

ARTICLES OF AGREEMENT

This Agreement made at Hamersville, Ohio, this _____ day of _____, 1976, by and between THE VILLAGE OF HAMERSVILLE, OHIO, hereinafter called the OWNER, acting through its ELECTED COUNCIL, thereunto duly authorized, and MCGILL & SMITH, INC., Consulting Engineer, 119 West Main Street, Amelia, Ohio 45102, hereinafter called the ENGINEER, witnesseth, that:

WHEREAS, the OWNER desires to construct a storm sewer to improve surface run-off conditions, said sewer being sorely needed to replace the present facility known as the Town Ditch; and

WHEREAS, professional engineering services will be required in the design and construction of said improvement,

NOW THEREFORE it is agreed by and between the parties as follows:

ARTICLE I

The ENGINEER agrees to furnish professional services as may be required in connection with the above named improvements as follows:

- (A) Prepare preliminary plans and estimates of cost, indicating alternatives available, and submit to the OWNER for consideration and approval, as may be essential for the development of designs preparatory to establishing exact limits, scope and detail of the improvements for which detailed construction plans, estimates of cost and specifications shall be prepared.
- (B) Subsequent to the approval of said general plan and as authorized, or directed, in writing by the OWNER, prepare detailed construction drawings, estimates of cost, specifications and related documents for improvements outlined and as delineated on said approved general plan referred to in Subparagraph (A) of the Article and as set forth in the following:
 - (1) Make such field surveys as may be necessary. Prepare detailed construction drawings showing plans, sections, elevations, and/or profiles, as may be required in conformance to good engineering practice. The standards of the OWNER shall be followed where applicable. A description and elevation of bench marks shall be given on said detail construction drawings. The drawings shall be complete and, prior to submission to the OWNER for approval, said drawings complete with design data and computations with respect to hydraulics, electrical, mechanical, and structural features shall be submitted to the OWNER for his comments and suggestions.
 - (2) Make such revisions to the detailed construction drawings as may be recommended and required by the OWNER. However, any revision in the plans resulting from changes ordered by the OWNER following their approval shall be paid for by the OWNER as set forth in Article IV, paragraph (A) of this contract.
 - (3) Based upon the detailed construction drawings submitted, prepare a detailed estimate or breakdown of the costs of the construction work by items which will appear in the proposal form and the specifications referred to in the following paragraph.

- (4) Prepare detailed specifications and related documents including legal notice, instructions to bidders, proposal form, contract form, bond forms, certificates, affidavits, general conditions, general provisions, general and detailed specifications for the improvements employing the standard forms, documents, and specifications of the OWNER insofar as applicable and not in conflict with Federal requirements. Specifications and documents shall be bound into a book or set for each contract. The original copy of the specifications and contract documents as submitted shall be in such form and conditions as to be suitable for reproduction by the "Offset" printing process. Prevailing wage rates shall be obtained from the State and/or Federal authority and included in the contract documents.
- (5) Recommend and show on sketches the location of test borings and/or soil test required to determine the character, stability and bearing value of the substrata as may be required for the proper design and estimating purposes, stake in the field the location of such test borings and/or soil test and all sub-surface explorations. The actual cost of drilling such test borings shall be paid for directly by the OWNER and work of drilling is not included as a part of this contract.
- (6) Final plans, estimates of cost, specifications and contract documents, including such design data and computations as may be required, shall be submitted to the Ohio Environmental Protection Agency; the State Department of Industrial Relations, Divisions of Factory and Building Inspection and Safety; and the Federal government when completed and directed by the OWNER, all in conformance to the laws of the State of Ohio and requirements of the Federal Agencies.
- (7) Six (6) sets of all plans, estimates of cost and specifications shall be furnished.
- (8) Sketches, plans, drawings, specifications and applications shall be prepared and submitted to the various State, County and Township governments or public utilities and permits secured for work in highways, construction of buildings and for electric service or connection. Prints of such sketches, plans, drawings and specifications are to be paid for by the OWNER.

- (9) When and as requested by the OWNER, prepare and submit reports on the progress of the work covered by this contract and as may be required by the Federal Government.
- (C) Furnish general inspection of the construction of the work for which contracts are awarded and construction is in progress, which service shall include:
 - (1) Periodic inspection of the construction work but not less than once each week during the progress of the work in order to determine, in general, compliance and conformance with the specifications and the drawings on the part of the Contractors.
 - (2) Make any necessary interpretation of the plans and specifications as may be requested by the OWNER or Contractor.
 - (3) Review, check and approve plans and specifications for all equipment, supplies and materials submitted by the various contractors for incorporation into the work in order to insure full and complete compliance with the drawings and specifications.
 - (4) Review, check and approve all shop drawings submitted by the various contractors covering any fabricated materials such as reinforcing steel, structural steel, miscellaneous metal, windows, doors, roof slabs, railings, floor plate, grating, etc.
 - (5) Review, check and submit to the OWNER estimates for payments to the various contractors for the work performed with a specific recommendation as to approval, disapproval or revision.
 - (6) Submit two copies of all approved material, equipment and shop drawings and specifications to the OWNER.
 - (7) Assist the OWNER as may be required to place the work into successful operation which shall include operation of new treatment and pumping facilities for a period of thirty (30) days. The ENGINEER, however, does not guarantee the performance of the contracts by the contractors.
 - (8) Revise all detailed drawings to show facilities as actually built and furnish one print of "as built" drawings to the OWNER.

- (D) Make all field and property surveys as may be directed by the OWNER for lands, easements and rights-of-way necessary to be acquired for the construction of the improvements named herein, including the preparation of sketches and technical descriptions in duplicate for each and every property owner involved and from whom land, easements, or rights-of-way must be acquired.
- (E) Resident Services During Construction:
- A Resident Project Representative and assistants will be furnished and will act as directed by the ENGINEER in order to provide more extensive representation at the Project site during the Construction Phase.
- (F) Set line and grade stakes as follows:
- Line and grade stakes shall be set in compliance with the request of the various contractors as to time and location and in accordance with construction specifications. Resetting of line and grade stakes destroyed by the contractor or others shall be at the expense of the contractor and the specifications referred to herein shall make provisions for this contingency.
- (G) Prepare and submit reports on financial feasibility in fifty (50) copy form in the event such feasibility is deemed advisable and necessary by the Bond Underwriters and ordered in writing by the OWNER.

ARTICLE II

The OWNER agrees to pay the ENGINEER as compensation for professional engineering services outlined in Article I at the rates and times as set forth in the following:

- (A) For the services outlined in Article I, subparagraphs (A) to (C) inclusive, a sum equal to (8.7%) of the actual cost of construction, which sum or sums shall be due and payable as follows:
- (1) When the preliminary plan as referred to in Article I, subparagraph (A), is submitted to the OWNER, the ENGINEER shall be paid an amount equal to one and one-half percent (1½%) of the ENGINEER'S estimated construction cost.

- (2) Upon completion of the detailed construction drawings, estimates of costs, specifications and related documents and their approval by the OWNER and such State and/or Federal Agency having jurisdiction therefor, as set forth in Article I, subparagraph (B), the ENGINEER shall be paid a sum equal to (5.7%) of the ENGINEER'S estimated cost of construction.
- (3) For the services enumerated in Article I, subparagraph (C), the ENGINEER shall be paid a sum equal to one and one-half percent (1½%) of the actual cost of construction which sum or sums shall be due and payable monthly in direct proportion to the amount earned by the various contractors. Any over or under payments made by reason of employing estimated cost of construction in compliance with Article II, subparagraphs (A) (1) and (A) (2), shall be adjusted under this subparagraph so the total payments provided for in Article II, subparagraph (A) shall not exceed (8.7%) as set forth in said Article.
- (B) For the professional services enumerated in Article I, subparagraph (D), a sum equal to the actual payroll cost plus 125% to cover overhead, taxes, profit, etc. which sum or sums shall be due and payable upon submission of right-of-way or property descriptions and six (6) prints of same.
- (C) For the services enumerated in Article I, subparagraph (E), a sum equal to the actual payroll costs, exclusive of deductions for Social Security, plus 125% for overhead, taxes, readiness to serve, profit, etc., but not to exceed four percent (4%) of the actual cost of construction which amount shall be due and payable monthly, in the month following that in which the services were furnished and performed.
- (D) For the services enumerated in Article I, subparagraph (F), a sum equal to one percent (1%) of the actual costs of construction, which sum shall be due and payable monthly in direct proportion to the amount of the work performed, or amount earned, by the various contractors.

- (E) For the services enumerated in Article I, subparagraph (G), a sum equal to one percent (1%) of the amount of the revenue bonds issued to finance the OWNER'S proportion of the cost of the project or projects, which sum or sums shall become due and payable upon submission of said feasibility reports. All payments to be made herein by the OWNER to ENGINEER as compensation shall be contingent upon the OWNER receiving a 100% Federal Grant.

ARTICLE III

The OWNER agrees further as follows:

- (A) To pay for test borings and sub-surface explorations or investigations required to determine foundation conditions and character of subsoil and to pay for chemical, mechanical and other tests when required.
- (B) To pay for building or highway permits and/or licenses as may be required by local, State or Federal authorities.
- (C) To pay for any specialized inspection and/or testing of metal welding.

ARTICLE IV

The ENGINEER agrees to furnish such additional professional services as may be required and ordered in writing by the OWNER and the OWNER agrees to pay for such professional services as set forth in the following:

- (A) Compensation for additional services shall be made in the amount equal to the actual payroll costs, exclusive of deductions for Social Security, plus 12.5% for overhead, taxes, readiness to serve, profit, etc., plus out-of-pocket expenses for travel, reproduction of plans, specifications or other documents required for proper execution in carrying out of the additional services requested by the OWNER which amount or amounts shall become due and payable monthly in the month following that in which the work or services was performed.

- (B) If any of the work enumerated in Article I is suspended or abandoned, the OWNER shall pay the ENGINEER for the services rendered with payment based upon the fees as set forth in Article II, insofar as possible, and, where this basis cannot be applied, then compensation shall be determined as set forth in Article IV, subparagraph (A), above.

ARTICLE V

It is mutually understood and agreed as follows:

- (A) That the estimated construction costs shall be used for payments to the ENGINEER until the actual construction costs have been established by proposals, by contracts and by work actually constructed.
- (B) That the cost of construction used herein and as a basis for computation of payments means the cost to the OWNER of the entire construction, including all materials, labor, and use of equipment without deduction on account of penalties, liquidated damages or other amounts withheld from payments to the Contractors, but such costs shall not include the ENGINEER'S fee or other payment to the ENGINEER made under this Agreement. The cost of construction does not include land, right-of-way, compensation for and/or damages to property, legal, financing, test borings, labor and testing or materials or other administrating costs.
- (C) That drawings and specifications are instruments of service and as such the original documents, tracings and field notes are and remain the property of the ENGINEER whether the work for which they were prepared be executed or not, and shall not be used by the OWNER for any other project or construction.
- (D) That all questions in dispute under this Agreement shall be submitted to arbitration at the choice of either party hereto.
- (E) In the event of the death or incapacity of the ENGINEER or for any other justifiable reason the ENGINEER is unable to carry out the terms of this Agreement, the ENGINEER binds himself that his successors, executors, administrators or representatives may employ a competent qualified registered engineer, registered in the State of Ohio, and subject to the approval of the OWNER, on a full time basis to execute the completion of the professional engineering services enumerated in this Agreement or in a reasonable period of

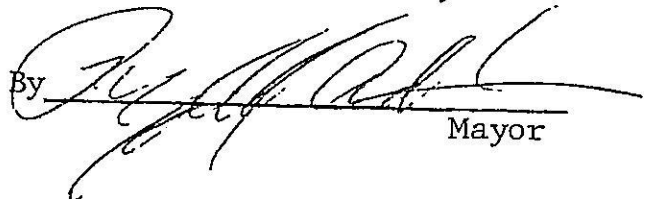
time thereafter satisfactory to the OWNER or in the event of death or incapacity of the ENGINEER or for any other justifiable reason the ENGINEER is unable to carry out the terms of this Agreement, the successors, executors, administrators or representatives of the ENGINEER may turn over to the OWNER, either by their own volition or upon request of the OWNER, all survey notes, computations, plans, specifications, estimates and/or other documents pertaining to this Agreement, either completed or incomplete, for which payment will be made by the OWNER to the successors, executors, administrators or representatives of the ENGINEER in proportion to the amount of work performed insofar as the items enumerated in this Agreement are concerned.

- (F) That the OWNER and the ENGINEER each binds himself, his partners, successors, executors, administrators and assigns, to executors, administrators and assigns of such other party in respect under all covenants of this Agreement. Except as set forth herein, neither the OWNER nor the ENGINEER shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other party hereto.
- (G) That this Agreement shall be in full force for a period of five years and may be extended from year to year by mutual agreement of the parties.

ARTICLE VI

IN WITNESS WHEREOF, the parties have hereto set their hands this ____ day of _____, 1976, at Hamersville, Ohio.

VILLAGE OF HAMERSVILLE, OHIO

By  Mayor

McGILL & SMITH, INC.
Consulting Engineers

CLERK'S CERTIFICATE

Hamersville, Ohio _____, 1976

I hereby certify that _____, Mayor, signed the above contract with McGill & Smith, Inc., Consulting Engineers, by authority invested in him by Ordinance No. _____, passed by the Council of the Village of Hamersville, Ohio, on _____ day of _____, 1976.

Signed: _____
Village Clerk

SOLICITOR'S CERTIFICATE

Hamersville, Ohio _____, 1976

I hereby certify that I have examined the contract attached between the Village of Hamersville, Ohio, and McGill & Smith, Inc. Consulting Engineers, and find same to be in accordance with the provisions of law and hereby approve said contract as to form.

Signed: Philip R. McLean
Village Solicitor