

RESOLUTION NO. 2009-013

A RESOLUTION AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO A CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

WHEREAS, the Village of Waynesville has need of a professional engineer to advise the Village for services rendered pursuant to the attached agreement; and

WHEREAS, the Village of Waynesville has been using the services of Evans, Mechwart, Hambleton and Tilton, Inc. (EMH&T) as consulting engineers; and

WHEREAS, the Village Council is satisfied with the services which have been rendered and the Village desires to renew the contract. The Village finds that these are professional services and no competitive bid is required; and

WHEREAS, the Village Council of the Village of Waynesville desires to authorize the Village Manager to sign the attached contract;

NOW THEREFORE BE IT ORDAINED by the Village Council of the Village of Waynesville, with _____ members elected thereto concurring:

Section 1. That the Village Manager of the Village of Waynesville is authorized to enter into a contract with Evans, Mechwart, Hambleton and Tilton, Inc. for professional engineering services. The full text of the contract is attached hereto.

Section 2. That is Ordinance shall be in effect from and after the earliest period allowed by law.

Adopted this _____ day of _____ 2009.

Attest: _____
Staci Morris, Clerk of Council

Earl J. Isaacs, Mayor

AGREEMENT

**BETWEEN THE VILLAGE OF WAYNESVILLE, OHIO
AND
EVANS, MECHWART, HAMBLETON & TILTON, INC.
CONSULTING ENGINEERS AND SURVEYORS
CINCINNATI, OHIO**

**FOR PROFESSIONAL ENGINEERING SERVICES
FOR THE VILLAGE OF WAYNESVILLE**

SECTION I

This Agreement entered into this ____ day of _____, 20__, by and between the Village Of Waynesville, Ohio, acting through the Village Manager, pursuant to and under authority of Ordinance No. _____, passed by the Council of the Village of Waynesville, Ohio on _____ 20__, Party of the First Part, hereinafter designated as the “VILLAGE”, and Evans, Mechwart, Hambleton and Tilton, Inc., (EMH&T) Consulting Engineers and Surveyors (Professional Engineers and Surveyors registered in the State of Ohio), Cincinnati, Ohio, Party of the Second Part, hereinafter designated as the “ENGINEER”.

WITNESSETH, That in consideration of the **One Dollar** and other good and valuable consideration, including the mutual promises and agreement hereinafter set forth, the ENGINEER and VILLAGE do hereby agree as follows:

SECTION II

When requested by the Village, the ENGINEER shall furnish personnel, equipment and material necessary to perform engineering services for the Village, including but not limited to:

- (A) Preparing studies of existing engineering data, reports, etc., which have been made preciously be the Village, County of other agencies and give full consideration to same.
- (B) Providing complete detailed plans, including necessary field work, specifications, and estimates of cost and provide contract documents consisting of Advertisement, Information to Bidders, Proposal and Proposal Bond Forms, and Contract Performance Bond Forms for the Construction of projects as ordered.
- (C) Furnishing to the VILLAGE copies of detailed plans, specifications, estimates and contract documents required by them for contracting for and prosecuting the work. Tracings of plans, field books and field records shall become the property of the VILLAGE, but shall remain in the files of the ENGINEER for the future reference.

- (D) Assisting with lettings, tabulate proposals and bids, and report same to the Village of Officials.**
- (E) Presenting plans to and assist in obtaining approval of such plans from any Village, City, County, State or Federal Department or other political subdivision which may have jurisdiction in the development of the project.**
- (F) Preparing current and final pay estimates for construction work in conformance with the conditions of each contract.**
- (G) Providing land surveying Field Parties to perform construction layout staking.**
- (H) Providing project representation during construction to be an interpreter and arbitrator of the plans and specifications and make every reasonable effort to protect the Village against deficiencies in the contractor's work.**
- (I) Advising and recommending to the VILLAGE in the matter of testing materials and reviewing laboratory results.**
- (J) Inspecting the completed work and submit a final report for the acceptance of the project. However, the issuing of the final report does not make the ENGINEER responsible for any deficiencies in the work not discovered at the time. Inspection of the Village's street and sidewalk programs may be excluded from this contract.**
- (K) The ENGINEER shall furnish full-time resident inspection personnel as the Village requires. The Inspection personnel shall spend their full-time on the work beginning when the construction contractor starts construction and ending when all work under their inspection is completed to the satisfaction of the VILLAGE. Inspection of the VILLAGE's street and sidewalk programs may ne excluded from this contract.**
- (L) The ENGINEER shall maintain a complete record of the progress of the work and other incidents relative to the construction process.**
- (M) Providing GIS related assistance to the various Village departments.**
- (N) Providing plan reviews and other technical assistance, as such may be requested by the VILLAGE.**

SECTION III

The VILLAGE agrees to pay the ENGINEER as compensation, for services performed as required by SECTION II, Paragraphs (A) through (N), inclusive, a fee in accordance with the following hourly rates:

<u>Labor Classification</u>	<u>CY 2009</u>	<u>CY 2010</u>
Principal	\$ 110.00 per hr.	\$ 120.00 per hr.
Senior Engineer	\$ 92.00 per hr.	\$ 98.00 per hr.
Engineer II	\$ 84.00 per hr.	\$ 90.00 per hr.
Engineer I	\$ 72.00 per hr.	\$ 72.00 per hr.
Engineer Aide	\$ 62.00 per hr.	\$ 70.00 per hr.
Cad Technician II	\$ 50.00 per hr.	\$ 54.00 per hr.
Cad Technician I	\$ 48.00 per hr.	\$ 55.00 per hr.
Senior Planner	\$ 96.00 per hr.	\$ 98.00 per hr.
Planner II	\$ 88.00 per hr.	\$ 90.00 per hr.
Planner I	\$ 72.00 per hr.	\$ 76.00 per hr.
Survey Field Party	\$ 140.00 per hr.	\$ 140.00 per hr.
Inspector II	\$ 55.00 per hr.	\$ 55.00 per hr.
Inspector I	\$ 48.00 per hr.	\$ 48.00 per hr.
Transportation	Internal Revenue Service's most current rate.	
Stakes, prints, postal, special delivery and miscellaneous items:		
	At Cost	At Cost

Filing fees, special consulting, such as soil investigation, etc. :

Actual fee plus 5%

Actual fee plus 5%

SECTION IV

When requested, a representative of the ENGINEER, acceptable to Council and the Village Manager, shall attend regular and special meetings of Council, Planning Commission, of other boards of committee meetings. The ENGINEER shall receive compensation of \$90 per meeting attended. If additional representatives of the ENGINEER are requested by the VILLAGE to attend a meeting, the ENGINEER shall receive compensation of \$75 per each additional representative requested to attend the meeting.

SECTION V

(A) PROPERTY OR EASEMENT ACQUISITION

The ENGINEER, when authorized by the Village, shall furnish personnel to make property surveys, legal descriptions of same, make easement surveys, prepare descriptions, and assist in the acquisition of both property and easements across private property.

For the furnishing of such property and easement personnel, the ENGINEER shall be paid on the basis of the hourly rates as set forth in SECTION III. In addition, the ENGINEER shall be reimbursed for materials and other incidental expense at actual cost. It is agreed that cost of the above will be invoiced and payment made monthly.

(B) OTHER SERVICES

The ENGINEER will arrange for the services of an independent agency to perform test borings, subsurface explorations or other investigations as may be required for the determination of the foundation conditions for streets, sewers, water mains, elevated tanks of other type structures. The services so arranged for shall be subject to the approval by the VILLAGE and the VILLAGE shall reimburse the ENGINEER on the basis of the actual cost plus 5% for directing or interpreting the results of such work.

(C) DISCRIMINATION BECAUSE OF RACE, ETC.

In connection with the performance of work under this Contract, the ENGINEER agrees not to discriminate against any employee or applicant for employment on the basis of race, religion, gender, color, Vietnam Era and disabled veterans, age, handicap, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, up-grading, demotion or transfer, forms of compensation, and selection for training, including apprenticeship. The ENGINEER agrees to post hereafter in conspicuous places, available for employees of applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause. The ENGINEER further agrees to insert the forgoing provisions in all contracts here under except sub-contracts for standard commercial supplies or raw materials.

(D) CITY INCOME TAX TO BE WITHHELD

The ENGINEER hereby further agrees to withhold all Village Income Taxes due or payable under the provisions of Village Ordinances and Resolutions and as subsequently amended, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such Village Income Taxes due under said Ordinance for services performed under this Contract.

(E) TERMINATION OF CONTRACT

The VILLAGE and/or ENGINEER may, at any time prior to the completion of full performance by the ENGINEER of all engineering services under the Engineering Contract, terminate the Engineering Contract or any part thereof by giving written notice not less than sixty (60) days prior to the effective date by registered mail of its intention to do so. In the event this agreement is terminated, payment to the ENGINEER shall be paid in full prior to the effective date of termination of this Engineering Contract.

(F) CHANGES IN SCOPE OF SERVICES

The VILLAGE may, from time to time, request changes in the scope of services of the ENGINEER to be performed hereunder, or, economic conditions may pose a hardship upon the ENGINEER to perform services at fees set hereunder, such changes or condition, including any increase or decrease in the amount of the ENGINEER'S compensations, which are mutually agreed upon by and between the VILLAGE and ENGINEER, shall be incorporated in written amendments TO THIS Contract.

(G) CONFLICT OF INTERESTS

In the event services to be performed by ENGINEER hereunder required review of engineering plans prepared by the ENGINEER for a party other than the VILLAGE, the VILLAGE shall be notified and such review shall not be performed by the ENGINEER without the VILLAGE's written consent.

(H) CONTRACT TERM EXTENSION

The VILLAGE and ENGINEER, upon mutual agreement of all terms by and between the VILLAGE and ENGINEER, may, prior to expiration of this contract, extend, this contract for a period of up to two (2) years, which terms and extension shall be incorporated in written amendments to this contract.

SECTION VI PARTIES OF AGREEMENT

The VILLAGE, its successors and assigns, and the ENGINEER, a Corporation, its successors and assigns, have bound themselves to the other party of this Agreement. Neither the VILLAGE nor the ENGINEER shall assign, sublet or transfer its or their interest in this Agreement without written consent of the other party hereto. The Agreement shall not be determined to be a grant of a franchise for all future engineering services.

SECTION VII INDEMNITY AGREEMENT

The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Village, its employees, including elected, appointed officials, and volunteers, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineers negligent performance in connection with the acts of anyone for whom the Engineer is legally liable.

Engineer shall not be obligated to indemnify the Village in any manner whatsoever for the Village's negligence.

SECTION VIII CONTRACTING RESPONSIBILITIES

The ENGINEER, on the basis of on-site observations, shall endeavor to guard the VILLAGE against apparent defects and deficiencies in the permanent work constructed by the Contractor; and is not responsible for construction means, methods, techniques, sequence or procedures, time of performance, programs, notifications of utilities, or for any safety precautions and/ or requirements in connection with the construction work. The ENGINEER IS NOT RESPONSIBLE FOR THE Contractor's failure to execute the work in accordance with the construction contract and shall not be responsible for defects of omissions in the work as a result of the Contractor's or any Sub-Contractor's employees or that of any other person and entities responsible for performing any of the work as contained in the construction contract.

It is agreed by the parties that this Contract shall be governed by the laws of the State of Ohio. The ENGINEER and the VILLAGE further agree that they will make every effort to settle claims and disputes without recourse to legal action. However, it is also agreed that any claims or actions arising out of the ENGINEER'S performance of service under the terms of this Engineering Contract, including any actions for contribution of indemnity, shall be brought no more than eight (8) years after the performance of furnishing of such services.

SECTION IX

IN WITNESS WHEREOF, The parties hereto have affixed their hands and seals, this ____ day of _____ 20__.

VILLAGE OF WAYNESVILLE, OHIO
Party of the First Part

BY: _____
Bruce Snell, Village Manager

EVANS, MECHWART, HAMBLETON & TILTON, INC.
Party of the Second Part

BY: _____
Executive Vice President