

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH FINKBEINER, PETTIS & STROUT FOR PROFESSIONAL ENGINEERING SERVICES IN CONNECTION WITH THE IMPROVEMENTS OF THE RICHFIELD WOODS PARK AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of Richfield, State of Ohio:

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into an agreement with Finkbeiner, Pettis & Strout for professional engineering services in connection with the improvements to the Richfield Woods Park, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference, in a total amount not to exceed \$29,900.00.

SECTION 2. That there be, and hereby is, appropriated as follows:

From the Herschel Hunt account of the Parks and Recreation Fund

\$29,900.00

SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that plans must be prepared to meet the spring/summer building season in the year 1997; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: March 4, 1997

[Signature]
President of Council

[Signature]
Mayor

Dated: 3/5/97

ATTEST:
[Signature]
Clerk of Council

AGREEMENT FOR ENGINEERING SERVICES

THIS IS AN AGREEMENT, made and entered into this 5th day of March, 1997, by and between the **VILLAGE OF RICHFIELD, OHIO** hereinafter called the "**OWNER**", and **FINKBEINER, PETTIS & STROUT, INC.**, Consulting Engineers of Akron, Ohio, their successors or assigns, hereinafter called the "**ENGINEER**".

WITNESSETH THAT:

Under the authority of Resolution No. 7-1997, passed March 4, 1997, the OWNER agrees to employ the ENGINEER to furnish engineering services as outlined in Section 2 of this Agreement for improvements related to the Richfield Woods Park. An aerial survey of the park will be provided with contours, property lines and street right-of-way. Improvements will include driveway upgrade and extension, parking lot enlargement and rehabilitation, grading for drainage, storm sewer design and a paved trail layout. The ENGINEER will also furnish required Additional Services and those requiring authorization in advance as outlined in Section 3 of this Agreement.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER, as set forth below. All of such services, however, will be furnished by ENGINEER only after authorization by OWNER and upon agreement as to the fees therefor.

SECTION 1 - GENERAL CONSIDERATIONS

1.1. Standards of Performance

1.1.1. *Standard of Care.* The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

1.1.2. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

1.1.3. ENGINEER shall perform for or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

1.1.4. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

1.1.5. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

1.1.6. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

1.1.7. ENGINEER shall not be responsible for the acts or omissions of any Contractor, subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

1.2. *Coordination with Other Documents.* This Agreement shall be coordinated with the General Conditions of the Construction Contract between OWNER and Contractor.

1.3. *Definitions.*

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.3.1. *Additional Services.* The services to be performed for or furnished to OWNER by ENGINEER described in Section 3 of this Agreement.

1.3.2. *Agreement.* This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Section 9 of this Agreement.

1.3.3. *Basic Services.* Services to be performed for or furnished to OWNER by ENGINEER as described in Section 2 of this Agreement.

1.3.4. *Construction Contract* - The entire and integrated written agreement between OWNER and Contractor concerning the Work.

1.3.5. *Construction Cost.* The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER, or other design professionals and consultants, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Section 4 of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

1.3.6. *Contractor.* An individual or entity with whom OWNER enters into a Construction Agreement.

1.3.7. *Contract Documents* - Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

1.3.8. *Contract Times* - The number of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

1.3.9. *Direct Labor Costs*. Direct Labor Costs mean salaries and wages paid to all the ENGINEER's personnel engaged directly on the Project.

1.3.10. *Drawings* - That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

1.3.11. *ENGINEER's Consultant*. Individuals or entities having a contract with ENGINEER to perform or furnish services as ENGINEER's independent professional associate or consultant engaged directly on the Project.

1.3.12. *General Conditions*. That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

1.3.13. *Hazardous Environmental Condition* - The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

1.3.14. *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

1.3.15. *Payroll Costs*. Payroll Costs mean Direct Labor Costs as defined in Paragraph 1.3.9.; plus the current cost of customary and statutory benefits, including, but not limited to social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, sick leave, vacation and holiday and other group benefits.

1.3.16. *Record Drawings* - The Drawings as issued for construction on which the Contractor, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

1.3.17. *Reimbursable Expenses*. The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER including, but not limited to; subcontract cost and expenses (plus 10% of the total); transportation; meal expense; lodging; rental of equipment; photo expense; parcel delivery and postage; miscellaneous supplies and reproduction of reports, Drawings and similar Project related items.

1.3.18. *Shop Drawings* - All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

1.3.19. *Substantial Completion* - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.3.20. *Total Project Costs*. The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals or consultants, cost of land and rights-of-way, or

compensation for damages to , properties, interest and financing charges and for other services to be provided by others to OWNER under Paragraph 4.4.

1.3.21 . *Work*. The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

SECTION 2 - BASIC SERVICES OF ENGINEER

The Basic Services of the ENGINEER shall be provided in accordance with the following paragraphs and the Scope of Services as defined in ENGINEER's Richfield Woods Park Proposal #1 (see attached Exhibit "B") and Richfield Woods Park Proposal #2 (see attached Exhibit "C").

2.1. *Study and Report Phase*. Not Used.

2.2. *Preliminary Design Phase*.

After indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon authorization from OWNER, ENGINEER shall:

2.2.1. On the basis of the above authorization, prepare Preliminary Design documents consisting of final design criteria and preliminary drawings of the Project.

2.2.2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners, including OWNER.

2.2.3. Advise OWNER if additional reports, data or other information or services of the types described in Paragraph 4.4. are necessary and assist OWNER in obtaining such reports, data, information, or services.

2.2.4. Not Used.

2.2.5. Furnish the Preliminary Design documents to OWNER for review.

2.2.6. Submit to OWNER two copies of the Preliminary Design Phase Documents.

2.2.7. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to the OWNER.

2.3. *Final Design Phase*.

After acceptance by OWNER of the Preliminary Design Phase documents and subject to OWNER directed modifications or changes in the scope, extent, character or design requirements of the Project, and upon authorization from OWNER, ENGINEER shall:

2.3.1. On the basis of the above acceptance, direction, and authorization prepare final Drawings and Specifications indicating the scope, extent and character of the work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.

2.3.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

2.3.3. Advise OWNER of the opinion of probable Construction Cost and Total Project Costs known to ENGINEER.

2.3.4. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel and other advisors, as appropriate and assist OWNER in the preparation of other related documents.

2.3.5. Submit the Drawings and Specifications to OWNER. Provide two copies for regulatory review and the OWNER's use.

2.3.6. ENGINEER's services under the Final Design Phase will be considered complete on the date when such submittals are delivered to OWNER for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Final Design Phase.

2.4. *Bidding or Negotiating Phase.*

This phase is not included under the Basic Services of the ENGINEER and upon authorization of the OWNER, ENGINEER shall:

2.4.1. Assist OWNER in issuing Bidding Documents to prospective bidders, and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits or charges for Bidding Documents.

2.4.2. Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.

2.4.3. Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

2.4.4. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

2.4.5. The Bidding or Negotiating Phase will be considered complete upon execution of the Contract Documents by OWNER and Contractor or upon cessation of OWNER's negotiations with prospective Contractors.

2.5. *Construction Phase.*

This phase is not included under the Basic Services of the Engineer and upon authorization of the OWNER, ENGINEER shall:

2.5.1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2.5.2. Not Used.

2.5.3. Assist OWNER in the selection of an independent laboratory to perform needed testing services.

2.5.4. Visits to Site and Observation of Construction. In connection with observations of Contractor's work while it is in progress:

2.5.4.1. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. In addition, ENGINEER shall provide the services of a Resident Project Representative (RPR) at the Site to assist ENGINEER and to provide more continuous observations of such work, if authorized by the OWNER as an additional service as set forth in Paragraph 3.3. The furnishing of such RPR services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement. Such visits and observations by ENGINEER and the RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Contractor's work in progress, or to involve detailed inspections of the Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgement as assisted by the RPR, if any. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

2.5.4.2. The purpose of ENGINEER's visits to and representation by the RPR, if any, at the Site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its Work in accordance with the Contract Documents.

2.5.5. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

2.5.6. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

2.5.7. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER as appropriate, and prepare Change Orders and Work Change Directives as required.

2.5.8. *Shop Drawings and Samples.* Review and approve or take appropriate action in respect to Shop Drawings and Samples and other data which the Contractor is required to submit, but only for general

conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. It shall not include review of quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination with the work of other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. ENGINEER shall not be required to review and shall not be responsible for any deviations from the Contract Documents not specifically brought to ENGINEER's attention as a deviation by the Contractor, nor shall ENGINEER be required to review partial submissions or those for which submissions for correlated items have not been received. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

2.5.9. *Substitutes and "or-equal"*. Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph 3.2.2.

2.5.10. *Inspections and Tests*. Require such special inspections or tests of Contractor's work, and receive and review all certificates of inspections, tests and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

2.5.11. *Disagreements between OWNER and Contractor*. Render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

2.5.12. *Applications for Payment*. Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying supporting documentation:

2.5.12.1. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in Paragraph 2.5.12.1. are expressly subject to the limitations set forth in Paragraph 2.5.12.2. and other express or general limitations in this Agreement.

2.5.12.2. By recommending any payment ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control Contractor's work in progress or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs

incident thereto, or Contractor compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.5.13. Contractor's Completion Documents.

2.5.13.1. Receive, review and transmit to OWNER maintenance and operating instructions, schedules, and guarantees.

2.5.13.2. Receive, review and transmit to OWNER bonds, certificates or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph 2.5.8. and marked-up record Drawings which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

2.5.14. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, together with OWNER and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

2.5.15. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable (subject to the provisions of Paragraph 2.5.11.2.) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

2.5.16. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

2.5.17. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the Construction Contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment. If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate prime contracts.

2.6. Post-Construction Phase.

This phase is not included under the Basic Services of the ENGINEER and upon authorization of the OWNER, ENGINEER shall:

2.6.1. Not Used.

2.6.2. Not Used.

2.6.3. Not Used.

2.6.4. Together with OWNER, visit the Project to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of Defective Work, if present.

2.6.5. Provide miscellaneous services as requested by OWNER in connection with Project closeout.

2.6.6. In company with OWNER, or OWNER's representatives, provide an inspection of the Project within one month before the end of the Contractor's warranty period to ascertain whether any portion of the Work is subject to correction.

2.6.7. The Post-Construction Phase may commence during the Construction Phase and will terminate one year after the date of Substantial Completion.

SECTION 3 - ADDITIONAL SERVICES OF ENGINEER

3.1. Additional Services Requiring Authorization in Advance.

If authorized by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in Paragraphs 3.1.1. through 3.1.23., inclusive. These services will be paid for by OWNER as indicated in Section 6.

3.1.1. Preparation of applications and supporting documents for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

3.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

3.1.3. Furnishing assessment area boundary descriptions, assessment area maps, assessment calculations and assessment roll information.

3.1.4. Services resulting from changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

3.1.5. Services required as a result of OWNER's providing incomplete or incorrect Project information:

3.1.5.1. which are different from information about such conditions that OWNER previously provided to ENGINEER under Paragraph 4.4. and upon which ENGINEER was entitled to rely; or

3.1.5.2. as to which OWNER had responsibility to provide information under Paragraph 4.4. if such information was not previously provided.

3.1.6. Providing renderings or models for OWNER's use.

3.1.7. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

- 3.1.8. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 3.1.9. Furnishing services of ENGINEER's Consultants for other than Basic Services; and furnishing data or services of the types described in Paragraph 4.4. when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same under Paragraph 4.4.
- 3.1.10. Services attributable to a variation in the number of prime contracts from the number specified by ENGINEER.
- 3.1.11. Services during out-of-town travel required of ENGINEER other than visits to the Site or OWNER's office.
- 3.1.12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.
- 3.1.13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents. Evaluating alternate materials or equipment or substitute construction methods or procedures proposed by the OWNER or the Contractor during the Construction Phase.
- 3.1.14. Assistance in connection with Bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
- 3.1.15. Not Used.
- 3.1.16. Providing any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 3.1.17. Providing Construction Phase services beyond the Contract times set forth in original Agreement between the OWNER and Contractor(s).
- 3.1.18. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
- 3.1.19. In lieu of Contractor's marked-up record drawings provided in Paragraph 2.5.12.2., preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
- 3.1.20. Furnishing additional copies of reports, Drawings and Specifications in addition to those provided in Paragraphs 2.2.6. and 2.3.5.
- 3.1.21. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
- 3.1.22. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under Paragraph 4.13.

3.1.23. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

3.2. Required Additional Services.

ENGINEER shall perform or furnish, without requesting or receiving specific advanced authorization from OWNER, Additional Services of the types listed in Paragraphs 3.2.1. through 3.2.6., inclusive. These services will be paid for by OWNER as indicated in Section 6. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

3.2.1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER.

3.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of the OWNER of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution.

3.2.3. Services resulting from delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.

3.2.4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) defective, neglected or delayed work of Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

3.2.5. Services in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

3.2.6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work or services for repeated failure of the Contractor to present acceptable shop drawing submittals.

3.3. Resident Project Representative (RPR) Services During Construction.

3.3.1. If requested by OWNER or recommended by ENGINEER and agreed to by OWNER, provide the services of an RPR (and assistants) at the Site during the Construction Phase to assist ENGINEER in observing progress and quality of the Work. The RPR will be ENGINEER's agent or employee and under ENGINEER's supervision. The furnishing of RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.

3.3.2. The duties and responsibilities, and authority of the RPR (and assistants) are set forth in Exhibit A "Duties, Responsibilities and Limitations of Authority of Resident Project Representative."

3.4. Programming and Instrumentation Support Services

3.4.1. Not Used.

3.4.2. Not Used.

SECTION 4 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

- 4.1. The Mayor, or his designated representative, shall act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such individual shall have authority to transmit instructions, receive information, and render decisions on behalf of the OWNER.
- 4.2. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in Bidding Documents; and any conditions set forth in easements obtained by OWNER.
- 4.3. Furnish to ENGINEER any other available information pertinent to the Project including reports and any other data relative to previous designs or investigation at or adjacent to the Site.
- 4.4. Furnish or otherwise make available to ENGINEER, as reasonably requested by ENGINEER, such additional Project information or data as is reasonably required to enable ENGINEER to complete Basic and Additional Services such as the following:
 - 4.4.1. explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate interpretation thereof;
 - 4.4.2. the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment prior to and after installation, or to evaluate the performance of materials, equipment and facilities of OWNER, prior to specification, and during construction;
 - 4.4.3. environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site and adjacent areas;
 - 4.4.4. property, boundary, easement, right-of-way, property surveys for transfer of real property, and other special field surveys or data, including establishing relevant reference points.
 - 4.4.5. property descriptions;
 - 4.4.6. zoning, deed and other land use restrictions;
 - 4.4.7. Information as to the coverages and amounts of liability, and all other required insurance, required to be maintained by the Contractor including a listing of additional insureds;
 - 4.4.8. other special data or consultations not covered in Section 2 that both parties agree are necessary.
- 4.5. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished by OWNER. ENGINEER may use such reports, data and information in performing or furnishing service under this Agreement.
- 4.6. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 4.7. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

4.8. Provide reviews, approvals and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project. OWNER shall be responsible for review, approval and permit fees.

4.9. Provide, as required for the Project:

4.9.1. accounting, bond and financial advisory, independent cost estimating, and insurance counseling services;

4.9.2. legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises or ENGINEER reasonably requests.

4.9.3. such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.

4.9.4. placement and payment for Advertisement for Bids in appropriate publications.

4.10. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or person to ENGINEER) as OWNER may desire to verify:

4.10.1. that Contractor is complying with any Laws and Regulations, applicable to Contractor's performing and furnishing the Work; or

4.10.2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

4.11. Pay for prints of Drawings and copies of Specifications and other services performed by parties other than the ENGINEER, on the basis of the actual cost of the service, making payment to the party performing the service, based on invoices submitted to and approved by the ENGINEER.

4.12. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering and constructability review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

4.13. Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notice or certification requested under this Paragraph.

4.14. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER before such services begin.

4.15. Furnish to ENGINEER a as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

4.16. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections.

4.17. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance or furnishing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

4.18. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in Paragraph 3.1. of this Agreement or other services as required.

SECTION 5 - TIMES FOR RENDERING SERVICES

5.1. General

5.1.1. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement or a subsequent letter Agreement, ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the completion of said services.

5.1.2. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Project, the time for performance of ENGINEER's services shall be adjusted equitably.

5.1.3. For purposes of this Agreement the term "day" means a calendar day.

5.2. Suspension

5.2.1. If ENGINEER's services are delayed through no fault of the ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

5.2.2. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

SECTION 6 - PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

6.1. Methods of Payment for Services and Expenses of ENGINEER.

6.1.1. For the services to be performed by ENGINEER on a cost basis, the OWNER agrees to pay ENGINEER a cost-reimbursement multiplier fee based on Payroll Costs involved in performing the services as defined in Paragraph 1.3.15., plus 100% thereof, plus Reimbursable Expenses as defined in Paragraph 1.3.17.

6.1.2. OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis of a lump sum fee of \$8,000 for services to be performed by ENGINEER for Richfield Woods Park Proposal #1 (see attached Exhibit "B"), a lump sum fee of \$17,500 for services to be performed by ENGINEER for Richfield Woods Park Proposal #2 (see attached Exhibit "C"), a lump sum fee if authorized by the OWNER of \$3,200 for Bidding and Award services to be performed by ENGINEER for Richfield Woods Park Proposal #2 (see attached Exhibit "C") and a lump sum fee if authorized by the OWNER of \$1,200 for Centerline Staking for Construction service to be performed by the ENGINEER for Richfield Woods Park Proposal #2 (see attached Exhibit "C") as mutually agreed between OWNER and ENGINEER prior to authorization to proceed.

6.1.3. Fees for services to be performed under Paragraph 2.5. Construction Phase and Paragraph 2.6. Post-Construction Phase are contingent on the Contractor(s) completing construction within the original contract time set forth in the agreement between the OWNER and the Contractor(s). Services performed by the ENGINEER after the time of completion outlined in the original agreement between the OWNER and Contractor(s) will be provided on the basis of a cost-reimbursement multiplier fee as described in Paragraph 6.1.1.

6.1.4. OWNER shall pay ENGINEER for Additional Services performed or furnished under Section 3 on the basis of a cost-reimbursement multiplier fee as described in Paragraph 6.1.1, or a lump sum fee mutually agreed between OWNER and ENGINEER.

6.1.5. When work is performed under a cost-reimbursement fee, it is mutually agreed that, since the fees are estimates and the extent of services cannot be specifically defined as of the date of authorization of services, the Agreement shall be amended, if necessary, to provide additional payment in excess of any estimated fee authorized.

6.2. *Other Provisions Concerning Payments.*

6.2.1. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER monthly.

6.2.2. *Unpaid Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

6.2.3. *Payments on Termination.* In the event of termination by either party under Paragraph 8.1., OWNER shall pay ENGINEER for all services performed by ENGINEER or ENGINEER's consultants, including reimbursable expenses, rendered through the date of termination. In addition, OWNER shall pay ENGINEER for services and reasonable expenses directly attributable to termination, both before and after effective date of termination, such as reassignment of personnel, cost of terminating contracts with ENGINEER's consultants, and other related costs using the cost reimbursement multiplier fee basis described in Paragraph 6.1.1..

6.2.4. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. To extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

6.2.5. In the event OWNER issues a Purchase Order or other instrument related to the ENGINEER's services, it is understood and agreed that such document is for OWNER's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement.

SECTION 7 - OPINIONS OF COST

7.1. *Opinions of Probable Construction Cost.* ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgement as an experienced and qualified professional engineer generally familiar with the industry. However, since ENGINEER has no control over cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Costs will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Paragraph 4.9.1.

7.2. *Designing to Construction Cost Limit.* If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in a supplement to this Agreement.

7.3. *Opinions of Total Project Cost.* ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs provided for in Section 2.

SECTION 8 - GENERAL CONSIDERATIONS

8.1. Termination.

The obligation to provide further services under this Agreement may be terminated:

8.1.1. For cause,

8.1.1.1. By either party upon thirty days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

8.1.1.2. By ENGINEER:

8.1.1.2.1. upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional; or

8.1.1.2.2. upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

8.1.1.2.3. ENGINEER shall have no liability to OWNER on account of such termination.

8.1.1.3. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

8.1.2. *For convenience,*

8.1.2.1. By OWNER effective upon the receipt of notice by ENGINEER.

8.2. *Use of Documents.*

8.2.1. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of ENGINEER) whether or not the Project is completed.

8.2.2. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

8.2.3. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

8.2.4. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

8.2.5. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

8.2.6. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

8.2.7. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

8.2.8. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

8.3. *Insurance.*

8.3.1. ENGINEER shall procure and maintain the following insurance: (a) Workmen's Compensation Insurance, (b) Professional Liability Insurance (Errors and Omissions) of not less than \$1,000,000, (c) Comprehensive Public Liability Insurance, and (d) Automobile Liability Insurance.

8.3.2. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list ENGINEER and ENGINEER's Consultants as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insured thereunder.

8.3.3. At any time OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, different limits or revised deductibles in excess of those maintained by the ENGINEER. If so requested by OWNER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles, for such periods of time as requested by OWNER.

8.4. *Controlling Law.* This Agreement is to be governed by the law of the State of the local office of the ENGINEER providing service to the OWNER.

8.5. *Successors and Assigns:*

8.5.1. OWNER and ENGINEER each is hereby bound and the shareholders, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by Paragraph 8.5.2. the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the shareholders, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

8.5.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.5.3. Unless expressly provided otherwise in this Agreement:

8.5.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

8.5.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. OWNER agrees that the substance of the provisions of this Paragraph 8.5.3. shall appear in the Contract Documents.

8.6. *Dispute Resolution.* OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of thirty days from the date of notice prior to exercising their rights under other provisions of this Agreement, or under law.

8.7. *Allocation of Risks - Indemnification.*

8.7.1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, shareholders, employees and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

8.7.2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, shareholders, employees and agents and ENGINEER's Consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts and omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

8.7.3. *Limitation of ENGINEER's Liability.*

8.7.3.1. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER and all other negligent entities and individuals.

8.7.3.2. *ENGINEER's Liability Limited to Amount of Insurance Proceeds.* ENGINEER shall procure and maintain insurance as required by Paragraph 8.3 of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, shareholders, employees, agents, and ENGINEER's Consultants, and any of them, to OWNER and anyone claiming by, through, or under OWNER for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of ENGINEER or ENGINEER's officers, directors, shareholders, employees, agents, or ENGINEER's Consultants, or any of them (hereafter "OWNER's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement of satisfaction of OWNER's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto pursuant to the provisions of Paragraph 8.3. (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal).

8.7.3.3. *Exclusion of Special, Incidental, Indirect and Consequential Damages.* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, ENGINEER and ENGINEER's officers, directors, shareholders, employees, agents, and ENGINEER's Consultants shall not be liable to OWNER or anyone claiming by, through, or under OWNER for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes.

8.7.4. In addition to the indemnity provided under Paragraph 8.7.2. of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, shareholders, employees and ENGINEER's Consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 8.7.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

8.7.5. The indemnification provision of paragraph 8.7.1. is subject to and limited by the provisions agreed to by OWNER and ENGINEER in a properly executed written document.

8.8. **Notices.** Any notice required under this Agreement will be in writing, addressed to the appropriate party and given personally, or by registered or certified mail, or by commercial courier service. All notices shall be effective upon the date of receipt.

8.9. *Survival.* All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.

8.10. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SECTION 9 - EXHIBITS AND SPECIAL PROVISIONS

9.1. This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

9.1.1. Exhibit A - "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", consisting of four pages.

9.1.2. Exhibit B - "Richfield Woods Park Proposal #1" consisting of one page.

9.1.3. Exhibit C - "Richfield Woods Park Proposal #2" consisting of three pages.

9.2. This Agreement together with the Exhibits identified above constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

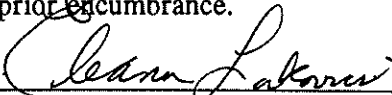
APPROVED AS TO FORM



Law Director

CERTIFICATION OF AVAILABILITY OF FUNDS

I hereby certify that the \$ 29,900. required for this contract has been lawfully appropriated and is in the treasury or is in the process of collection to the credit of the appropriate fund, free from prior encumbrance.

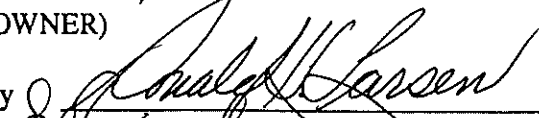


Finance Director

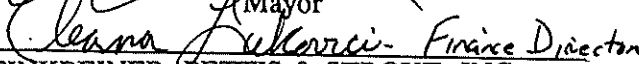
March 5, 1997

Date

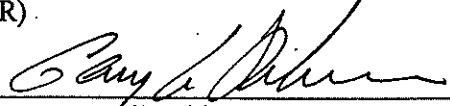
RICHFIELD, OHIO
(OWNER)

By 


Mayor



FINKBEINER, PETTIS & STROUT, INC.
(ENGINEER)

By 

President

& 

~~Treasurer~~
SECRETARY

EXHIBIT A

Duties, Responsibilities and Limitations of Authority of Resident Project Representative

A. General

The Resident Project Representative ("RPR") is the ENGINEER's agent at the site, will act as directed by and under the supervision of the ENGINEER and will confer with the ENGINEER regarding his actions. RPR's dealings in matters pertaining to the on-site work shall, in general, be with the ENGINEER and the Contractor, keeping the OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of the Contractor. RPR shall generally communicate with the OWNER with the knowledge of and under the direction of the ENGINEER.

B. Duties and Responsibilities

The Resident Project Representative shall:

1. Schedules Review the progress schedule, schedule of Shop Drawing and sample submittals, and schedule of values prepared by the Contractor and consult with the ENGINEER concerning acceptability.
2. Conferences and Meetings Attend meetings with the Contractor, such as preconstruction conferences, progress meetings, job conferences and other project related meetings, and prepare and circulate copies of minutes thereof (if not required of the Contractor on multiprime contracts as outlined in the Standard General Conditions).
3. Liaison
 - a. Serve as the ENGINEER's liaison with the Contractor, working principally through the Contractor's superintendent and assist in understanding the intent of the Project Contract Documents; and assist the ENGINEER in serving as the OWNER's liaison with the Contractor when the Contractor's operations affect the OWNER's on-site operations.
 - b. Assist in obtaining from the OWNER additional details or information, when required for proper execution of the work.

4. Shop Drawings and Samples

- a. Receive samples which are furnished at the site by the Contractor, and notify the ENGINEER of availability of samples for examination.
- b. Advise the ENGINEER and the Contractor of the commencement of any work requiring a Shop Drawing or sample if the submittal has not been processed by the ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspection and Tests

- a. Conduct on-site observations of the work in progress to assist the ENGINEER in determining if the work is in general proceeding in accordance with the Contract Documents.
- b. Report to the ENGINEER whenever he believes that any work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged or does not meet the requirements of any inspection, test or approval required to be made; and advise the ENGINEER of work that he believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records thereof; observe, record and report to the ENGINEER appropriate details relative to the test procedures and startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the ENGINEER.

6. Interpretation of Project Contract Documents Report to the ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued by the ENGINEER.

7. Modifications Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications and report them, with recommendations, to the ENGINEER. Transmit to the Contractor, in writing, decisions as issued by the ENGINEER.

ADDENDUM NO. 1 TO AGREEMENT FOR ENGINEERING SERVICES

WHEREAS, an Agreement was entered into on March 5, 1997 by and between the VILLAGE OF RICHFIELD, OHIO, hereinafter called the "OWNER", and FINKBEINER, PETTIS & STROUT, INC., Consulting Engineers, of Akron, Ohio, their successors or assigns, hereinafter called the "ENGINEER"; and,

WHEREAS, under said Agreement, the OWNER agreed to employ said ENGINEER to render engineering services in connection with the Richfield Woods Park; and

WHEREAS, the Agreement must be amended to authorize the additional services and payment to the ENGINEER for said services:

NOW THEREFORE, this 7th day of March, 1997, the OWNER hereby agrees to amend said Agreement with said ENGINEER, under the Authority of Resolution No. N/A passed on N/A, 1997, to provide these services as follows:

1. Delete paragraph 6.1.2. and substitute with the following:

6.1.2. OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis of a lump sum fee of \$8,750 for services to be performed by ENGINEER for Richfield Woods Park Proposal #1 (see attached Exhibit "B" and "D"), a lump sum fee of \$17,500 for services to be performed by ENGINEER for Richfield Woods Park Proposal #2 (see attached Exhibit "C"), a lump sum fee if authorized by the OWNER of \$3,200 for Bidding and Award services to be performed by ENGINEER for Richfield Woods Park Proposal #2 (see attached EXHIBIT "C") and a lump sum fee if authorized by the OWNER of \$1,200 for Centerline Staking for Construction service to be performed by the ENGINEER for Richfield Woods Park Proposal #2 (see attached Exhibit "C") as mutually agreed between OWNER and ENGINEER prior to authorization to proceed.

2. Add Paragraph 9.1.4. to read as follows:

- "Exhibit D - Richfield Woods Park Additional Services, dated February, 24, 1997, and consisting of one page."

IT WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

VILLAGE OF RICHFIELD, OHIO
(OWNER)

Joyce Remer
Attest

John Maurin

By

Ronald W. Larsen
Mayor

&

Elaine Luker
Finance Director

FINKBEINER, PETTIS & STROUT, INC.
(ENGINEER)

Michelle L. Lewis
Attest

Shirley A. Hall

By

Campbell
PRESIDENT

&

Gregory A. Cubell
SECRETARY

8. Records

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all work change directives, addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions of work change directives, change orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures; and send copies to the ENGINEER.
- c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

9. Reports

- a. Furnish the ENGINEER periodic reports as required of progress of the work and of the Contractor's compliance with the progress schedule and the schedule of Shop Drawing and sample submittals.
- b. Consult with the ENGINEER in advance of scheduled major tests, inspections or start of important phases of the work.
- c. Draft proposed change orders and work change directives, obtaining backup material from the Contractor and recommend to the ENGINEER change orders, work change directives and field orders.
- d. Report immediately to the ENGINEER and the OWNER upon the occurrence of any accident.

10. Payment Requests Review applications for payment with the Contractor for compliance with the established procedure for their submission and forward them with recommendations to the ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment delivered at the site, but not incorporated in the work.

11. Certificates, Maintenance and Operation Manuals During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the ENGINEER for review and forwarding to the OWNER prior to final payment for the work.
12. Completion
 - a. Before the ENGINEER issues a Certificate of Substantial Completion, submit to the Contractor a list of observed items requiring completion or correction.
 - b. Conduct a final inspection in the company of the ENGINEER, the OWNER and the Contractor, and prepare a final list of items to be completed or corrected.
 - c. Observe that all items on the final list have been completed or corrected and make recommendations to the ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority

The Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the ENGINEER.
2. Shall not exceed limitations of the ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of the Contractor, Subcontractors, Suppliers or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than the Contractor.
7. Shall not authorize the OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the ENGINEER.

Exhibit "B"

Richfield Woods Park Proposal #1

Scope of Services

This project entails the preparation of a mylar aerial topographical map (1"=50') with 1' contour intervals, property lines and street right-of-ways.

Our approach to this project will be as follows:

1. Gather existing data:
 - Deeds for the park and adjacent properties shall be obtained from Summit County.
 - Benchmarks to be used on this project shall be obtained from previous FPS projects in the area.
2. Perform aerial survey:
 - We propose to use the services of Aerocon Photogrammetric Services, Inc. to provide the aerial survey.
 - Finkbeiner, Pettis and Strout, Inc. shall provide horizontal and vertical control.
3. Prepare topographical map including contour, right-of-way and property lines.
 - Existing property and right-of-way pins shall be located in the field.
 - Property lines and right-of-way lines shall be shown on the plan based on pin information found in the field and the deed descriptions.

Schedule

Work shall begin within one week following receipt of written authorization to proceed. If the weather remains clear, aerial photography can begin immediately. Finkbeiner, Pettis & Strout, Inc., shall submit the mylar drawing to the Village three weeks after receipt of the aerial data.

Estimated Cost

We propose to complete the above outlined scope of services for a total lump sum fee of \$8,000.00.

The Summit County GIS maps only show contours, roads, railroads, streams, and buildings. The maps do not show trees, catch basins, manholes, park benches, ballfield fencing, utility or light poles, and many other features that the Village will want on the final topographical map. In addition, it is Finkbeiner, Pettis & Strout, Inc.'s position that these maps are not sufficiently accurate for roadway and grading design. They are better suited for drainage studies.

If the Village decides to use the Summit County contour maps, the maps would need to be upgraded to show new topographical features or features not shown and revise contours in the area of the proposed multi-purpose field. We believe that performing these tasks would increase the engineering cost above the lump sum fee previously listed.

Exhibit "C"

**Richfield Woods Park
Proposal #2**

Scope of Services

The project entails the preparation of plans and specifications to complete certain Phase 1 and Phase 2 improvements to the Richfield Woods Park as shown on the Master Plan dated June 12, 1996.

Our approach to this project will be as follows:

1. Gather existing data:

- Aerial mapping obtained through Proposal #1 shall be utilized. Field survey shall be obtained to supplement the aerial information for items such as drainage appurtenances and inverts, signage, and sections at the west end of the existing drive. A three point tie for the driveway centerline shall also be obtained.
- Existing construction plans and/or soil information shall be obtained from the Village.
- Finkbeiner, Pettis & Strout, Inc., recommends that the Village retain a geotechnical engineering firm to obtain at least four (4) soil borings for our use in determining a proper pavement buildup for the driveway and parking lots. Finkbeiner, Pettis & Strout, Inc., will assist the Village in obtaining such services. Costs for the geotechnical services will be the responsibility of the Village.
- Coordination with the Ohio Utility Protection Service (OUPS), the East Ohio Gas Company, and Ohio Edison will be required to verify the size, location and depth of the transmission line crossing the north end of the property and the voltage and location of the underground power line serving the property.

2. Prepare preliminary and final design plans and specifications:

- The design shall be made in accordance with the Ohio Department of Transportation Construction and Material Specifications and shall include the following sheets:

Title Sheet	1
Existing Site Plan	1
Proposed Layout Plan	1
Proposed Grading Plan	1
Miscellaneous Details	<u>1</u>
Total	5

- 3. Perform a pavement design to determine the required pavement buildup for the driveway and parking lots.
- 4. Design a drainage system for the proposed improvements. Drainage elements may include underdrains, ditches, catch basins and/or storm sewer. The proposed drainage system shall be outletted into the existing stream. Permanent and temporary erosion control measures shall be incorporated into the plan. The plans shall be submitted to the Planning and Zoning Commission for their review of the erosion control measures in accordance with the Village's Ordinance Chapter 1177 - Erosion Control Plans.

5. Submit preliminary plans to the Village for review. Review comments shall be incorporated into the final plans.
6. Prepare for review and approval by the Village and its legal counsel, contract agreement forms, General Conditions, Supplementary Conditions, bid forms, Invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

Schedule

Work will begin within one week following receipt of written authorization to proceed and receipt of the complete aerial plan. Preliminary design shall be submitted to the Village of Richfield Park Board within four weeks of receipt of the required information. Final plans and specifications shall be completed within three weeks of receipt of preliminary comments.

The final submittal shall include the following items:

- 1 mylar set of plans
- 2 sets of bidding plans
- 2 sets of bidding documents

Estimated Cost

We propose to complete the above outlined scope of services for a total lump sum fee of \$17,500.00.

Additional Services (If Authorized)

1. Bidding and Award
 - The Village will be responsible for advertising the project. FPS will distribute the plans and specifications to interested contractors. Representatives of FPS will attend the pre-bid meeting, the bid opening, prepare and distribute bid tabulations, and assist the City in evaluating the bids. Contract Documents will also be prepared by FPS.

We propose to complete this service for a lump sum fee of \$3,200.00.
2. Centerline Staking for Construction
 - We propose to stake the centerline of the proposed road and the baselines for the parking lots and multi-purpose field for a lump sum fee of \$1,200.00.

3. Services During Construction

- Representatives of FPS can serve the Village in a number of capacities during construction. Compensation on an hourly billing rate basis with an agreed maximum fee can be negotiated should these services be required. Services can include:
 - Attend preconstruction meeting.
 - Visit the site periodically to observe construction.
 - Review contractor's monthly request for payment.
 - Interpret the contract documents and assist the Village in resolving construction related problems.
 - Perform field closeout services such as final punch list, final inspection, etc.
 - Serve as resident project representative (RPR) on a full-time or part-time basis.
 - Prepare record drawings.

Exhibit "D"

Richfield Woods Park
Additional Services
February 24, 1997

Scope of Services

These additional services entail adding the J.G. Johnson property, located just south of the Richfield Woods Park property, to the Scope of Services listed under Exhibit B of the original Agreement dated March 5, 1997.

Schedule

The schedule shall remain as stated in the original Agreement.

Estimated Cost

We propose to include this additional property in the aerial map with contours, topo, and property lines, for an additional lump sum fee of \$750 for a total lump sum fee of \$8,750.