

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF BEXLEY
AND
KOCH ENGINEERING GROUP, LLC**

This Agreement entered into this ___ day of _____, 2024 by and between the City of Bexley, Franklin County, Ohio (CITY), with offices at 2242 East Main Street, Bexley, Ohio 43209, acting pursuant to and under authority of Resolution No. _____ passed by the Council of the City of Bexley on _____, 2024, and Koch Engineering Group, LLC (ENGINEER), Professional Engineers registered in the State of Ohio with offices at 3971 Hoover Road, #145, Grove City, Ohio 43213. This agreement shall be in effect until _____. This agreement may be extended beyond the identified term with mutual agreement of both parties.

WITNESSETH, that the ENGINEER and CITY do hereby agree as follows:

SECTION I: GENERAL CONSULTATION & ENGINEERING SERVICES

- A. The ENGINEER shall assist and advise the Mayor, Director of Public Service, Director of Administration and Development, Director of Building and Zoning, and City Council on engineering, inspection and construction management matters as the contracted City Engineer. This may include but is not limited to professional engineering services necessary to support the development, planning, construction, acquisition, administration, operation, maintenance and repair of storm drainage systems, wastewater systems, potable water distribution systems, bike paths, municipal parking, road signage, streets/roadways, sidewalks, rights-of-way, and other City infrastructure. The CITY, at its sole discretion, will determine when to engage the ENGINEER under this Agreement.
- B. Engineering, Inspection and Construction Management Services may include but are not limited to:**
- a. Assist CITY with prioritization of the needed improvements as part of the annual street, sidewalk and sewer improvement program.
 - b. Preparation of concept exhibits for projects and the evaluation of alternative project approaches.
 - c. Preparation of preliminary cost estimates, and identification of alternative and outside funding sources, including Federal and State grants and loans, and other resources. Preparation and submission of applications for such resources as applicable.
 - d. Provide, assemble, and advertise bid packages. Assist at all lettings, tabulate proposals and bids, and report same to CITY.
 - e. Furnish to CITY at cost the necessary copies of detailed plans, specifications, estimates, and contract documents required for the prosecution of work. Plans, field books, and field records shall become property of CITY and electronic (PDF copies) provided to the CITY.

- f. Construction observation services.
- g. Coordination with outside agencies and project partners to include MORPC, ODOT, Franklin County, City of Columbus, as well as private developers, etc.
- h. Develop studies of existing engineering data, reports, etc., which have been made previously by City, County or other agencies and give full consideration to same.

C. Developer Reimbursed Services

- a. The ENGINEER shall be reimbursed through application fees and developer deposits for the following professional services:
 - i. Private site improvement plan reviews (Engineering/Construction Plan submittals)
 - ii. Plan reviews of public improvements that are constructed in conjunction with private site developments (utility extensions, public roadway extensions, etc.)
 - iii. Construction observation services
 - iv. Coordinate efforts with Franklin County Soil and Water Conservation District to monitor, place, and maintain stormwater and erosion control measures

SECTION II: ENGINEER RESPONSIBILITIES

- A. ENGINEER shall be responsible for the technical accuracy of its services and documents. The CITY shall not be responsible for discovering deficiencies. ENGINEER shall correct deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CITY furnished information including but not limited to unknown / unforeseen site conditions or underground utilities.
- B. ENGINEER may employ such subconsultants as ENGINEER deems necessary to assist in the performance or furnishing of the services with prior written approval of CITY.
 - a. Any subconsultant shall procure and maintain insurance coverage pursuant to Section V.C of this Agreement.
 - b. ENGINEER shall be and remain solely responsible to the CITY for the acts ENGINEER performs or faults of any subconsultant and of any subconsultant officers, agents or employees.
- C. ENGINEER shall comply with applicable laws or regulations and CITY mandated standards.

SECTION III: CITY RESPONSIBILITIES

- A. The CITY shall provide full information, which shall set forth the CITY's objectives, schedule, constraints, and budget within reasonable contingencies and criteria.
- B. CITY shall make decisions and carry out its other responsibilities in a timely manner and shall bear costs incident thereto so as not to delay the services of the ENGINEER.

- C. CITY shall provide requirements, programs, instruction, reports, data, and other information to ENGINEER pursuant to this Agreement. ENGINEER may use such information in performing or furnishing services under this Agreement.

SECTION IV: PAYMENT TO ENGINEER

A. Fees for Engineering, Inspection and Construction Management Services

- a. For rendering the Engineering Services as stated in Section 1.A and 1.B, the ENGINEER shall be paid the rate agreed upon by the parties by the CITY as approved for the individual project proposals as executed by the authorized representative(s) of the CITY.
- b. Fees and expenses for all work performed under this Agreement shall be paid at a rate(s) as listed on the ENGINEER'S rate sheet, current for the year that the work is provided. A copy of the 2025 Rate Schedule sheet is attached as Exhibit A and made a part of this Agreement.

B. Fees for Developer Reimbursed Services

- a. The CITY agrees to pay the ENGINEER for services completed under Section 1.C. The CITY shall be responsible for collecting all applicable funding for these services from the Developer as defined by the City's administrative or legislative actions. ENGINEER may prepare proposals with estimated fees for construction phase services prior to initiation of deposit-based Developer Reimbursed Services. This proposal shall be submitted to the CITY for prior authorization.

C. Reimbursable Expenses: Reimbursable Expenses include expenses incurred by the ENGINEER in the interest of the Project for:

- a. Expense of transportation in connection with travel required to carry out the scope of services;
- b. Fees paid by the ENGINEER for securing approval of authorities having jurisdiction over the Project; in general, all approval fees shall be paid up front by the ENGINEER and reimbursed by the CITY and as such are not within the not-to-exceed fee limit established by the ENGINEER;
- c. Reproductions; and
- d. Postage and handling of Drawings and Specifications.

D. Invoicing

- a. The ENGINEER shall provide detailed, itemized billing on services performed and shall provide the CITY 30 days to pay invoices. These invoices shall reflect detailed, itemized billing, and will include any fees or payments to subcontractors. Itemized billing shall include hours billed, hourly rates, charges for subconsultant services and itemized reimbursable expenses.
- b. For projects paid by outside agencies: The ENGINEER shall submit to the CITY all invoices to be billed to outside agencies on behalf of City projects and provide 14 days for the CITY to approve and forward these invoices to the outside

agency, including but not limited to projects paid directly by the Ohio Public Works Commission. These invoices shall reflect detailed, itemized billing.

E. Taxes

- a. Any and all taxes, except income taxes, imposed or assessed by reason of this Agreement or its performance, including, but not limited to, sales or use taxes, shall be paid by the ENGINEER.
- b. The ENGINEER hereby further agrees to withhold all municipal income taxes due or payable 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 municipal income taxes due for services performed under this Agreement or subsequent Service Orders.
- c. The CITY represents that it is a tax-exempt entity and evidence of this tax-exempt status will be provided to the ENGINEER upon written request.

SECTION V: GENERAL CONSIDERATIONS

- A. Documents:** Upon completion or termination of the Agreement, pdf copies of all work documents associated with this agreement prepared by the ENGINEER, including tracings, drawings, estimates, specifications, field notes, investigations, copies of computer/electronic files (original application files in .TIF or PDF format for drawings), studies and reports shall become the property of and shall be delivered to the CITY upon full payment of monies owed to the ENGINEER.
- B. Confidentiality:** The ENGINEER shall not disclose, or permit the disclosure, of any confidential information except to its employees and/or sub-consultants and other engineers who need such confidential information in order to properly prepare authorized services. No information shall be released by the ENGINEER for publication, advertising or for any other purpose without prior written approval of the CITY.
- C. Insurance:** Prior to the commencement of any work under this agreement, ENGINEER shall furnish to CITY certificates of insurance showing that ENGINEER has obtained the following insurance policies with insurance companies licensed and authorized to do business in the State of Ohio. A new certificate of insurance shall be provided to the CITY each year at the time of policy renewal.
 - a. **Worker's Compensation Insurance:** ENGINEER shall procure and maintain during the life of this contract, Worker's Compensation Insurance, including employers Liability Coverage, in accordance with all applicable statutes of the State of Ohio.
 - b. **Commercial General Liability Insurance:** ENGINEER shall procure and maintain during the life of this agreement, Commercial General Liability Insurance on an Occurrence Basis with limits of Liability not less than

\$1,000,000.00 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury, Bodily Injury and Property Damage.

- c. **Motor Vehicle Liability:** ENGINEER shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Ohio Coverages, with limits of liability of not less than \$1,000,000.00 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. This insurance is not required for non-company owned or leased vehicles used by employees to travel to and from their assigned work locations.
- d. **Professional Liability:** Professional Liability Insurance on a Claims Made Basis with Limits of liability of not less than \$1,000,000.00 per claim/aggregate;

D. Indemnification: The ENGINEER agrees to indemnify, protect, defend, and hold harmless, the City of Bexley, Ohio, its elected and appointed officials, officers, employees, agents, representatives, and volunteers from and against all claims, costs (including reasonable attorney's fees and court costs), expenses, damages, liabilities, losses, or judgments to the extent directly arising out of, or in connection with, any claim, demand, or action made by any party, if such are sustained as a direct consequence of the services performed by the ENGINEER under this Agreement, and do not result from the negligence or intentional acts or omissions of the CITY, its elected or appointed officials, officers, employees, agents, representatives and volunteers.

E. Assignment of Contract:

- a. The CITY shall not be entitled to assign/delegate this Agreement.
- b. The ENGINEER shall not be entitled to assign/delegate this Agreement or any of its rights/duties hereunder without the prior express written approval of the CITY.

F. Relationship of Parties: The Parties acknowledge and agree that the ENGINEER is an independent contractor (or vendor) and is not an agent or employee of the CITY. Nothing in this Agreement shall be construed to constitute the relationship between the ENGINEER and the CITY as a partnership, association, or joint venture.

G. Modification of Contract: It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both Parties in accordance with the laws of the State of Ohio.

H. Discrimination:

- a. No discrimination for reason of race, religion, sex, age, disability, military status, or country of national origin shall be permitted or authorized by the CITY and/or the ENGINEER in connection with the Services.
- b. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having

jurisdiction over the services of the ENGINEER.

I. Ethics:

- a. ENGINEER agrees that its performance under this Agreement would not be contrary to the terms of the Ohio Revised Code Section 102.03 and Section 102.04, as applicable (ethics and conflicts of interest).
- b. Specifically, the ENGINEER shall not solicit or accept anything of value from individuals, subcontractors or other businesses in the course of the execution of their duties with the CITY, including but not limited to participating in projects with the ENGINEER on behalf of the City.

J. Applicable Law and Dispute Resolution: Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly of this Agreement, whether between the Parties, or of any of the Parties' employees, agents, or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Franklin County, Ohio.

K. Duration and Termination:

- a. This Agreement shall be effective from the date of execution until December 31, 2025.
- b. This Agreement may be extended for additional two (2) year concurrent periods upon written consent and approval of the CITY and the ENGINEER. Should the ENGINEER intend to increase their rate schedule for either of the concurrent periods, the ENGINEER shall provide the CITY with a written rate schedule update for the upcoming year no later than 30 days prior to the anniversary of the effective date of this agreement.
- c. The CITY may, by written notice to the ENGINEER, terminate this Agreement prior to the expiration date. The Agreement will be considered terminated after receipt of, and expiration of, a thirty (30) day advance written notice from the CITY. Any improvements upon which the ENGINEER has performed a reasonable amount of labor shall be carried to completion by the ENGINEER, but no new improvement/project shall be commenced after the CITY has properly served notification upon the ENGINEER.
- d. The ENGINEER may, by written notice to the CITY, terminate this Agreement prior to the expiration date. The Agreement will be considered terminated after receipt of, and expiration of, a thirty (30) day advance written notice from the ENGINEER. Any improvements upon which the ENGINEER has performed a reasonable amount of labor shall be carried to completion by the ENGINEER, but no new improvement/project shall be commenced after the CITY has properly served notification upon the ENGINEER.
- e. In the event this Agreement is terminated by either of the Parties to this Agreement, the ENGINEER shall be paid the amounts for work actually performed, to the CITY'S satisfaction, in accordance with this Agreement to the date of termination, being thirty (30) days from the date of receipt of written

notice.

- L. Notices:** Any notice required by this Agreement shall be conclusively presumed to have been received, if in writing, and if delivered personally or sent by registered or certified mail, postage prepaid, to the Party to be notified at that Party's usual place of business.
- M. Effect of Invalidity:** If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of the Agreement shall continue in full force and effect.
- N. Paragraph Headings:** Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.
- O. Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, the effective date of which is indicated on Page 1.

CITY OF BEXLEY
FRANKLIN COUNTY, OHIO

City of Bexley

Koch Engineering Group, LLC
(CITY ENGINEER)

By: _____
Mayor

By: DB Koch
Authorizing Agent

Name: _____

Name: David B Koch, PE

Date: _____

Date: 11/22/2024

APPROVED AS TO FORM

By: _____
City Attorney

Date: _____

Exhibit A
Rate Schedule

Exhibit B

General Project Proposal Format

[Date]

[Name of Recipient]

[Title]

[Address]

Subject: [Professional Services for...]

STUDY AND REPORT PHASE

Determine need for and prepare studies and analysis as directed by CITY's project representative. Name and detail services to be provided by subcontractors in this phase.

DESIGN PHASE

In consultation with CITY, determine general scope, extent, and character of individual project. Provide technical design, technical criteria, topographic or other survey as needed, preparation of easement descriptions as needed, prepare bid documents, plans, and specifications, prepare and pursue necessary permits, furnish drawings, prepare opinions of probable costs, assist in bidding and preparation of construction documents.

In essence, provide CITY with complete level of design services from original scope detail through the bidding and selection of contractor. Name and detail services to be provided by subcontractors in this phase.

CONSTRUCTION PHASE

Offer to CITY construction engineering services as authorized by CITY project representative. Such services may include general administration of construction contracts, site observation of construction, interpretation of contract documents, assisting City obtain needed materials testing services, dispute resolution, review and approval of change orders, review and approval of contractor pay requests, preparation of final inspection reporting and review and/or preparation of as-built drawings. Name and detail services to be provided by subcontractors in this phase.

ADDITIONAL SERVICES

There may be special services needed to meet the goal and objectives of the CITY. Name and detail additional services to be provided by subcontractors. Services include but are not limited to the following:

- Attend community meetings or represent CITY at County, State, or Regional meetings.
- Assist CITY in preparation applications for grant funding.

- Right of Way/ Easement Acquisition.
- Preparation of master utility plans, including technical modeling, reliability, and capacity analysis.
- Perform wetland or other environmental engineering analysis.
- Preparation of management plans.
- Geographic information services.
- Traffic/Signal engineering or traffic calming studies.
- Other related services as may be requested and directed by the CITY's Project Representative.

ANTICIPATED HOURS/COMPENSATION

Services shall be provided on an hourly basis as determined by the CITY and ENGINEER as described in this professional services agreement. Detail whether the project fees shall be paid directly by the CITY to the ENGINEER, or if the ENGINEER will be compensated by an outside agency on behalf of the CITY.

Specify fees for any subcontractor to be engaged in the execution of the above stated services.

SCHEDULE

Provide schedule of services.