

**AN AGREEMENT
BETWEEN THE VILLAGE OF MADISON
AND
CT CONSULTANTS, INC.**

I. **THIS AGREEMENT**, made at the Village of Madison, Ohio this 3 day of November, in the year 2014, by and between the Village of Madison, Ohio, hereinafter called the "VILLAGE", and the firm of CT Consultants, Inc., hereinafter called the "ENGINEER", witnesseth;

WHEREAS, the VILLAGE intends to employ the services of a professional engineering firm to provide engineering, architectural, and surveying services to the VILLAGE and act in the capacity of Village Engineer; and

WHEREAS, the ENGINEER proposes to furnish such engineering services to the VILLAGE for a period beginning Nov. 3, 2014 and continuing until such time as the agreement is terminated pursuant Article XIII herein. The VILLAGE Mayor shall have the right to designate and select from the firm of CT Consultants, Inc., the individual Engineer(s) who shall personally perform the engineering services to the VILLAGE and shall be the exclusive person who may exercise such statutory, Charter, or other legal authority vested in the position of Village Engineer.

WHEREAS, the ENGINEER currently maintains engineer's professional liability insurance, limits of which are: \$1,000,000 per claim; \$2,000,000 policy aggregate and the VILLAGE is listed as an additional insured; and

THEREFORE, in consideration of these premises, and of the mutual covenants herein set forth, the VILLAGE and the ENGINEER agree as follows:

II. The ENGINEER agrees to furnish and perform the various professional services as are herein defined as "RETAINER SERVICES," as follows:

A. **RETAINER SERVICES**: The following professional services shall be performed by the ENGINEER for the VILLAGE, either as a matter of routine or upon request of an appropriate Village official as may be designated by the Mayor.

1. Attend Council Meetings and Planning Commission or BZA Meetings as requested as well as meetings with the public, legislative or administrative meetings or conferences as requested by the Village, up to a total of three (3) meetings per month.
 2. Site inspection(s) and consultation with such authorized representatives of the VILLAGE, providing such consultation requires no preparation of detailed plans, estimates or field investigations.
 3. Prepare estimated budgets of engineering and/or technical services in sufficient detail for review and approval.
 4. Provide assistance in the preparation of applications for financial assistance in the form of preliminary estimates of construction cost and minor engineering details.
 5. Make and deliver to the Council periodic reports of the progress of improvements under its charge, stating conditions of same, together with any other matters of interest desired by the Council.
- B. RETAINER FEE: For services as detailed above, under Article II-A, Retainer Services, a monthly retainer fee of One Thousand Dollars (\$1,000.00) shall be paid to the ENGINEER as compensation for services indicated and shall be increased Fifty Dollars (\$50.00) per month each succeeding year of this Contract to a maximum One Thousand Five Hundred Dollars (\$1,500.00).
- III. The ENGINEER agrees to furnish and perform additional professional services as are herein defined as "SPECIFICALLY AUTHORIZED SERVICES," as follows:
- A. SPECIFICALLY AUTHORIZED SERVICES: The following professional services shall be performed by the ENGINEER for the VILLAGE only after such services specifically have been authorized by the VILLAGE:
1. Preparation, maintenance and reproduction of specifications and standards for public utilities.
 2. Preparation, maintenance and reproduction of a comprehensive master plan for development of any public utilities.

3. Furnishing of preliminary investigations, studies, and reports, preliminary general plans, preliminary cost estimates and field investigations.
 4. Furnishing land surveys, establishment of boundaries and monuments, line, grade, topographic, easement and right-of-way field surveys and related office plotting of notes, computations, descriptions and drafting.
 5. Furnishing of line and grade surveys for the construction of public improvements.
 6. Furnishing the services of a resident engineer and/or field representative to observe the work on public improvement projects and report to the VILLAGE on the Contractor's compliance and progress.
 7. Computing and certifying of the amount of special assessments for public improvements as may be required.
 8. Preparing record drawings that reflect actual construction and making said drawings available upon the request of the VILLAGE.
 9. Furnishing of additional surveying, architectural or engineering services as may be authorized by the VILLAGE and not specified elsewhere herein.
 10. Acting as Inspector for the administration and enforcement of the grading and site plan ordinances of the VILLAGE.
- B. The ENGINEER shall receive for performance of all necessary services stipulated and defined above, in Article III-A, Specifically Authorized Services, a fee equal to an hourly rate computed as payroll cost of various personnel plus one hundred percent (100%). It is agreed and understood by the parties hereto that for purposes of this Agreement, payroll costs shall be actual salary plus fifty percent (50%) for such items as insurance, sick leave, vacations, Worker's Compensation, Social Security, incentive pay, and other direct overhead.

Payments for the aforesaid professional services are to be paid monthly by the VILLAGE upon receipt of a detailed statement of time and expenses from the ENGINEER.

C. INDEPENDENT CONTRACTOR. Nothing in this Agreement shall create nor is it intended to create an employer-employee relationship between the VILLAGE and the individual designated as Village Engineer.

IV. The ENGINEER agrees to furnish and perform professional services as are herein defined as "PUBLIC IMPROVEMENT PROJECTS," as follows:

A. PUBLIC IMPROVEMENT PROJECTS: The following professional services shall be performed by the ENGINEER on specific public improvements for the VILLAGE only after such services have been specifically authorized by the VILLAGE.

1. Preparation of detailed construction plans, specifications, cost estimates and construction proposals for public improvements.
2. Placing copies of plans and specifications on view in the ENGINEER's office for information of equipment and material suppliers; and being available for interviews with prospective bidders during the period of advertisement for construction bids.
3. Assistance to the VILLAGE in securing, tabulating and evaluating construction bids and furnishing an engineering assessment of the Contractor's capability to perform such public improvement.
4. Visits at necessary intervals to the site of the work by a duly qualified representative of the ENGINEER throughout the active construction periods for review of the progress and quality of the construction work, to assure compliance with the specifications, and consultation with VILLAGE representatives. The ENGINEER shall not be responsible for, nor have control of, construction means, methods, techniques, sequences, or for safety programs in connection with the work by the Contractor(s). The ENGINEER is not responsible for the failure of the Contractor(s) to carry out the work in accordance with the contract documents; nor can the

responsibility be conferred upon the ENGINEER for any acts or omissions of the Contractor(s) performing the work.

5. Review and checking of all detailed construction drawings and all shop and erection drawings and other information submitted by Contractors for compliance with design concept and requirements of the contract documents. This performance includes similar checking of laboratory, shop and mill reports of materials and equipment.
 6. Furnishing supplementary detailed working drawings, specifications and written instructions as may be necessary from time to time throughout the construction period to interpret the contract plans and documents and to resolve actual field conditions encountered.
 7. Checking interim and final estimates for payment to Contractors.
 8. Review of all operation and performance tests required by the contract specifications.
 9. Provide, in writing, recommendations concerning completion and final acceptance of the construction work.
- B. The ENGINEER shall receive as compensation for the performance of services stipulated and defined above, in Article IV-A, Public Improvement Projects, a fee based upon the cost of construction according to the following schedule:

<u>PROJECT CONSTRUCTION COST</u>	<u>FEE</u>
\$0 to \$100,000	Payroll cost times 2.0 plus reimbursable expenses
\$100,000 to \$500,000	13% of first \$100,000 plus 7.6% of amount over \$100,000
\$500,000 to \$1,000,000	8.7% of \$500,000 plus 6.3% of amount over \$500,000
\$1,000,000 to \$5,000,000	7.5% of \$1,000,000 plus 6.1% of amount over \$1,000,000
Over \$5,000,000	6.4% of \$5,000,000 plus 5.6% of amount over \$5,000,000

No engineering work shall be undertaken by the ENGINEER for the design and construction of sewers, water mains, roadways or other major projects with a fee value in excess of \$25,000.00 without formal authorization from the VILLAGE.

In all cases, the construction cost for application of percentage fees shall be exclusive of the costs for land or right-of-way acquisition, engineering, surveys, legal services or similar administrative expenses.

Payment for services shall be made monthly based upon the ENGINEER's estimate of work progress and shall be in proportion to the services performed for each phase equal to the following percentages of the total base fee payable:

Detailed Construction Drawings and Specifications	80%
Bidding Services	5%
Engineering Services During Construction	15%

If and to the extent that the contract time initially established in a construction contract is exceeded or extended through no fault of the ENGINEER, the VILLAGE and the ENGINEER shall agree upon the amount of compensation to be paid for additional services required for administration of the construction contract.

The fee for services shall be based upon the ENGINEER's opinion of the probable cost for construction but shall be adjusted to actual construction cost when a contract for construction is awarded. Should requirements of the state agencies having jurisdiction entail revisions of contract documents or plans as a condition to approval, such revisions shall be made by the ENGINEER at no additional expense to the VILLAGE. If, however, the VILLAGE orders a change in scope or alterations in contract drawings or other documents after they have been approved by the State, the VILLAGE and the ENGINEER shall agree upon the amount of compensation to be paid for such work prior to the commencement of the work.

If any portion of a project is deleted or otherwise not constructed, compensation shall be payable to the extent services are performed in accordance with the percentage fee schedule set forth in Article IV-B; based on either: (1) the lowest and best bid or negotiated proposal; or (2) if no such bid or proposal is received, the most recent opinion of probable construction cost.

- V. PERFORMANCE BY THE VILLAGE: This proposal is based upon the understanding that the VILLAGE, without expense to the ENGINEER, will:
1. Make available to ENGINEER all information, reports and other data in its files that are pertinent to the work herein proposed.
 2. Provide all test borings or other soils investigations which are required for the proper design of the improvements.
 3. Furnish testing laboratory services for inspection and testing materials and/or equipment as may be necessary to assure compliance with contract specifications.
 4. Furnish all legal and/or land appraisal services which may be required.
- VI. CONFLICT OF INTEREST: Unless otherwise directed by the VILLAGE, the ENGINEER, including all staff members, shall not be employed, have any financial interest in, or receive compensation from any developer for planning of or in seeking approval of any subdivision or development within the corporate limits of the VILLAGE during the time the ENGINEER is employed as Village Engineer. Pursuant to § 10.1 of the Madison Village Charter the ENGINEER shall not have any business interest within the VILLAGE other than those reviewed and approved by a majority of all members of the VILLAGE Council.
- VII. CONFIDENTIALITY: The ENGINEER shall not, either during or after the term of the Contract, disclose to any third party, or use for its own benefit, any confidential information relative to the services or the business of the VILLAGE without the written consent of the VILLAGE. The provisions of this sections hall survive the satisfaction of the obligations and the completion of the term of this Contract.

- VIII. WARRANTY: ENGINEER warrants that any consulting and professional engineering services performed by it under a Work Authorization shall be performed in accordance with that degree of care and skill ordinarily exercised by members of ENGINEER's profession practicing at the same time in the same location.
- IX. INDEMNITY: Each party shall indemnify, defend and save the other party, its officers, directors, employees and affiliates harmless from any loss, costs or expense claimed by third parties, excluding employees of either party, for property damage and/or bodily injury, including death, to the proportionate extent such loss, cost or expense arises from the negligence or willful misconduct of the indemnifying party, its employees or affiliates in connection with the services.
- X. WAIVER OF CONSEQUENTIAL DAMAGES: Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, neither VILLAGE or ENGINEER shall be liable, whether based on contract, tort, negligence, strict liability, warranty, indemnity, error and omission or any other cause whatsoever, for any consequential, special, incidental, indirect, punitive or exemplary damages, or damages arising from or in connection with loss of power, loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and ENGINEER hereby releases VILLAGE and VILLAGE hereby releases ENGINEER from any such liability.
- XI. OWNERSHIP OF DOCUMENTS: ENGINEER grants to VILLAGE a transferable, irrevocable and perpetual royalty-free license to retain and use all work products delivered to VILLAGE for any purpose in connection with the project specified in each Work Authorization, upon full payment by VILLAGE for ENGINEER's services. ENGINEER also may use such work product for other purposes with ENGINEER's written consent. Re-use of any such work product by VILLAGE on any extension of the project or on any other project without written authorization of ENGINEER shall be at VILLAGE's sole risk and VILLAGE shall indemnify, defend and save ENGINEER and its affiliates, consultants, agents,

subcontractors and suppliers of any tier, and any and all employees, officers and directors of any of the foregoing, if any, from and against any and all losses suffered as a result of, or arising out of, or in connection with such re-use. ENGINEER shall have the right to retain copies of all such work product. ENGINEER retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its services.

- XII. NON-AGENCY: ENGINEER shall not have, nor shall this Agreement be construed by implication as creating, an agency relationship between VILLAGE and ENGINEER except that which is explicitly authorized by this Agreement. Notwithstanding this non-agency clause, the ENGINEER, with respect to services performed hereunder, shall, nevertheless, for purposes of governmental immunity, be considered an instrumentality through which the VILLAGE carried out its governmental function.
- XIII. TERMINATION: In the event the ENGINEER desires to terminate the Agreement, it will be effective ninety (90) days after written notification to the VILLAGE of its decision to terminate.

The VILLAGE may terminate this Agreement in accordance with § 10.1 of the Madison Village Charter at any time, such termination shall be effective at the earliest date allowed by law.

The parties may mutually agree to terminate this Agreement at any such time and with an effective date as they should so agree.

The ENGINEER shall be permitted to complete all started projects and design work in process only upon authorization by the VILLAGE; all other services shall cease unless the parties should mutually agree on a later cessation date for the specific service(s). The ENGINEER shall return to the VILLAGE all maps, drawings and other VILLAGE records.

This Agreement is not exclusive and the VILLAGE shall not be prohibited from retaining other engineering, architectural, or consulting services in addition or in lieu of the ENGINEER.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals at the Village of Madison, Ohio, this 3rd day of November, 2014.

VILLAGE OF MADISON, OHIO

CT CONSULTANTS, INC.

By: _____


Sam Britton, Jr., Mayor
as authorized by
Ordinance No. 39-2014

By: _____


Dave Wiles, P.E., President