

ORDINANCE NO. 94-16 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER  
INTO A CONTRACT WITH GILLS, GUARD AND JOHNSON, INC.  
OF WILLOUGHBY, OHIO, FOR GENERAL ENGINEERING SERVICES  
FOR THE CITY OF OBERLIN  
AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County  
of Lorain, State of Ohio, five-sevenths (5/7ths) of all members  
elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and  
directed to enter into a contract with Gills, Guard and Johnson,  
Inc. of Willoughby, Ohio, for general engineering services for the  
City of Oberlin, in accordance with the contract attached hereto  
and incorporated herein by reference

SECTION 2. It is hereby found and determined that all formal  
actions of this Council concerning or relating to the adoption of  
this ordinance were adopted in an open meeting of this Council, and  
that all deliberations of this Council and of any of its committees  
that resulted in such formal action, were in meetings open to the  
public in compliance with all legal requirements, including Section  
121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an  
emergency measure necessary for the preservation of the public  
peace, health and safety of the citizens of the City of Oberlin,  
Ohio, to wit:

"to provide for City engineering services at the earliest  
possible date to ensure continuity in on-going City construction  
projects"

and shall take effect immediately upon passage.

PASSED: 1st Reading - February 7, 1994 (E)  
2nd Reading -  
3rd Reading -

ATTEST:

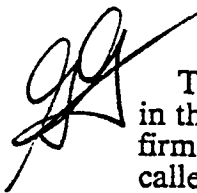
  
CLERK OF COUNCIL

  
CHAIRMAN OF COUNCIL

POSTED: February 11, 1994

EFFECTIVE DATE: February 8, 1994

AGREEMENT BETWEEN  
THE CITY OF OBERLIN, OHIO  
AND GILLS, GUARD & JOHNSON, INC.  
FOR CITY ENGINEERING SERVICES

 This agreement made at the City of Oberlin, Ohio this 15<sup>th</sup> day of February, in the year 1994, by and between the City of Oberlin, hereinafter called the "City", and the firm of Gills, Guard & Johnson, Inc., of Fremont, Ohio, Consulting Engineers, hereinafter called the "City Engineer";

WITNESSETH:

WHEREAS, the City of Oberlin, Ohio from time to time is in need of both technical and Engineering assistance in the various City Departments, and;

WHEREAS, the City of Oberlin is required to prepare studies, estimates, plans and specifications for public works projects, and;

WHEREAS, the City of Oberlin has determined it to be in their best interest to obtain the continuing assistance of a Professional Engineer.

NOW THEREFORE, in consideration of these premises, and of the mutual comments herein set forth, the City and the City Engineer agree as follows:

I. SERVICES OF THE CITY ENGINEER

The City Engineer agrees to furnish and perform the various professional services as are herein defined as "ROUTINE SERVICES" and such additional professional services as are herein defined as:

- A. ROUTINE SERVICES: The following professional services shall be performed by the Engineer for the City, either as a matter of routine or upon request of such authorized representatives of the City as may be designated by the City Manager or Public Works Director.

It is the intent of the City to require the City Engineer to spend two (2) days as a minimum in the City acting as the City Engineer performing all duties as requesting the City with the following description.

1. Consultation with authorized representative(s) of the City, on matters of interest to the City.
2. When requested, prepare an estimated budget of engineering and/or technical services in sufficient detail for review and approval by the City.

3. Assistance in the preparation of applications for federal or other financial assistance in the form of very preliminary estimates of construction cost, minor engineering details, etc.
4. Preparation, maintenance and reproduction of standards for public projects.
5. Furnish general office and field technical advise to all departments of the City as required by the department and approved by the City.
6. Furnishing of preliminary investigations, studies and reports, preliminary general plans, preliminary cost estimates and field investigations including technical and engineering assistance in achieving solutions to paragraph A5, and presenting the solutions to the various governmental agencies involved.
7. Preparation of limited engineering plans and specifications as may be reasonably completed in the City offices using and directing City forces and using City resources as may be reasonably completed within the 16 hours weekly provided by the contract.
8. Review lot splits, operational records, procedures, State and Federal orders relative to the operation and safety of various City owned facilities and advise the City and the particular department of a proper course of action.
9. Shall review all plans and specifications prepared by Developers or others and submitted to City and requested by the City to be reviewed. The Engineer shall recommend as to the acceptability of these plans and provide such other services requested by the City.
10. It is mutually understood and agreed that the hours required to perform the duties under Section A in excess of the 16, shall be requested and agreed between the parties within the City offices shall be billed in addition to the retainer.

B. SPECIFICALLY AUTHORIZED SERVICES: The following professional services shall be performed by the Engineer for the City only after such services have been specifically authorized by due process.

1. Preparation of detailed construction plans, specifications, cost estimates and construction proposals for public improvements.
2. The computation and certification of the amount of special assessments for public improvements as may be required.

3. Provide property, boundary, right-of-way, topographic or other field surveys and all test borings or other soils investigations which are required for the proper design of the improvements.
4. The furnishing of additional surveying technical or engineering services as may be authorized by the City and not specified elsewhere herein.
5. Shall provide all other services requested by the City required to provide the City with the technical and professional assistance consistent with the intent of this agreement.
6. The City Engineer shall attend all regular Council or special meetings when specifically requested by the City Manager, Public Works Director and/or City Council. The City Engineer shall act as the City's professional representative in attendance.

C. CONSULTING SERVICES DURING CONSTRUCTION: Following the design and bidding of an improvement and upon authorization by the City and certification of funds therefore, the City Engineer will furnish consulting services during construction of the improvements. These services will include:

1. Placing copies of plans and specifications on view in the Engineer's office for information or equipment and material suppliers; and being available for interviews with prospective bidders during periods of advertisement for construction bids.
2. Assistance to the City in securing, tabulating and evaluating construction bids and furnishing engineering recommendations concerning the awarding of construction contracts.
3. Periodic visits to the site of the work by a duly qualified representative throughout the active construction periods for review of the progress and quality of the construction periods for review of the progress and quality of the construction work and consultation with City representative and maintenance of contract by telephone and correspondence in the interim between such visits.
4. Review and approval of all detailed construction drawings and all shop and erection drawings and other information submitted by contractors for compliance with design concept and requirements of the contract documents. This performance includes similar checking of laboratory, shop and mill reports of materials and equipment.

5. Furnishing supplementary detailed working drawings, specifications and written instructions as may be necessary from time to time throughout the construction period to interpret the contract plans and documents and to resolve actual field conditions encountered.
  6. Checking interim and final estimates for payment to contractors.
  7. Review of all operation and performance tests required by the contract specifications and submission of recommendations concerning completion and final acceptance of the construction work.
- D. RESIDENT ENGINEERING AND/OR OBSERVATION SERVICES: Upon written authorization, the Engineer shall furnish:
1. The services of a qualified Resident Engineer to observe, direct and coordinate any public improvements project or group of public improvement projects and observers.
  2. The services of a qualified observer(s) to maintain detailed observation of the construction project(s).

## II. PERFORMANCE BY CITY

This agreement is based upon the understanding that City, without expense to Engineer, will:

- A. Make available to the Engineer all information, reports and other data in its files that are pertinent to the work herein proposed.
- B. Furnish testing laboratory services for inspection and testing material and/or equipment as may be necessary to assure compliance with contract specifications.
- C. Provide all legal and/or land appraisal services which may be required.
- D. Provide any manpower and equipment assistance necessary in locating existing facilities and making them accessible for inspection, measuring or metering.

### III. FEES AND PAYMENTS

For the several services as noted herein, the City will pay and the Engineer agrees to accept as full compensation for such services, fee and charges in amounts and at time(s) as follows:

- A. RETAINER: The City shall pay the City Engineer a retainer fee of four hundred fifty dollars (\$450.00) per day for each day the City requests his presence per week with a minimum of two (2) days attendance and starting on February 15, 1994, continuing until modified by mutual consent from time to time by both parties.

The retainer shall be paid at the rate of four hundred fifty dollars (\$450.00) per day and shall require a minimum of sixteen hours of Engineers time each week for service under paragraphs A1 through A9.

Additional services beyond sixteen hours per week shall be paid at the rate of \$60/hour for the City Engineer and at a rate of salary plus 150% for overhead and profit for all other employees.

- B. ROUTINE SERVICES: Services as performed by the Engineer stipulated and defined in Section I "Services of the City Engineer" paragraph A1 through A9, the Engineer shall perform under the retainer, but within the sixteen hours weekly provided by the agreement. Additional hours week by shall be as per paragraph III A.
- C. SPECIFICALLY AUTHORIZED SERVICES: Services performed by the Engineer as stipulated and defined in Section I, paragraph B and C, shall be performed as a percentage of construction cost or a per diem basis at salary cost plus 150% to cover overhead and profit plus direct out-of-pocket expenses.

These shall be as follows:

- a. Paragraphs B2 and B5 per diem.
- b. Paragraph B3:
  - 1. Surveys - per diem
  - 2. Test borings or other soil investigations - invoice cost and 10% for administration.

- c. Paragraphs B1 the following schedule:

<u>Construction Cost</u>	<u>Rate</u>
50,000 and under	Per Diem
50,000 to 100,000	8.0% of Const. Cost
Next 100,000 to 250,000	7.0% of Const. Cost
Next 250,000 to 500,000	6.0% of Const. Cost
Balance over 500,000	5.0% of Const. Cost

- d. Paragraphs C1 thru C7 the following:

Schedule:

<u>Construction Cost</u>	<u>Rate</u>
50,000 and under	Per Diem
50,000 to 250,000	2.5% of Const. Cost
Next 250,000 to 500,000	2.0% of Const. Cost
Balance over 500,000	1.5% of Const. Cost

For attendance at meetings as required by paragraph B6, a charge of seventy dollars (\$70.00) per meeting to cover the City Engineer's basic cost unless otherwise agreed to in writing.

- D. RESIDENT ENGINEER AND/OR OBSERVATION SERVICES: Services performed by the Engineer as stipulated and defined in Section I, paragraph D, shall be performed on a per diem basis at salary cost plus 125% to cover overhead and profit plus direct out-of-pocket expenses.
- E. ADDITIONAL COPIES OF PLANS AND SPECIFICATIONS: It is mutually understood between the parties as part of the services by the Engineer, the Engineer shall furnish five (5) completed copies of plans and specifications of authorized construction projects to the City for its use. Additional copies of completed plans and specifications will be furnished at cost to the City by the Engineer.
- F. All subcontracts and services such as soil borings, etc. shall be paid at invoice cost plus 10% for administration.

- G. A complete list of estimated general per diem charges based on paragraphs B, C and D shall be submitted to the City on January 1st of each year this contract is in force and shall serve as a general guide for charges during the calendar year. The City shall notify the Engineer by February 1st as to the acceptability of the proposed rates. If no comments are forth coming to the Engineer in writing from the City on or before February 1st, the Engineer shall assume the rates are acceptable to all parties.

Payment for the aforesaid professional services are to be paid monthly by the City upon receipt of a detailed statement of time and expense from the Engineer.

#### IV. REPRESENTATIVES

- A. The City shall choose a representative from various candidates submitted by Gills, Guard and Johnson, Inc. which will act as the City Engineer.
- B. The City shall designate an individual to serve as the City's Engineering and Projects Manager.
- C. Either party may modify its representative with written notice and approval of the other.

#### V. ENGINEERS RESPONSIBILITY

- A. The Engineer shall perform professional engineering services in a manner consistent with the level of care and skill exercised by professional engineering consultants performing similar services at the time and location at which the services are to be performed, with due consideration to the time and effort incorporated herein.
- B. Include within the obligation set forth in paragraph A the duty to incorporate and/or conform to regulatory and other legal requirements and standards applicable to the work product(s) prepared for the project to the extent that such requirements are currently and generally understood and applied.
- C. Be consistent with the standard of care set forth in paragraph A and shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all design, drawings, specifications, reports and other services furnished. The obligation is limited by paragraph F of this section.
- D. Gills, Guard and Johnson, Inc. shall be and remain liable in accordance with applicable law to the City for damages incurred by the City caused by the Engineers breach of its contractual obligations regarding the performance of these services.



- E. Gills, Guard and Johnson, Inc. shall be and remain obligated, in accordance with applicable law, to hold the City harmless, either through indemnification or contribution, against the claims made by third parties for injuries to persons and/or property to the extent that such claims were caused by the negligence of Gills, Guard and Johnson, Inc.
- F. Gills, Guard and Johnson, Inc. shall not be responsible to the City or any third party for any errors, omissions or other deficiencies attributable to the City, City furnished data, or any third party, upon all of which the Engineer shall have the right of rely.

## VI. GENERAL CONSIDERATIONS

- A. There shall be no assignment of this agreement without written consent of the City.
- B. The Engineer agrees not to discriminate against any employee or applicant for employment because of race, religion, color or natural origin, including but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. It is mutually understood and agreed that this Agreement constitutes a contract for employment of professional services of a highly specialized and technical nature, and the Engineer recognizes this responsibility to the City. The City may terminate this Agreement upon thirty (30) days written notice by registered mail. In turn, the City recognizes its responsibility to the Engineer to perform in accordance with the terms herein and should the City materially breach its obligations as set forth herein, the Engineer may terminate this Agreement by the same means as provided for the City.
- D. It is further mutually understood and agreed that the Engineer shall not be entitled to any damages or compensation by reason of the City's termination other than as herein specified; and that all records, manuals, forms, drawings, schedules, field notes, lists, assessments, surveys, specifications, designs and other data pertinent to the work specified in this contract are and shall remain the sole property of the City.
- E. The City shall pay all permit and review fees as may be required by various agencies. The City may request the Engineer to pay the required fee with the understanding the City will be billed for the fee(s) at cost.
- F. Nothing in this agreement shall be construed as to appear in litigation or to prepare evidence for such in the City's behalf, except in consideration of additional compensation.

G. It is further mutually understood and agreed between the parties that the Engineer is limited in its liability to the extent that insurance is available and reasonably priced in the marketplace, and the liability is therefore limited to the extent insurance coverage to the Engineer is able to obtain.

H. Documents prepared pursuant to this Agreement are instruments of service solely for the project for which they were prepared.

Any reuse or adaptation of these documents by City in another project shall be at the sole risk of City, who shall indemnify Gills, Guard and Johnson, Inc. for any and all costs, loss expenses and/or damages arising out of such reuse or adaptation.

I. Any provisions of this Agreement which are determined to violate any law or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. Gills, Guard and Johnson, Inc. and the City shall in good faith attempt to replace any invalid or unenforceable provisions of such an Agreement with provisions that are valid and enforceable and that express as nearly as possible the intention of the original provisions.

J. This Agreement is solely for the benefit of Gills, Guard and Johnson, Inc. and the City of Oberlin and no third parties shall have any rights or benefits pursuant to this Agreement.

K. None of the terms or conditions of this Agreement may be irrevocably waived by either party except in a specific writing signed by the party to be bound. No waiver by either party of any provision or condition of this Agreement shall be construed or deemed to be a waiver of any other provision or condition herein, or as a waiver of any subsequent breach of the same provision or condition unless expressly so stated in the written waiver.

L. It is mutually understood and agreed that the included agreement is not an exclusive for work to the engineer, but the City has the option to either hire an outside Consultant for specific projects or to instruct the City Engineer to perform the required professional services under the terms of this contract and after appropriate action and authorization by the City as required by Law.

M. It is mutually understood and agreed that all invoices rendered under the terms of this agreement are due and payable within thirty (30) days of receipt.

IN WITNESS WHEREOF, The parties hereto have affixed their hands at the City of Oberlin, Ohio this 15<sup>th</sup> day of February, 1994.

CITY OF OBERLIN, OHIO

BY: 

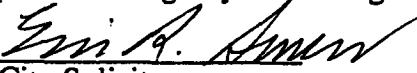
GILLS, GUARD & JOHNSON, INC.

BY: 

James R. Gills, President

CERTIFICATION OF LEGALITY

I, Eric R. Severs, hereby approve the legality of this Agreement.

  
City Solicitor  
City of OBERLIN, Ohio