

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH FINKBEINER, PETTIS & STROUT, INC. FOR PROFESSIONAL ENGINEERING SERVICES

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, Inc. to serve as the Village Engineer, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. The starting date of this agreement shall be April 1, 1997.

SECTION 3. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: April 1, 1997

[Signature]
President of Council

[Signature]
Mayor

Dated: 4/2/97

ATTEST:
[Signature]
Clerk of Council

AGREEMENT
BETWEEN THE VILLAGE OF RICHFIELD, OHIO
AND FINKBEINER, PETTIS & STROUT, INC.

THIS AGREEMENT, made this 1st day of April, in the year Nineteen Hundred Ninety-Seven, by and between the Village of Richfield, an Ohio Municipal Corporation, hereinafter called the VILLAGE, and Finkbeiner, Pettis & Strout, Inc. of 520 South Main Street, Suite 2400, Akron, Ohio 44311, hereinafter called the ENGINEER.

WITNESSETH, that

WHEREAS, the VILLAGE wishes to employ a qualified Engineer, registered in the State of Ohio to perform the engineering and surveying services necessary to meet the challenges and needs of this growing community through the coming years for and on behalf of the VILLAGE as hereinafter set forth; and WHEREAS, said ENGINEER is duly admitted to practice in the State of Ohio as required by law, holding Engineer's Certificate No. 95-573, and desires to perform such services for the compensation hereinafter described.

SECTION I

The ENGINEER shall provide the following services:

- (a) Prepare necessary plans, profiles, specifications and estimates of cost of every kind for such public improvements as he may be authorized by Council to prepare.
- (b) Supervise and serve as the representative of the municipality in the execution of such public work undertaken by this Council, pursuant to plans and specifications approved by this Council, as they may have prepared material for, pursuant to paragraphs (a) and (b) hereof.
- (c) Supervise and direct all resident project representatives (RPR's) appointed by the Village and such (RPR's) shall report to and receive their instructions from the ENGINEER relative to the improvements covered in paragraphs (a) and (b) hereof.
- (d) Furnish to the Council, plans, specifications and estimates of cost and such improvements for the information and guidance of contractors dealing with the municipality.
- (e) Upon request, shall make and deliver to this Council monthly reports of the progress of improvements under this charge, stating conditions of same, together with any other matters of interest, desired by this Council. All plans shall be the property of the

municipality, and when so directed by the Council, be filed in the Clerk's office upon completion of any improvement.

- (f) Be available to any department of the municipality and to any official acting in his official capacity.
- (g) Check and approve all plans for proposed works within the jurisdiction of the VILLAGE, prepared by other consultants.
- (h) To be available for consultations and conference with the Mayor, and other Directors and members of the Village administration.

SECTION II

Provide necessary Consulting Engineering Services including field and office, to facilitate Section I.

SECTION III

Provide necessary assessment services when required by the Village Council.

PERFORMANCES BY VILLAGE

This proposal is based upon the assumption that the VILLAGE without expense to the ENGINEER, will:

- (a) Furnish all legal services which may be required.
- (b) Make available from its files, data relating to all engineering problems.
- (c) Furnish testing and laboratory inspecting services.

FEES AND PAYMENTS

- (a) For attendance at regular Planning and Zoning Commission meetings which is required, and attendance at regular or special meetings of Council only when requested by Council or Planning & Zoning (P&Z), the Engineer shall be paid at the rate of \$75.00 per meeting, to be paid at the end of each month.
- (b) For the several services as particularized herein and for Supplemental Services as described hereafter to the extent that all services are ordered and furnished, the VILLAGE agrees to pay and we agree to accept as full compensation for such services, fees in the amounts and at times as follows:
 1. VILLAGE shall pay ENGINEER for Basic Services performed or furnished under Section I on the basis of an hourly billing rate plus reimbursable expenses with a maximum fee or a lump sum fee negotiated at the time the services are authorized, as mutually agreed between VILLAGE and ENGINEER prior to authorization to proceed.

2. When work is performed under an hourly billing rate plus reimbursable expenses, it is mutually agreed that, when the extent of services cannot be specifically defined as of the date of authorization of services, the ENGINEER shall be authorized by the VILLAGE up to a pre-determined maximum fee and then amended, if necessary, to provide additional payment in excess of any estimated maximum fee authorized.

SECTION IV

The following stipulations and definitions shall apply to this ordinance:

- (a) The ENGINEER shall provide either a lump sum fee or a cost reimbursement fee with a maximum, based on the hourly billing rates in Exhibit A, for engineering services with approval of the VILLAGE.
- (b) "General Supervision" is defined as supervision of the construction by periodical visits by the Engineer or his representative from the office of the Engineer.
- (c) "Resident Project Representative" is defined as a person who observes the construction in detail under the general supervision of the Engineer or a representative of the Engineer, and who shall receive compensation for his services from the Village.
- (d) 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.

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. VILLAGE 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.

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; of or any decision made on interpretations or clarifications of the Contractor Documents given by VILLAGE without consultation and advice of ENGINEER.

SECTION V

The following general considerations are part of this Agreement:

- (a) This Agreement shall terminate on December 31, 1999, unless extended by mutual written authorization.
- (b) The obligation to provide further services under this Agreement may be terminated 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.
- (c) 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.
- (d) All documents are instruments of service in respect to the VILLAGE 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.

Copies of VILLAGE-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 VILLAGE 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.

Copies of Documents that may be relied upon by VILLAGE 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 VILLAGE are only for convenience of VILLAGE. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

- (e) The Mayor, or his representative, designated by written authorization, is the signatory representative of the VILLAGE to the ENGINEER.
- (f) This Agreement together with Exhibit A constitutes the entire agreement between VILLAGE 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 set their hands the day and year first above written. The signature of the VILLAGE OF RICHFIELD, OHIO, being affixed by its' Mayor pursuant to ~~Ordinance~~ Resolution No. 14-1997, passed by the Council of said VILLAGE, the 1st day of April, 1997, and in accordance with the provisions of said Resolution.

VILLAGE OF RICHFIELD, OHIO:

Eleana Lakner
DIRECTOR OF FINANCE

Donald M. Larsen
MAYOR DONALD LARSEN

ENGINEER:

Gary W. Johnson
GARY W. JOHNSON, PRESIDENT
FINKBEINER, PETTIS & STROUT, INC.
520 SOUTH MAIN STREET, SUITE 2400
AKRON, OHIO 44311

Warren E. Henry
WARREN E. HENRY, TREASURER
FINKBEINER, PETTIS & STROUT, INC.
4405 TALMADGE ROAD
TOLEDO, OHIO 43623

In the presence of:

Jo Ann Maupin
Jimmy King

Approved as to Legal Form:

[Signature]
Solicitor for the Village of
Richfield

EXHIBIT A

1997 HOURLY BILLING RATES

Engineer - Project Manager	\$80.00
Design Engineer	\$63.00
Assistant Engineer	\$57.00
CAD Drafter	\$42.00
Clerical	\$27.00
Three-man Field Crew	\$90.00
Two-man Field Crew	\$65.00
Chief Construction Engineer	\$66.00
Resident Project Representative	\$48.00
Construction Technician	\$30.00

Billing rates shall be amended January 1 of each calendar year by mutual written agreement of the VILLAGE and the ENGINEER.