

Resolution 103-2024

Agreement for Professional Engineering Consultation Services

Cuyahoga County, Ohio

Be it Resolved by the Township Trustees of Olmsted Township, that

WHEREAS, the Olmsted Township Board of Trustees has a need for professional and engineering services to be provided in conjunction with the Olmsted Township Building Department, and

WHEREAS, the Olmsted Township Board of Trustees has worked with Stephen Hovancsek & Associates, Inc. on multiple projects, and after careful thought and consideration has made a determination, and

WHEREAS, the Stephen Hovancsek & Associates, Inc. will be responsible for working with the Building Department and providing timely service as outlined in the attached agreement for engineer and professional services, marked Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Olmsted Township Board of Trustees has entered into engineer and professional service agreement with Stephen Hovancsek & Associates, Inc. until October 17, 2025, pursuant to the Agreement for Professional services submitted, and marked Exhibit A, and attached hereto as if fully rewritten herein.

BE IT FURTHER RESOLVED, that it is hereby found and determined that all formal actions of the Board of Trustees concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and any of its committees that resulted in such formal action, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted the 17th day of October, 2024

Attest: Brian W. Guttler
Township Fiscal Officer

R. Lee Jr.
Thomas D. L.
Jan J. Jr.
Township Trustees

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of October 17, 2024 ("Effective Date") between
Olmsted Township ("Owner")
and Stephen Hovancsek & Associates, Inc. ("Engineer")

Engineer agrees to provide the services described below to Owner for Misc. Engineering Consulting Services ("Project").

Description of Engineer's Services: Review residential and commercial topographic site plans submitted, final grade Inspections, investigation of complaints (as referred), coordination with the Building and Service Dept.
As requested, meeting with and coordination with federal, state and county agencies when required or requested by the Township .

(See Attached scope of services - Appendix I)

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of 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 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, 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 other related

charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

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

I. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

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 professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 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 for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. 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 or 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.

7.01 General Considerations

A. 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 the subject profession practicing under similar circumstances 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 and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. 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 between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on

interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If 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 consultants or contractors 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.

8.01 Total Agreement

A. This Agreement (consisting of pages I to 4 inclusive together with any expressly incorporated appendix), 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.

APPENDIX I (Modified)

Attachment to form of agreement between Olmsted Township and Stephen Hovancsek & Associates, Inc. (10/08/2024)

Scope of Services:

DESCRIPTION	FEE BASIS
1. Residential Topographic review, site visit and approval (Initial submittal) Hourly Rate charged for resubmittals	\$200/ initial submittal review
2. Commercial Topographic review and approval (Initial and final submittal)	\$130/hour
3. Final Grade Inspections (residential) Hourly Rate charged for re-inspections	\$250/unit/initial approval visit
4. Final Grade Inspections (Commercial) Hourly Rate charged for re-inspections	\$130/hour
5. Monthly retainer	\$1,000 month {LUMP SUM}
6. Misc. services (as requested)	\$130/hour Professional Engineer \$130/hour Professional Surveyor \$75/hour AutoCAD Services \$80/hour Construction Manager \$46/hour Construction Observer \$135/hour 2-Man Field Crew \$185/hour 3-Man Field Crew

Retainer Fee is based on an estimated 10 hours per month expended by the Engineer in performing any of the following tasks:

- A. General coordination or meetings with other governmental agencies (as requested)
Not including preconstruction meetings or construction status meetings (included in retainer scope)
- B. Coordination with County, State or Federal Agencies not related to developments (included in retainer scope)
- C. General consultation with Township Officials related to projects, regulations or
Code updates (included in retainer scope)
- D. Providing and update of project status to BOT, Service Director or Building Commissioner
(included in retainer scope)

Any retainer services totaling in excess of 10 hours per month will be billed under the hourly rate for Misc. Additional Services in Item 6 above. Engineer will notify the Township prior to billing.

Billing for services will be accompanied by a detailed summary of hours, time of services and tasks performed for pass through charges for all hours charged for services listed under Retainer Fee as described in A to D.

9.01 Payment (Hourly Rates Plus Reimbursable Expenses)

A Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

I. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.

2. Engineer's Standard Hourly Rates are attached as part of Appendix 1.

B. The Engineer's compensation is conditioned on the time period of the approval of this agreement which is **12** months.

Should the time to be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

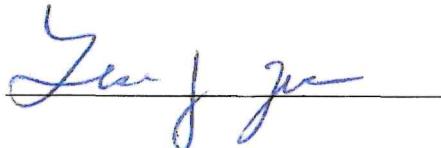
OWNER:

By:

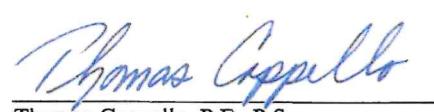


Trustee Trustee

Date Signed:



ENGINEER:



Thomas Cappello, P.E., P.S.

Title:

President

Date Signed: 10/22/2024

License or Certificate No. and State COA. 02208

Address for giving notices:

7900 Fitch Road

Olmsted Township, Ohio 44138

Address for giving notices:

Stephen Hovancsek & Associates, Inc.

2 Merit Drive

Richmond Heights, Ohio 44143

