



Introduced: 12/05/2016  
Revised:  
Adopted:  
Effective:

## CITY OF PATASKALA

### RESOLUTION 2016-062

#### **A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH JOBES HENDERSON FOR PROFESSIONAL ENGINEERING SERVICES FOR FISCAL YEAR 2017**

*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 entered into a retainer agreement with Jobes Henderson Engineering in early 2016 to provide general engineering services; and

*WHEREAS*, the City has a desire to enter into a retainer agreement with Jobes Henderson Engineering for general engineering services for 2017; and

*WHEREAS*, the approved 2017 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 PRESENT CONCURRING THAT:**

Section 1: The City Administrator is hereby authorized and directed to enter into a contract, in substantially the same form and content as the agreement attached hereto as Exhibit A and incorporated herein by reference with Jobes Henderson, for general engineering services through December 31, 2017 in an amount not to exceed the sum of \$98,100.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

Section 3: This Resolution shall become effective from and after the earliest time allowed by the Charter of the City of Pataskala.

ATTEST:

\_\_\_\_\_  
Kathy M. Hoskinson, Clerk of Council

\_\_\_\_\_  
Michael W. Compton, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian M. Zets, Law Director



November 23, 2016

Mr. BJ King, City Administrator  
City of Pataskala  
621 West Broad Street  
Suite 2B  
Pataskala, Ohio 43062

RE: Proposal for Civil Engineering and Land Surveying Services  
2017 General Engineering Services | PKL013

Dear Mr. King,

Jobs Henderson & Associates, Inc. (JHA) is pleased to provide this proposal for Civil Engineering and Land Surveying services for the City of Pataskala's General Engineering Services contract. After reviewing your request for proposal we offer the following understanding of your request and proposal.

## Project Understanding

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JHA provided General Engineering Services for the City of Pataskala in 2016. The city and JHA were pleased with the partnership and intend to renew the contract for 2017. Services provided under this contract include, but are not limited to, general engineering guidance and direction to the city as needed, attendance at meetings (Director's Meetings, Council Meetings, Planning Commission Meetings, Board of Zoning Appeals Meetings, and miscellaneous project specific meetings as needed), site visits, review of PC and BZA agenda items, and other items as needed and directed by the city.

With this understanding, JHA proposes the following scope of services:

## Scope of Services

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Under this contract, JHA will provide the following services for the City of Pataskala:

- General Engineering Services as requested by the city.
- Attendance at meetings as requested by the city.
- Advice and direction to department heads as requested.
- Site visits to evaluate existing conditions on issues the city is dealing with.
- Review of agenda items for BZA and Planning Commission Meetings.
- Other items at the request of the city.

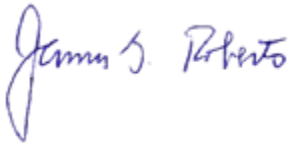
Jobs Henderson & Associates, Inc. will provide the above services according to the attached hourly rate table for a lump sum fee not to exceed **\$90,000.00 (Ninety Thousand Dollars)**. All permit fees are the responsibility of the owner and shall be paid by the owner directly to the agency requiring the fee. All work will be performed in accordance to the attached Terms and Conditions dated September 2014, which are a part of this proposal.

By the signing of this agreement the undersigned takes full responsibility for the payment of the fee. This responsibility cannot be assigned to a third party without the written approval of JHA. The above fee is due and payable upon completion of the work and/or percent of completion on a monthly basis and is not contingent on real estate closings, transfer of property, or any other outside (third party) agreements.

Working with JHA on this project will provide an understanding of the project issues as demonstrated in our scope of services, a timely and accurate completion of the work, and overall value to your project stemming from our commitment to providing quality, personalized service to you. Kindly sign and return one of the originals of the proposal to our office, and we will provide you with responsive action adding it to our current workload schedule immediately.

Sincerely,

**Jobs Henderson & Associates, Inc.**



James G. Roberts, P.E.

President

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We accept, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the above proposal for professional engineering and/or land surveying services.

\_\_\_\_\_  
Signature

Jobs Henderson & Associates, Inc.  
Professional Services  
General Rate Schedule  
Effective: November 22, 2016

Engineer 1 .....	\$85.00/hr.
Engineer 2 .....	\$90.00/hr.
Engineer 3 .....	\$100.00/hr.
Engineer 4 .....	\$115.00/hr.
Engineer 5 .....	\$125.00/hr.
Engineer 6 .....	\$140.00/hr.
Engineer 7 .....	\$150.00/hr.
Civil Designer 1 .....	\$85.00/hr.
Civil Designer 2 .....	\$90.00/hr.
Civil Designer 3 .....	\$100.00/hr.
Civil Designer 4 .....	\$110.00/hr.
Civil Designer 5 .....	\$125.00/hr.
Civil Designer 6 .....	\$140.00/hr.
Civil Designer 7 .....	\$150.00/hr.
Surveyor 1 .....	\$85.00/hr.
Surveyor 2 .....	\$90.00/hr.
Surveyor 3 .....	\$100.00/hr.
Surveyor 4 .....	\$115.00/hr.
Surveyor 5 .....	\$125.00/hr.
Surveyor 6 .....	\$140.00/hr.
Surveyor 7 .....	\$150.00/hr.
Survey Crew Chief.....	\$80.00/hr.
Survey Crew Member.....	\$60.00/hr.
1 Man Survey Crew w/ Robotic GPS.....	\$140.00/hr.
Technician 1 .....	\$45.00/hr.
Technician 2 .....	\$65.00/hr.
Technician 3 .....	\$70.00/hr.
Technician 4 .....	\$80.00/hr.
Technician 5 .....	\$85.00/hr.
Environmental Scientist I.....	\$85.00/hr.
Scientist II.....	\$95.00/hr.
Construction Inspector.....	\$72.00/hr.
CPESC Inspector .....	\$100.00/hr.
Clerical .....	\$40.00/hr.
Administrative I.....	\$55.00/hr.
Administrative II.....	\$80.00/hr.
Marketing Coordinator .....	\$45.00/hr.
Marketing Director .....	\$100.00/hr.
Intern .....	\$45.00/hr.

**JOBES HENDERSON & ASSOCIATES, INC.**  
**TERMS & CONDITIONS**  
**September 2014**

1. SCOPE OF SERVICES

JOBES HENDERSON & ASSOCIATES, INC., hereinafter called "JH&A" shall perform the services defined in this proposal and shall invoice the client at the unit prices or fixed fee as specified in this proposal. JH&A shall provide additional services under this agreement as requested by the CLIENT and shall invoice the CLIENT for those additional services at the rates or revised fee as indicated by the proposal. It is understood that the nature and scope of the services set forth in the proposal and the rate or fee agreed upon for performing such services is based upon information provided by the CLIENT. If unexpected site conditions are encountered which increase the cost of JH&A's work beyond that contemplated in the accepted proposal or if such conditions require additional services beyond the defined scope of work, JH&A will make a reasonable effort to promptly contact the CLIENT. Additional work beyond that contained in the accepted proposal shall be performed by JH&A only upon authorization by the CLIENT, and the CLIENT'S agreement to compensate JH&A at its accepted rate for such additional work.

2. RIGHT OF ACCESS

Free right-of-access shall be granted to the personnel of JH&A and its subcontractors. Exploration equipment and/or JH&A company vehicles may unavoidably disturb, alter or damage the existing vegetation and terrain at the site. JH&A and its subcontractors will take reasonable precautions to limit possible damage, but shall not be liable for such damage and will accept no responsibility to restore the site to its original condition. Conditions unless specific arrangements and reimbursement are contractually agreed upon prior to the initiation of our fieldwork.

3. UTILITIES

It is possible that utility lines may exist in the area of the proposed project. The CLIENT shall provide data which the CLIENT reasonably believes to be accurate as to the location of all underground pipes, cables, conduits, tanks or structures. JH&A is not responsible for damaging underground utilities or other man-made objects that were not called to JH&A's attention or which were not properly located on plans furnished to JH&A.

4. CONSTRUCTION MONITORING

Construction monitoring shall consist of visual observation or equipment of construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents. Such monitoring shall not be construed as relieving the parties under contract in any way from their obligations and responsibilities under the construction contract. Specifically, monitoring shall not require JH&A to assume responsibilities for the means and methods of construction. Construction monitoring shall not be a part of this contract, unless specifically stated in the scope of services.

5. CONSTRUCTION KEY

It is understood and agreed the JH&A has no constructive use of the Owner's site; has no control or authority over the means, methods, and sequences of construction; and therefore has no ongoing responsibility whatsoever for construction safety, beyond it own personnel.

6. COMPUTER AIDED DRAFTING AND DESIGN LIMITATIONS

Electronic data and drawing files, submitted as part of this agreement are compatible only with AutoCAD Civil 3D and/or Microstation; operating on an IBM-Compatible PC using Windows XP. JH&A makes no representation as to the compatibility of these files beyond the specified release of the above mentioned software. Hard copies are submitted to CLIENT, to review for a 7-day acceptance period. During this period, the CLIENT may review and examine these plans and any errors detected during this time will be corrected by JH&A as part of the scope of services of this agreement. Any changes requested after the acceptance period will be considered additional services to be performed on a unit rate basis, at the JH&A standard hourly rate schedule.

7. CONSTRUCTION COST AND TIME ESTIMATES

JH&A is not a construction cost estimator or construction contractor. JH&A's opinion of probable construction cost will be based solely upon its own experience and familiarity with the construction industry. JH&A is required to make a number of assumptions as to specific site conditions, methods of construction and market conditions over which JH&A has no control. JH&A does not guarantee that proposals, bids, or construction costs will not vary from opinions of probable cost prepared under this agreement.

8. PERMITS AND APPROVALS

When identified in the Scope of Services, JH&A shall assist the CLIENT in applying for and obtaining permits and approvals typically required by law for projects similar to the one for which JH&A's services are being engaged. Jobes Henderson & Associates, Inc. will follow the guidelines set forth by the various agencies and shall make any technical corrections to the plans that are the fault of Jobes Henderson & Associates, Inc. without cost to the client on lump sum contracts only. Assistance in applying for permit applications by JH&A does not guarantee approval of the permits by the jurisdictional regulatory authorities. Payment for the services outlined in the scope of services is not contingent upon the client permit approval. This assistance shall also not extend to the preparation of research studies, special documentation, special tests, development and delivery of testimony, or any other action which may be required to obtain regulatory approval. These services shall be compensated for as additional services. The costs of all such permits shall be paid by the client.

9. LIMITATION OF LIABILITY

JH&A's total aggregate liability to CLIENT, its shareholders, directors, officers, employees and agents, and any subcontractors of CLIENTS, arising from JH&A's acts, errors or omissions, shall not exceed the amount of the current Errors and Omission Policy by JH&A. JH&A cannot take any responsibility for the adequacy of its design, specifications or design recommendations unless its work includes construction monitoring necessary to determine whether or not the work is in substantial compliance with design specifications or design recommendations. In no event shall JH&A be responsible for any special, incidental, consequential or penal losses or damages arising from any act or omission of JH&A under this agreement.

10. OWNERSHIP OF DOCUMENTS

CLIENT acknowledges JH&A's reports, plans specifications, field data, field notes, calculations, and estimates including electronic media, are instruments of professional service, not products. These documents are and shall remain the sole and exclusive property of JH&A. The CLIENT agrees to hold-harmless and indemnify JH&A against all claims arising out of any reuse of these documents without written authorization of JH&A.

JH&A reserves the right to remove all indication of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by JH&A in CADD form only for information and use by the CLIENT for the specific purpose for which JH&A was engaged. Said materials shall not be used by CLIENT, or transferred to another party, for use in other projects, additions to current project, or any other purpose for which the material was not strictly intended by JH&A without JH&A's express written permission. Any unauthorized modification or reuse of materials shall be at CLIENT'S sole risk, and CLIENT agrees to defend, indemnify, and hold JH&A harmless from all claims, arising out of the unauthorized modification or use of these materials.

#### 11. STANDARD OF CARE

JH&A will strive to perform its services consistent with current professional standards for consultants undertaking similar projects under like circumstances. JH&A makes no other warranty, express or implied, concerning any report, data, operation or document provided to CLIENT by JH&A under this Agreement, or concerning the site or the presence of any hazardous substance thereon, and shall not be responsible for consequential or incidental damages sustained by any party in connection therewith.

#### 12. PAYMENT

**RETAINER.** Unless other arrangements have been specified in this Agreement, the CLIENT shall make an initial payment of a minimum of 10% of the total fees for services (retainer) upon execution of this Agreement. This retainer shall be held by JH&A and applied against the final invoice.

**PAYMENT DUE.** The CLIENT will be invoiced monthly, and at the end of the project, for services and expenses. Invoices will be due and payable upon receipt. If payment in full is not received by JH&A within thirty (30) calendar days of the due date, invoices shall bear interest at one and one half (1.5) percent (18% per annum) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

JH&A also reserves the right to terminate its services for failure of CLIENT to make payments in accordance with the provisions of this Agreement (any project whose invoices exceed forty-five (45) days past due until payment is received.) The CLIENT'S obligation to pay for Services contracted in this agreement is in no way dependent upon the CLIENT'S ability to obtain financing, payment, approval of governmental or regulatory agencies, or upon the CLIENT'S successful completion of the Project. JH&A reserves the right to retain possession of CLIENT'S documents until payment is made in accordance with the terms of this Agreement. No retainage of payment for services performed by JH&A is to be held by CLIENT.

**COLLECTION COSTS.** If the CLIENT fails to make payments when due and JH&A incurs any costs in order to collect overdue sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to JH&A. Collection costs shall include, without limitation, legal fees, collection agency fees, and expenses, court costs, collection bonds and reasonable JH&A staff costs at standard billing rates for JH&A's time spent in efforts to collect. This obligation of the CLIENT to pay JH&A's collection costs shall survive the term of this agreement or any earlier termination by either party.

**PAYMENT TO SUBCONSULTANTS.** The Subconsultant shall submit invoices monthly to JH&A, who shall review them promptly. JH&A shall either approve these invoices or notify the Subconsultant of any invoices not approved. JH&A and the Subconsultant shall confer and attempt to resolve such disputed invoices. JH&A acts as the CLIENT's agent and not the subconsultant's.

JH&A shall promptly invoice the CLIENT for the Subconsultant's service in accordance with the billing terms of JH&A's agreement with the CLIENT and shall use reasonable and diligent efforts to collect payment from the CLIENT. JH&A shall pay the Subconsultant within 30 calendar days after receiving payment from the CLIENT. When JH&A receives payment for the subconsultant's fees, JH&A shall pay the Subconsultant for all undisputed invoices within a reasonable period of time after the completion of the Subconsultant's services under this agreement. JH&A acts as a conduit with regard to any payments made to subconsultants.

**SET-OFFS, BACKCHARGES, DISCOUNTS.** Payment of invoices shall not be subject to any discount or set-offs by the CLIENT, unless agreed to in writing by JH&A. Payment to JH&A for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

**DISPUTED INVOICE.** If the client objects to any portion of an invoice, the CLIENT shall notify JH&A in writing within thirty (30) calendar days of receipt of the invoice. The CLIENT shall identify in writing the specific cause of the disagreement and the amount in dispute, and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due that cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the CLIENT on all disputed invoice amounts that are subsequently resolved in JH&A's favor and shall be calculated on the unpaid balance from the due date of the invoice.

This proposal is good for ninety (90) days from the date of this proposal. After this time Jobs Henderson and Associates, Inc., reserves the right to revise our rates. Unless otherwise specified in writing JHA will send invoices to the address and individual listed at the top of this proposal.

#### 13. SATISFACTION WITH SERVICES

PAYMENT of any invoice by the CLIENT to JH&A shall be taken to mean that the CLIENT is satisfied with our services to the date of payment and is not aware of any deficiencies in those services.

#### 14. INSURANCE

If the owner wishes to be named as an additional insured on a primary and noncontributory basis you must notify us in advance and it will be done at the owner's expense.

15. CONFIDENTIALITY

JH&A agrees to maintain the confidentiality of the work performed under this agreement, and shall not disclose any such information to any party other than the CLIENT without the express written or oral authorization of CLIENT.

16. DELAY AND FORCE MAJEURE

In the event that JH&A's work is interrupted due to unusual or unanticipated causes outside of its control, JH&A shall be compensated for the additional labor, equipment, and other costs associated with maintaining its work force and equipment availability during such interruption, or at the option of the CLIENT, for such similar charges that are to be incurred by JH&A for shutting down the project and subsequent re-start up costs.

Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by force majeure, acts of GOD, or other events beyond control or either party which could not have been reasonably foreseen or prevented. Such acts or events shall include unusual weather, floods, epidemics, war riots, strikes, lockouts, protest demonstrations, unanticipated site conditions and instability. Any delay within the scope of this provision which cumulatively exceeds 45 days shall, at the option of either party, make the Agreement subject to termination or renegotiation.

17. SUSPENSION OF SERVICES

If the CLIENT fails to make payments when due or otherwise is in breach of this agreement, JH&A may suspend performance of services upon seven (7) calendar day's notice to the CLIENT. JH&A shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon payment in full by the CLIENT, JH&A shall resume services under this agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for JH&A to resume performance.

18. TERMINATION

Either the CLIENT or JH&A may terminate this agreement for reasons identified elsewhere in this agreement. In the event termination becomes necessary, the party effecting the termination shall so notify the other party in writing, and termination shall become effective within seven calendar days after receipt of the termination notice. The CLIENT shall be obligated pursuant to the terms of the agreement for all services performed by JH&A on the CLIENT's behalf. In the event of termination by CLIENT, JH&A may complete and be compensated for such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of termination.

19. DISPUTE RESOLUTION

All claims, disputes and other matters in controversy between JH&A and CLIENT arising out of this Agreement shall be submitted to mediation before and as a condition precedent to other remedies provided by law.

20. NOTICES

Any notice to be given under this Agreement shall be in writing and shall be deemed given and received when delivered in person, deposited in the United States Mail, or by Courier, to the responsible project manager under this agreement at the appropriate address for JH&A or CLIENT as appropriate.

21. APPLICABLE LAW

The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

22. SEVERABILITY

If any provision of this Agreement shall to any extent be invalid, the remainder of this Agreement shall be valid and enforced to the fullest extent permitted by law.

23. AMENDMENT

This Agreement may not be amended except in a writing executed by both JH&A and CLIENT. No alterations or modifications to these Terms & Conditions shall be effective unless affirmatively contained in the signed proposal.

24. AS-BUILT DRAWINGS

Any "as-built" drawing or record drawing has been prepared based upon information in part by others. While this information is believed to be reliable, Jobs Henderson and Associates, Inc. cannot assure its accuracy, and is thus not responsible for the accuracy of this record drawing or for any error or omission, which may have been incorporated into it as a result. Those relying on this record drawing are advised to obtain independent verification of its accuracy before applying it for any purpose.

25. DEFINITIONS

Claims or "liability" as referred to in this document shall include damages, liability for injury or loss, cost of defense and all other losses.

"Certify" means to state or declare a professional opinion of condition whose true properties cannot be known at the time such certification was made, despite appropriate professional evaluation. A Jobs Henderson and Associates, Inc.'s certification of conditions in no way relieves any other party from meeting requirements imposed by contract or other means, including commonly accepted industry practices.

Construction "monitoring", "inspection", or "supervision" shall consist of visual observation of construction and the equipment and materials used therein, to permit Jobs Henderson and Associates, Inc. to render a professional opinion as to the contractor's conformance with Jobs Henderson and Associates, Inc.'s recommendations, plans or specifications. Given the limitation of such inspections, the opinions shall not be relied upon by any party as acceptance of the work, nor shall they relieve any party from fulfillment of customary or contractual responsibilities and obligations.