



CITY OF PATASKALA

RESOLUTION 2016-013

Passed February 1, 2016

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO ENTER A PROFESSIONAL SERVICES AGREEMENT WITH JOBES HENDERSON FOR PROFESSIONAL ENGINEERING SERVICES FOR FISCAL YEAR 2016.

WHEREAS, the City of Pataskala has a continuing need for services rendered by professional engineers for the purpose of infrastructure improvements as outlined in the attached Exhibit A; and

WHEREAS, the City Administrator solicited qualifications and proposals from firms interested in providing professional engineering services to the City of Pataskala; and

WHEREAS, the City has the need to secure a retainer agreement with a professional engineering firm for general engineering services; and

WHEREAS, the approved 2016 operating budget contains sufficient appropriations for this purpose.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS CONCURRING THAT:

Section 1: The City Administrator is hereby authorized and directed to enter into a contract with Jobes Henderson, as outlined in the attached Exhibit A, for general engineering services through December 31, 2016 in an amount not to exceed the sum of \$90,000.


Section 2: This Resolution shall become effective from and after the earliest period allowed by law.

ATTEST:


Kathy M. Hoskinson, Clerk of Council


Michael W. Compton, Mayor

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Brian M. Zets" followed by a stylized flourish or initials.

Brian M. Zets, Law Director

**CITY OF PATASKALA
AGREEMENT FOR ENGINEERING CONSULTING SERVICES**

Exhibit A

This *AGREEMENT FOR CONSULTING SERVICES* ("Agreement"), is entered into this _____ day of _____, 20____, by and between _____, located at _____, ("Consultant"), and the City of Pataskala, Ohio 43062 ("the City" or "City").

1. SERVICES TO BE PERFORMED

1.1 Scope of Services; Retainer. Consultant agrees to provide to the City, under the terms and conditions of this Agreement, the following services at a rate of _____ to be billed on a monthly basis.

- Provide City with Senior Project Engineer to serve as point of contact with Administration
 - Will work from City's offices only as requested by the City Administrator not to exceed 2 days per week
- General Consultation and Advice to City
 - Administration
 - City Council
 - Planning Commission
- Meeting Attendance
 - Staff Meeting (as requested not to exceed 2 per month)
 - Council Meeting (as requested not to exceed 2 per month)
 - Project Update Meeting (weekly in writing, attendance and only as requested not to exceed 2 attended meetings per month)
 - Departmental Meeting (as requested not to exceed 2 per month)
 - Planning Commission Meeting (as requested)
 - Park Board Meeting (as requested)
 - Other Public Meeting or City Meeting (as requested)
- Assist Director of Public Services with staff assignments and developer coordination:
 - Coordinate private inspections
 - Prepare exhibits for Service Crews
 - Answer routine questions and assisting in providing directions to Service Crews
 - Perform miscellaneous tasks as requested by Service Director
- Planning Services to Support Administration Activities
- Value Engineering and Constructability Review of City improvements
- Review, Address and Coordinate Engineering Questions
 - City Staff
 - Residents
 - Developer
- Program Management
 - Capital Improvement Program Review and Assistance

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- **Enforcement and Maintenance of Standards**
 - Standard Drawings
 - Design Manuals and Engineering Procedures
- **Miscellaneous Surveying to support City Activities**
 - Easements and Right-of-Way
 - Legal Descriptions
- **Financial Assistance and Grant Activities**
 - Identify, Advocate and Secure Funding
 - Research grant opportunities and recommend as applicable
 - Submit grant applications and/or review grant applications and proposals prepared by City staff
- **Regulatory Compliance and Coordination**
 - Ohio EPA, ODOT, ODNR, FEMA, Licking County and other entities as needed
- **Project Coordination with interested Entities**
 - MORPC, Franklin County, Columbus, Licking County
- **Preliminary Engineering Studies**
- **Record Maintenance**
 - The City will purchase a license which will be shared with the Consultant to provide record maintenance services.
 - Zoning Map
 - Address Map
 - Utility Atlas Maps
 - GIS Maps
- **Design Services (attributable to non-competitive bidding contracts or internal City projects or reviews of other engineering firm project studies).**
 - Surveying
 - Design/Detailed Engineering
 - Construction Cost Estimating
 - Review Coordination (Utilities, Columbus and Newark)
 - Permitting and Regulatory Coordination
 - Bid Documents, Review of Bids, and Recommendation
- **Construction Services (attributable to non-competitive bidding contracts or internal City projects or reviews of other engineering firm project studies).**
 - Contract Administration
 - Pay Requests
 - Standby Inspection
 - Material Testing
 - Punch list and Warranty Inspections
 - As-Build Drawings and Record Plan
 - Prevailing Wage compliance reviews and determinations

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1.2 Scope of Services; CIP Services. The engineering firm approved for consulting services under the terms and conditions of this Agreement shall still be required to follow the City's Pre-Qualification process and follow the requirements to submit a proposal for any City requested CIP services. The City will have the ability to contract with another reputable engineering firm at the City's discretion. Furthermore, if the City elects to utilize another firm for this project, the Consultant agrees it will assist the City in addressing questions which may arise throughout the project as considered necessary.

1.3 Scope of Services; Development Reimbursed Services. Consultant agrees to provide to the City, under the terms and conditions of this Agreement, the following services which are to be reimbursed through application fees and developer deposits to be collected by the City:

- Plan Review Service
- Planning Commission Submittals
- Site Improvement Plan Review
- Inspection Services
- Material Testing Services
- Punch list and Warranty Services

1.4 Method of Performing Services; Personnel. Consultant will determine the method, details, and means of performing the work to be carried out for The City. The City may, however, require Consultant's personnel to observe at all times the safety policies of The City.

2. THE CITY RESPONSIBILITIES

- The City shall furnish Consultant all available information, reports, studies, testing results, operating records, existing plans, and other data pertinent to the specific task and such shall be furnished at the City's expense.
- If the City deems that auditing, legal, accounting, and insurance counseling services may be necessary, such services shall be furnished by the City.
- The City shall collect all developer application fees and deposits
- The City shall furnish any required information and services as expeditiously as necessary for the orderly progress of the any work performed.

3. TERM/TERMINATION/EXTENSION

This Agreement shall commence on _____ and terminate on December 31, 2016. The Agreement may be otherwise terminated by either party prior to the termination date upon thirty (30) days written notice to the other party and may be extended upon such terms and conditions as may be agreed to by the parties. Consultant shall be provided written notice of the City's desire and intention to extend the Agreement at least thirty days prior to its scheduled expiration. Each extension to this Agreement will include consideration of adjustments to fees with any such new amounts becoming effective on January 1st of the renewal period.

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4. INDEPENDENT CONTRACTOR STATUS

4.1 Intention of Parties. It is the intention of the parties that Consultant be an independent contractor and not an employee, agent, joint venture, or partner of The City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between The City and either Consultant or any employee or agent of Consultant.

4.2 Nonexclusive. Consultant shall retain the right to perform similar work for others during the term of this Agreement. The City shall retain the right to cause work of the same or a different kind to be performed by its own personnel or other consultants during the term of this Agreement.

5. PAYMENT AND ADDITIONAL SERVICES

For purposes of Section 1.1 of this Agreement, Consultant shall submit to the City monthly itemized installments indicating the nature of work performed. As defined in Sections 1.2 and 1.3 of this Agreement, any services outside of the Retainer Services shall be paid at such rates as agreed to by the City and the Consultant pursuant to a detailed proposal and scope of services to be provided, and a not-to-exceed amount for engineering services related to that specific scope and as otherwise limited by Section 1.2 of this Agreement.

The Consultant will be required to provide itemized documentation and shall include date of services, individual's name, detailed descriptions of services rendered and any other miscellaneous charges. The Consultant may be required to submit additional explanations to the Finance Department if requested to support services rendered and payment.

The Consultant shall be responsible for tracking hours worked by the Consultant and adhering to overtime hours worked in accordance with the Fair Labor Standards Act of the United States, whenever it is deemed necessary by the City Administrator for employees to work more than forty hours in any given week, overtime compensations of one and one-half times the regular rate shall be paid for all hours worked in excess of forty hours. Overtime hours worked shall not change the total amount of compensation paid by the City to the Consultant pursuant to this agreement. Transportation costs shall be at current IRS rates. Stakes, prints, postal, special delivery and other miscellaneous items shall be paid by the City at cost and shall become property of the City, if applicable.

6. CONSULTANT'S PERSONNEL

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Consultant shall bear sole responsibility for payment of compensation to its personnel, if any, whether they are employees or independent contractors. Consultant shall pay and report all federal, state and municipal income tax withholding and social security taxes applicable to such personnel. In addition, Consultant shall procure and maintain unemployment insurance and Worker's Compensation Insurance coverage sufficient to meet the statutory requirements of every state in which Consultant's personnel are engaged in The City's work. Consultant shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel may be entitled.

Consultant agrees to defend, indemnify, and hold harmless The City, The City's elected officials, officers, employees, agents, and volunteers, and the administrators of The City's benefit plans, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance, or benefit matters; provided that The City shall (1) promptly notify Consultant of each such claim when and as it comes to The City's attention; (2) cooperate with Consultant in the defense and resolution of such claim; and (3) not settle or otherwise dispose of such claim without Consultant's prior written consent, such consent not to be unreasonably withheld.

7. FORCE MAJEURE

In the event either party is delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, including but not limited to, strike, labor or civil unrest or dispute, embargo, blockage, work stoppage, protest, or acts of God, such delay shall be excused during the continuance of such delay, and the period of performance shall be extended to such extent as may be reasonable to perform after the cause of delay has been removed. In the event any such delay continues for a period of more than thirty (30) days, either party may terminate the Agreement upon written notice to the other party. In the event of any such termination, The City shall pay Consultant for work performed through the effective date of termination.

8. Indemnity and insurance

Consultant agrees to indemnify and hold The City and The City's elected officials, officers and Directors, affiliates, agents, volunteers, and employees harmless from any loss or damage, including reasonable attorney fees, arising out of a claim or action against such parties for injuries or damage to person or property caused by the negligent acts or omissions of Consultant's personnel while in the course of performing work for The City under this Agreement.

Consultant shall secure and maintain, at their own expense, General Liability insurance to protect itself from any claim arising out of the performance of professional services and causes by any acts which Consultant may be legally liable under the Agreement. Consultant shall maintain said coverage for the entire period of the Agreement.

Consultant, on the basis of on-site observations, shall endeavor to guard the City against apparent defects and deficiencies in the permanent work performed by project constructions

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contractors. Within 48 hours after discovery, the Consultant will notify the City Administrator in writing of any defects or deficiencies the Consultant has observed in the work performed. Nevertheless, this Consultant activity does not guarantee the performance of such construction contractors and does not indicate the Consultant's responsibility for a construction contractor's means, methods, techniques, sequence of procedures, time of performance, programs, notifications to utilities, or for any safety precautions, and/or other such requirements in connection with the construction work.

The Consultant is not responsible for a construction contractor's failure to execute the work in accordance with the construction contract and shall not be responsible for defects or deficiencies in the work performed by the construction contractor, its employees, its sub-contractors' employees, or that by any other person or entity responsible for any of the work required under the construction contract.

The parties to this Agreement specifically acknowledge that there is a pending dispute between Decker Construction and the City relative to work performed by Decker for the City. The Consultant provided professional services to the City as a part of that project. As of the date of this Agreement the liabilities of the various parties to that construction project have not been established. The Consultant and the City agree that they will continue to work cooperatively on that matter to the extent feasible. The parties further agree, however, that nothing in this Agreement shall constitute a waiver of any rights or a release or settlement of any claims that either party may have in that matter. All such rights are specifically reserved. The parties hereto further agree that the City shall not be billed under this Agreement for any services performed for the City relative to that dispute. Any and all issues relative to that dispute shall be addressed separately and are outside the scope of this Agreement.

CONFLICT OF INTEREST

Consultant agrees that they will not, at any time during the existence of this Agreement without approval of the City, perform any services directly for a developer, contractor, or any other person within the City where the City may have an adverse interest or otherwise become involved in the project. It is the Consultant's obligation to solely represent the City in connection with engineering services. In the event there is a conflict of interest, the Consultant will immediately resign from the Consultant's representation of the outside interest.

9. GENERAL PROVISIONS

9.1 Applicable Laws. Consultant shall comply with all applicable foreign, federal, state, and local laws, rules, regulations, orders, ordinances and government requirements in the performance of this Agreement, including all applicable non-discrimination requirements, including without limitation the provisions of Presidential Executive Order 11246 and the rules and regulations issued there under, which are incorporated herein by this reference.

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9.2 Notices. All notices and other communications hereunder must be in writing and will be deemed to have been duly given if delivered by hand, or on the next business day if delivered by a recognized overnight courier, or on the third business day if mailed (by certified mail, return receipt requested, first class postage prepaid), to the parties with written confirmations of receipt at the following addresses?

If to the City:

If to Consultant:

9.3 Waiver. No delay or failure on the part of any party hereto in exercising any right, power, or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power, or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power, or privilege, or the exercise of any other right, power or privilege.

9.4 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, such provision shall be enforced to the greatest extent permitted by law and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

9.5 Parties in Interest. This Agreement is enforceable only by Consultant and The City. The terms of this Agreement are not a contract or assurance regarding compensation, continued employment, or benefit of any kind to any of Consultant's personnel assigned to The City's work, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Agreement.

9.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of law principles.

9.7 Successors. This Agreement shall inure to the benefit of and shall be binding upon Consultant, The City and their respective successors, heirs and permitted assigns.

9.8 Entire Agreement. The Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto.

9.9 Assignment. This Agreement may not be assigned or transferred in whole or in part by either party without the written consent of the other. Any purported assignment without the express written consent of the other is void.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement for Consulting Services on the date first set forth above.

The City:

Consultant:

City of Pataskala

EMH&T

By: _____

By: _____

Benjamin King
City Administrator

Approved as to Form:

By:  _____

Law Director