3.2 Based upon the Rate Schedule in Exhibits B, a table is included that presents the hours for different levels of personnel assigned to the project to complete the tasks listed in Paragraph 1.1.
- 3.3 On major engineering and planning projects requiring local, state or federal funding and coordination thereof, a separate lump sum fee agreement may be negotiated by the OWNER and the ENGINEER within the guidelines of the state and federal agencies involved.
- 3.4 The OWNER shall make prompt monthly payments. Non-payment of monthly statements shall be considered grounds for termination of this agreement. Unpaid monthly statements will be charged an interest fee of up to 1½% monthly.
- 3.5 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, including but not limited to, changes in size, complexity, character, or schedule of the PROJECT when such revisions and changes are due to causes beyond the ENGINEER's control.

### SECTION 4

#### OWNER's Responsibilities

- 4.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the OWNER's policies and decisions with respect to ENGINEER's services for the PROJECT.
- 4.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the project including previous reports, record drawing, easement documents, design and construction standards which the OWNER will require to be included on the contract documents, and any other data relative to the PROJECT.

- 4.3 Arrange for access to, and make all provisions for, the ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this agreement.
- 4.4 Promptly review and comment upon the acceptability of all documents, reports, drawings, specifications, contract documents, bonds and other documents presented by ENGINEER. OWNER will review documents and consult with their respective legal council and bond council as to the acceptability of the contractual documents submitted by the ENGINEER. OWNER will complete their reviews within a reasonable time so as not to delay the services of the ENGINEER.
- 4.5 Furnish fees for approvals and permits from all agencies, authorities and others that may have jurisdiction over the PROJECT. The ENGINEER shall provide notice to the OWNER in a timely manner necessary for OWNER to secure the necessary fees.
- 4.6 Give prompt written notice to ENGINEER whenever the OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.
- 4.7 Furnish, or direct ENGINEER to provide additional services as stipulated in this agreement or other services as required in a timely manner.
- 4.8 Bear all costs incidental to compliance with the requirements of this Section 4.

## SECTION 5

### Remaining Provision

#### 5.1 Termination

The OWNER shall have the right to terminate this agreement for any reason and at any time with a thirty (30) day written notice to the ENGINEER. In the event of such written notice, the ENGINEER shall immediately cease all performance of the terms of the agreement and the OWNER shall pay to the ENGINEER within thirty (30) 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 the project materials to the OWNER. In no event shall the OWNER be obligated for the payment of 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 written notice of termination, any other provisions of this agreement to the contrary notwithstanding.

## 5.2 Ownership and Reuse of Documents

- 5.2.1 Engineering documents and associated files prepared for the OWNER under this AGREEMENT are the property of the Owner. Copies of said documents and files will be delivered to the OWNER within 30-days of the Owners written request
- 5.2.2 The OWNER acknowledges the ENGINEERS documents and files as instruments of professional service. Nevertheless, the documents and files prepared under this AGREEMENT shall become the property of the OWNER upon completion of the work and payment in full of all monies due to the ENGINEER. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold the ENGINEER harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the documents and files by the OWNER or by any person or entity that acquires or obtains the documents and files from or through the OWNER without the written authorization of the ENGINEER.

## 5.3 Insurance

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

## 5.4 Successors and Assigns

- 5.4.1 The OWNER and ENGINEER each binds themselves and their partners, successors, executors, administrators, assigns, and legal representatives to the other party of this agreement, and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this agreement.
- 5.4.2 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 6.4.1 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 they may deem appropriate to assist in the performance of services hereunder, who's costs and fees must be pre-approved by the OWNER.

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

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

## 5.5 Construction Cost

5.5.1 The construction cost of the PROJECT (hereinafter referred to as the CONSTRUCTION COST) means that total cost of the PROJECT to the OWNER, but it will not include the ENGINEER's compensation and expenses, the cost of land, right-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include the OWNERS legal, accounting, insurance counseling, or auditing services, or interest in financing charges incurred in connection with the PROJECT.

5.5.2 Since the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, their opinions of probable PROJECT COST and CONSTRUCTION COST provided for herein are to be made upon the basis of their experience and qualifications and represent their best judgement as an experienced and qualified professional engineer, familiar with the construction industry; but the ENGINEER cannot and does not guarantee that proposals, bids, or actual PROJECT or CONSTRUCTION COST will not vary from opinions or probable cost prepared by them.

## 5.6 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.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate, as of the date and year first above written, by affixing the signatures of the duly authorized officer of the ENGINEER, and by the duly authorized official(s) of the OWNER.

WITNESS:

*[Handwritten Signature]*

ms consultants, inc.

By: *[Handwritten Signature]*

Title: *TREASURER*

ATTEST:

\_\_\_\_\_

CITY OF CANFIELD

By: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**  
to  
**AGREEMENT**  
between  
**THE CITY OF CANFIELD, OHIO**  
and  
**ms consultants, inc.**  
for  
**THE PERFORMANCE OF ENGINEERING SERVICES**

**PROJECT SCHEDULE for ENGINEERING SERVICES**

- The Agreement will provide for Engineering Services beginning January 2, 2013 and extend for a period of 14 months, through February 28, 2014.
- This Agreement shall be renegotiated on an annual basis for services provided after completion.
- The schedule for supplemental engineering assignments will be negotiated on a project by project basis.

- end -

**EXHIBIT B**  
to  
**AGREEMENT**  
between  
**CITY OF CANFIELD, OHIO**  
and  
**ms consultants, inc.**  
for  
**THE PERFORMANCE OF ENGINEERING SERVICES**

**ENGINEERING SERVICES:**

For Engineering Services as described in Section 1.1, paragraphs 1.1.1 to 1.1.8 for the contract period of time detailed in Exhibit A in the amount not to exceed \$37,500.00 based on hours charged to the PROJECT at the hourly rates shown on the Billing Rate Schedule included as part of this Exhibit B.

See Next Two Pages

Basic Services

City of Canfield  
Annual Engineering Services Agreement  
14-Month Contract Period

Section	Task	Classification					
		PRINCIPAL ENGINEER	PROJECT MANAGER	Senior Engineering Technician	SURVEYOR	SUPPORT SERVICES	
1.1.1	Attend one (1) Regularly Scheduled Council meeting per month		28				
1.1.2	Attend one (1) Regularly Scheduled Planning Commission meeting per month		28				
1.1.3	Attend two (2) staff meetings per month to discuss and review work		84				
1.1.4	Review plats, replats, and roadway dedications submitted to Planning				6		
1.1.5	Keep City informed of Federal and State grants and assist in preparation of applications		14				
1.1.6	Assist City in preparing OPWC grant applications, represent City at scoring meetings, and Update Capital Improvement Report Summary and Maintenance of Effort Report		38	18			
1.1.7	Provide Telephone Consultation and other Misc. Services from time- to- time		49	28			
		No Charge				No Charge	
	<b>Total Hours</b>	0	241	46	6	0	

## RATE SCHEDULE

### CITY OF CANFIELD - ENGINEERING SERVICES 14-MONTH CONTRACT PERIOD

<u>Classification</u>	<u>Hourly Rate</u>
<i>Registered Professional:</i>	
Principal Engineer	\$350.00
Sr. Mechanical Engineer	\$137.00
Sr. Electrical Engineer	\$145.00
Sr. Structural Engineer	\$123.00
Sr. Foundation Engineer	\$149.00
Sr. Environmentalist (Water/Wastewater)	\$169.00
Sr. Environmentalist (Planner)	\$120.00
Sr. Architect	\$147.00
Sr. Urban and Rural Planner	\$137.00
Project Manager	\$134.00
Sr. Transportation Engineer	\$155.00
<u>Engineers</u>	
Civil	\$93.00
Electrical	\$75.00
Structural	\$78.00
Foundation	\$75.00
Environmentalist (Water/Wastewater)	\$90.00
Environmentalist (Planner)	\$78.00
Architect	\$69.00
Senior Engineering Technician	\$86.00
Technicians	\$68.00
Sr. Field Technicians	\$81.00
Draftspersons	\$56.00
Computer Programmer	\$105.00
Clerical	\$58.00
Registered Surveyor	\$124.00
Field Survey Crew – 2 men	\$160.00

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

The above will remain in effect through February 2014. There will be no charge for reimbursable mileage. Any subcontractor or other direct project costs will also be invoiced at actual cost plus 10%.

**EXHIBIT C**

**City of Canfield  
Annual Engineering Services Agreement  
14-Month Contract Period**

**Supplemental Services**

Section	Task	Classification					
		PRINCIPAL ENGINEER	PROJECT MANAGER	Senior Engineering Technician	SURVEYOR	SUPPORT SERVICES	
1.2.1	Attend a second regularly scheduled Council Meeting per month for the year		28				
1.2.2	Attend an additional staff meeting per week for the year		35				
1.2.3	Prepare the OEPA Storm Water Program Annual Report.		5				
1.2.4	Prepare the detailed 5-year OPWC Capital Improvement Report for the year 2013		5	24			
1.2.5	Update for 2013 the Zoning Map, Soil Map, Design Review Area Map, Historical Area Map, Thoroughfare Map, and Land Use Map and all copies		0	14			
		No Charge					No Charge
	<b>Total Hours</b>	0	73	38	0		0