

ORDINANCE NO. 06-42 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ARCADIS G&M OF OHIO, INC., OF AKRON OHIO, FOR AN INFRASTRUCTURE PLANNING STUDY FOR THE US 20/SR 58 CORRIDOR 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 ARCADIS G&M of Ohio, Inc., of Akron, Ohio, for an infrastructure planning study for the US 20/SR 58 corridor in an amount not to exceed \$102,000.00, a copy of the proposed contract being 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 public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

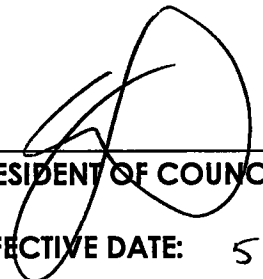
"to proceed with an infrastructure planning study in an area subject to strong development pressure at the earliest possible date",

and shall take effect immediately upon passage.

PASSED: 1st Reading – May 1, 2006
2nd Reading – May 15, 2006 (E)
3rd Reading –

ATTEST:


CLERK OF COUNCIL (Interim)


PRESIDENT OF COUNCIL

POSTED: 5/16/2006

EFFECTIVE DATE: 5/16/2006

AGREEMENT FOR ENGINEERING SERVICES

THIS IS AN AGREEMENT, made and entered into this 16th day of May 2006, by and between the **CITY OF OBERLIN**, hereinafter called the "**OWNER**", and **ARCADIS G&M OF OHIO, INC.**, Consulting Engineers, of Akron, Ohio, their successors or assigns, hereinafter called the "**ENGINEER**".

WITNESSETH THAT:

Under the authority of Ordinance 06-42, passed May 15, 2006, the OWNER agrees to employ the ENGINEER to furnish engineering services in connection with the **US 20/SR 58 Infrastructure Planning Study**.

The OWNER and the ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by the ENGINEER and the payment for those services by the OWNER as set forth below.

The ENGINEER shall serve as the OWNER's professional engineering representative and give professional engineering consultation and advice to the OWNER during the performance of services hereunder.

SECTION 1 – BASIC SERVICES OF THE ENGINEER

After execution of this Agreement by the OWNER, the ENGINEER shall:

1.1. Perform the following tasks representing our technical approach in the preparation of an Infrastructure Planning Study of the US 20/SR 58 Corridor. The Study includes the area defined in Exhibit A of the proposed Annexation Agreement and additional lands located between this area and Hamilton Street. The primary focus of this Plan will be on water and sanitary sewer service, with a review of the City's preliminary plans for electrical power distribution improvements also included. A key element of this Plan is development of financial alternatives to support the planned infrastructure.

1. Meet with City representatives to kick-off the project. As part of this meeting ARCADIS would:
 - Introduce project team members and discuss responsibilities
 - Establish communications protocol
 - Present a study development schedule identifying interview dates, progress meeting dates and draft review dates
 - Request available infrastructure information and planning documents
2. As part of kick-off meeting, review the existing infrastructure with City representatives to generally establish available capacities, identify existing limitations, understand operations and maintenance issues and currently planned capital improvements. The review will include utility atlases, field reconnaissance and interviews with city representatives including superintendents responsible for each infrastructure component. Identify the approximate useful life of each infrastructure component. These review steps will be performed for:

- Electrical distribution
 - Water distribution
 - Sanitary sewers
 - Storm water
 - Streets and roads
3. Obtain from the City current utility and roadway mapping in AutoCad compatible file format. Coordinate with City Engineering Department the merging of select drawings to provide ARCADIS with current maps for each utility in the study area. Produce planning maps for water, sanitary sewer, storm sewer, power distribution and roadways. It is understood at this time that the following can be made available in AutoCad or convertible format:
 - Zoning map and Pittsfield Township Annexation agreement map
 - Water
 - Sanitary sewer
 - Storm sewer
 - Electrical distribution
 - Streets and roads
 - WalMart Development drawings
 4. Review demographic statistics and current and predicted land-use patterns available in the City Comprehensive Plan, Update 2004, and amended in the Proposed Annexation Agreement with Pittsfield Township. Relate these patterns and predictions to the relative capacities and useful life of existing infrastructure.
 5. Meet with City representatives to discuss anticipated land uses and current development requests being made. And, clearly define the ultimate service area for each infrastructure component. Based on this input and information, develop future demands for each infrastructure system based on anticipated development through to build-out. Estimate the demands at a 20-year planning level. Summarize the 20-year and “ultimate” build-out demands in tabular format and in comparison to existing demands.
 6. Review available planning studies for the water and wastewater treatment facilities. Consider any proposed capacity improvements or service changes in this Study.
 7. Determine necessary improvements for water supply and service to the study area. This will include water transmission, major distribution and storage (It may be necessary to construct an elevated water storage tank in the area and an express water main directly from Parsons Road to provide adequate service to this developing area.) Obtain from the City information concerning the WalMart fire system and any other planned or existing systems in the study area. Our hydraulic modeler will provide two or more hydraulic scenarios to the City to coordinate running the computer hydraulic analysis for these alternatives. This will insure adequate supply pressure and volume. Alternatives will be screened and a final, comprehensive alternative will be developed and presented.

8. Determine necessary improvements for sanitary sewer service to the study area. This will include trunk sewers and/or vacuum based, small diameter systems, lift stations and force mains (The City's two trunk sewers have a history of being hydraulically overloaded during wet weather; their structural integrity may also be a concern. The sewers flowing from south to north through the city are also of limited capacity. It may be necessary to construct a new trunk sewer following a route generally east and north directly to the WWTP to adequately serve this area. Available capacity information from the City will be reviewed.) Two trunk main alternatives for conveying the additional sewage to the City's existing treatment facility will be developed and presented. Planning, construction and financing issues will be evaluated.
9. Review the Comprehensive Plan, the proposed ODOT SR 58/US 20 intersection improvement design and any other relevant planning/design plans, studies and estimates (information supplied by the City). Obtain from the City any available electronic format plans, GIS or aerial mapping which could be used for planning. Have at least one field investigation of the project area. Meet with the City and ODOT (phone conferences when possible) to determine goals, expectations and other requirements for potential improvements, including any potential environmental complications that could impact feasible alternatives. Define the project area limits. Determine the existing and proposed land use for the project area. Prepare a traffic capacity analysis for the existing and proposed roads in the project area, considering land use and demographic data. Develop a conceptual design and prepare line diagrams to quantify proposed improvements to arterial roadways and intersections, to be compatible with the anticipated study area development. General estimates of project costs will be developed for the design concept and will be presented as part of the final report. It will be determined if there are collaborative opportunities with other agencies, especially ODOT, associated with the proposed concept. Alternatives for sources of funding will be identified for the City's consideration.
10. Present concepts for storm water conveyance routes and facilities to support the anticipated study area development. This will include a general review of the existing topography and drainage courses to identify direction of flow from various sub-watersheds. (Pre- and post run-off conditions will not be calculated.).
11. Review City (OMLPS) planned improvements to the electrical power distribution grid to support the anticipated study area development. Ralph Tyler Companies will perform this review of the OMLPS led effort. A review of OMLPS-developed substation loads (for peak demand and power factor to determine load densities and capacities of the 69kV and 12kV systems for the entire City grid) will be completed and comments provided. A framework for a system expansion plan will be provided to OMLPS to determine load growth potential and the allocation of costs between existing and/or proposed rate classes.
12. Develop tables to present the capital improvement alternatives for each infrastructure component and the associated time frame for implementation.

13. Develop a table and figures representing the recommended alternative for each infrastructure. The table will reflect the implementation schedules for each improvement to provide a comprehensive and coordinated plan for the study area. The figures will provide a graphical representation of this comprehensive plan.
14. Review past funding mechanisms utilized by the City and associated City ordinances and policies pertaining to financing capital projects for each infrastructure component. Hold a workshop with our Financial Specialist and City representatives to explore all options. Develop a summary and resource list of funding mechanisms for each component including new and alternate sources. This meeting may be performed simultaneously with the Step 6 meeting.
15. For the water supply, sanitary sewer and electrical power distribution, consider the concepts of special assessments, impact fees, customer connection fees and tax increment financing. Special assessments, impact fees and tax increment financing may also be considered for the streets and storm water systems.
16. Develop a recommended infrastructure funding plan for the proposed US 20/SR 58 Corridor improvements that will:
 - Provide the necessary financial resources to support the plan
 - Fairly allocate the cost burden across the study area beneficiaries, i.e., landowners, developers
 - Recognize any value or benefit to larger portions of the community and proportionately distribute costs to those beneficiaries
 - Provide a reasonable time frame and annual cost burden to those affected

Identify necessary changes to ordinances and policies to support the plan and/or provide for the 'best' overall plan will be presented. (Effort associated with assisting the City with ordinance and policy revisions would be considered and additional scope of services as it may involve additional meetings with the City law department and/or bond counsel, etc.)

17. Draft study sections for each infrastructure component will be provided to City staff at key stages of development to solicit input. Ten (10) copies and one electronic copy of a complete draft of the study will be provided for City administration and City staff for review. Review comments will be encouraged and revisions will be made accordingly prior to submission of a second draft to the Public Utilities Commission, Planning Commission and City Council.
18. Within two weeks following receipt of comments on the completed draft study, make revisions and submit twenty-five (25) copies and one electronic copy of the final report to the City for distribution and review by the Public Utilities Commission, the Planning Commission and City Council.

19. Prepare and present the study at up to two City scheduled meetings. A digital presentation augmented with poster boards is anticipated. The presentation will include an overview of the anticipated infrastructure and will focus on funding solutions. Thus, the project manager and financial consultant will be presenting. Following these meetings, make final revisions to the study and provide (5) five copies and one electronic copy to the City.

SECTION 2 – ADDITIONAL SERVICES

- 2.1. If authorized in writing by the OWNER, the ENGINEER will provide Additional Services related to the Assignment or furnish general consultation services as may be requested from time to time by the OWNER.
- 2.2. In addition to the services which the ENGINEER agrees to furnish the OWNER under Section 1, the ENGINEER may also furnish Design, Bidding and Construction Phase services for specific projects. All of such services, however, will be furnished by the ENGINEER only after execution of a separate Agreement with the OWNER.

SECTION 3 – OWNER'S RESPONSIBILITIES

The OWNER will:

- 3.1. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the ENGINEER's services, including previous reports and any other data relative to the services to be performed which reports and data the ENGINEER may rely on in the performance of his services.
- 3.2. Provide all criteria and full information as to OWNER's requirements for the ENGINEER's services, including objectives and constraints, and any budgetary limitations; and furnish copies of all standards which OWNER will require.
- 3.3. Arrange for access to and make all provisions for the ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 3.4. 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.
- 3.5. Making the appropriate staff available for the agreed upon meetings and workshops when reasonably notified and at an agreed upon date and time. And, providing a meeting place within the City limits for those meetings and workshops.

3.6. Identifying known agreements, documents, data, maps and drawings and providing copies of same to ARCADIS, assuming the City has possession or legal rights to copies.

3.7. Coordinating and paying for any water system computer modeling by another consultant that is mutually agreed between the City and ARCADIS as being necessary for the development of water system improvement alternatives.

SECTION 4 – PAYMENTS TO THE ENGINEER

4.1 For the services to be performed by the ENGINEER under Section 1, the OWNER agrees to pay the ENGINEER a cost-reimbursement multiplier fee based on Payroll Costs involved in performing the services, and as defined in Paragraph 4.3., plus 95% thereof, plus Reimbursable Expenses as defined in Paragraph 4.4 up to a not-to-exceed fee of **\$102,000**.

4.2. For additional services authorized by the OWNER under Section 2, the OWNER agrees to pay the ENGINEER a cost-reimbursement multiplier fee based on Payroll Costs involved in performing the services, and as defined in Paragraph 4.3., plus 95% thereof, plus Reimbursable Expenses as defined in Paragraph 4.4.

4.3. Payroll Costs mean salaries and wages paid to the ENGINEER's personnel engaged directly in performing the services plus the current cost of customary and statutory benefits.

4.4. Reimbursable Expenses mean the actual expenses incurred directly in connection with any phase of the Project 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, Specifications and similar Project related items.

4.5. Invoices for ENGINEER's Services and Reimbursable Expenses will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER monthly. Invoices are due and payable on receipt.

4.6. 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.

4.7. 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 5 – PERIOD OF SERVICE

5.1. ENGINEER's Services for a report under this Agreement will be considered completed at the earlier of (1) the date when the Report is accepted by OWNER or (2) thirty days after the date when the Report is submitted for final acceptance, plus in each case, if applicable, such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Report. **The draft Report will be submitted by September 30, 2006.**

SECTION 6 – GENERAL CONSIDERATIONS

6.1. **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 circumstances at the same time and in the same locality.

6.2. **Opinions of Probable 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 generally familiar with the industry.

6.3. **Reuse of Documents.**

6.3.1. 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.

6.3.2. 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 media files will be at the user's sole risk.

6.3.3. When transferring documents in electronic media format, ENGINEER makes no representation 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.

6.3.4. 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 the 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.

6.3.5. 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.

6.4. ***Owner's Representative.*** The City Manager, or his designated representative, shall act as the OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority, to the extent permissible by law and by OWNER's procedures, to transmit instructions, receive information, interpret and define the OWNER's policies and decisions with respect to the ENGINEER's services under this Agreement.

6.5. ***Hazardous Environmental Condition.***

6.5.1. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

6.5.2. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

6.5.3. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

6.6. ***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. If they are unable to resolve their differences the OWNER and ENGINEER agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation (prior to exercising their rights under other provisions of this Agreement, or under law).

6.7. ***Allocation of Risks – Indemnification.***

6.7.1. 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.

6.7.2. 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.

6.7.3. *Limitation of ENGINEER's Liability.*

6.7.3.1. 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.

6.7.3.2. *ENGINEER's Liability Limited.* 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 compensation paid by the OWNER for the Project to the ENGINEER.

6.8. *Successors and Assigns.*

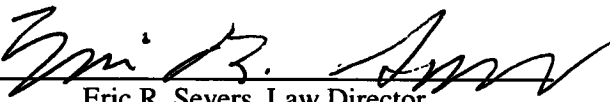
6.8.1. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

6.8.2. Any notice required under this Agreement will be in writing, addressed to the appropriate party and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

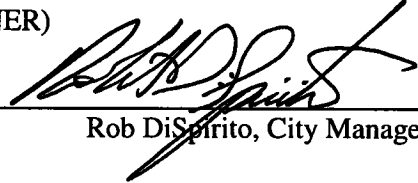
6.9. **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

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


Eric R. Severs, Law Director

CITY OF OBERLIN, OHIO
(OWNER)

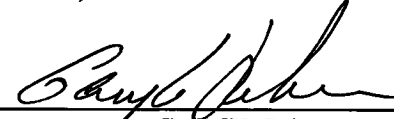
By 
Rob DiSpirito, City Manager

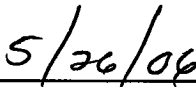
CERTIFICATION OF AVAILABILITY OF FUNDS

~~\$104,000~~
\$162,000
I hereby certify that the \$104,000 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.


I. Salvatore Talarico, Finance Director

ARCADIS G&M OF OHIO, INC
(ENGINEER)


Gary W. Johnson
Executive Vice President
Great Lakes Area Manager


Date