

First Reading: July 16, 2009
Second Reading: dispensed

RESOLUTION 2009 - 93

A RESOLUTION APPROVING A CONTRACT FOR A GEOTECHNICAL EXPLORATION STUDY FOR THE MONTGOMERY ROAD SIDEWALK PROJECT, DISPENSING WITH THE SECOND READING AND DECLARING AN EMERGENCY

WHEREAS, the Board of Township Trustees has contracted for the design, permitting, bidding, surveying, and construction administration for new sidewalks on Montgomery Road from Galbraith Road to Sturbridge Drive in the Township (the "Montgomery Road Sidewalk Project"); and

WHEREAS, the Ohio Department of Transportation has required that the project receive a geotechnical exploration study for the required retaining walls along Montgomery Road; and

WHEREAS, the Board wishes to proceed and obtain the geotechnical exploration study in order to continue with the Montgomery Road Sidewalk Project

NOW THEREFORE, BE IT RESOLVED by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The attached contract with Thelen Associates, Inc. is hereby approved and the Township Administrator is hereby authorized and directed to execute the contract on behalf of the Board.

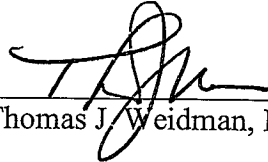
SECTION 2. The Board of Township Trustees of Sycamore Township, by at least two-third vote of all of its members, dispenses with the requirement that this Resolution be read on two separate days and authorizes its passage upon one reading.

SECTION 3. This Resolution is hereby declared to be an emergency measure, necessary for the preservation of the public peace, health, welfare, and safety of the Sycamore Township. The reason for the emergency is to provide for the immediate and continuing improvements to the sidewalks along Montgomery Road.

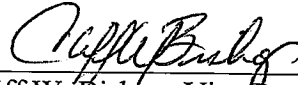
VOTE RECORD:

Mr. Bishop YES Mr. Kent YES Mr. Weidman YES

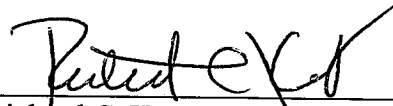
PASSED at a meeting of the Board of Township Trustees this 16th day of July, 2009.



Thomas J. Weidman, President



Cliff W. Bishop, Vice President



Richard C. Kent, Trustee

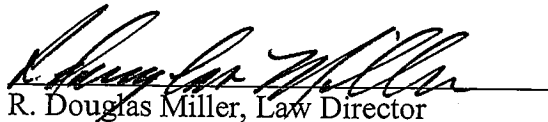
AUTHENTICATION

This is to certify that this Resolution was duly passed and filed with the Sycamore Township Fiscal Officer, this 16th day of July, 2009.



Robert C. Porter, III
Sycamore Township Fiscal Officer

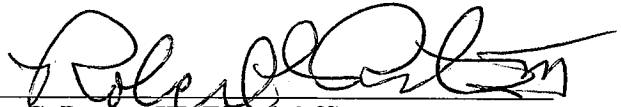
APPROVED AS TO FORM:



R. Douglas Miller, Law Director

PROOF OF PUBLICATION

I hereby certify that I have published this Resolution on July 21, 2009 by posting in the five most public places as established by the Board of Township Trustees such places being the Township Hall, Bob Meyer Park, Bechtold Park, North Sycamore Recreational Facility, and the North Fire Station, Station 93.



Robert C. Porter, III, Fiscal Officer,
Sycamore Township



THELEN ASSOCIATES, INC.

Geotechnical • Testing Engineers

• 1780 Carillon Boulevard, Cincinnati, Ohio 45240-2795 / 513-825-4350 / Fax 513-825-4756

www.thelenassoc.com

Offices
Erlanger, Kentucky
Cincinnati, Ohio
Dayton, Ohio

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July 13, 2009

Sycamore Township
8540 Kenwood Road
Sycamore Township, Ohio 45236-2010

Attention: Mr. Rob Molloy

Re: Proposal-Agreement N29246
Geotechnical Exploration
Proposed Retaining Walls
Montgomery Road Sidewalk, Phase II
Sycamore Township, Ohio

Dear Mr. Molloy:

Pursuant to your July 1, 2009 request for proposal, we are pleased to submit to you this Proposal-Agreement for completing a geotechnical exploration for the proposed retaining walls associated with the Montgomery Road Sidewalk, Phase II project in Sycamore Township, Hamilton County, Ohio.

We have reviewed the project plans prepared by Brandstetter Carroll, Inc. dated March 2009 that were provided for our use in preparing this proposal. It is our understanding that this is a "LOCAL let" project not an "ODOT let" project, therefore our proposed drilling and laboratory testing services will be performed in accordance with the Ohio Department of Transportation (ODOT) Specification for Geotechnical Explorations (SGE). A standard written geotechnical report will be issued but is not required to prepare the geotechnical report in ODOT graphical format. Also, our services will not include an ODOT red flag study nor a presentation on historical data.

We understand that the project will consist of sidewalk and curb improvements, new curb ramps and three (3) proposed retaining walls located along Montgomery Road between Galbraith Road and Sturbridge Drive. The three (3) proposed retaining walls

will range from 3 to 5 feet in height and will be located at Station 19+00 and between Stations 10+50 to 12+00 and Stations 20+50 to 27+50. The walls will measure approximately 50 feet, 150 feet and 700 feet in length as shown on the referenced plan.

The main purposes of our services is to determine the general subsurface profile in the area of the proposed retaining walls and to relate the engineering properties of the soils, that is their classification, strength and compressibility characteristics, to the proposed retaining wall design. Based upon our experience as Geotechnical Engineers and ODOT Specifications, we propose a scope of services including the following.

1. Preparation of a proposed test boring locations plan to be reviewed and approved by ODOT.
2. Perform eight (8) test borings, each extending to a depth of 12.5 feet. The boring locations and depths were determined in general accordance with ODOT specifications. This Proposal-Agreement is based upon Thelen Associates, Inc. marking the proposed test boring locations in the field and Brandstetter Carroll, Inc. obtaining the as-drilled test boring locations and ground surface elevations within one (1) week of the completion of our field drilling services.
3. Perform field and laboratory tests for use in evaluating the classification, strength, compressibility and subgrade support parameters of the subsurface soils. Laboratory testing will be performed in accordance with ODOT specifications. Laboratory tests will be shown on the Test Boring Logs, which will be prepared in accordance with the ODOT (SGE).
4. Make an engineering evaluation of the accumulated data, develop design criteria and recommendations, and prepare a written report outlining the field exploration, laboratory test results and the engineering conclusions. The report will be issued in standard written format. A graphical

geotechnical report is not required and is not included in our scope of services.

5. Distribute reports in electronic "PDF" format to Sycamore Township (in both paper and electronic copies) and Brandstetter Carroll, Inc.

Should we discover unusual or erratic subsurface conditions, we will contact you to discuss any necessary changes prior to expanding our scope of service.

The details of our services are outlined on the fee schedule shown on the accompanying revised Proposal-Agreement form. Our services include contacting the Ohio Utilities Protection Service for utility clearance, however, all private utilities need to be marked by the individual property owners prior to our field services. Our fees do not provide for repair of lawns, ground and/or vegetation disturbed during the drilling operations. The test borings will be backfilled with a cement-bentonite grout in accordance with ODOT Specifications.

Our services can generally commence within approximately one (1) week after receipt of authorization to proceed and upon receipt of the plan and profile drawings, weather and ground conditions permitting. Normally an allowance of four to six (4 to 6) weeks following completion of field work should be allotted for submittal of an ODOT geotechnical report for this type of project, provided there are no unforeseen delays.

In accordance with ODOT specifications, samples obtained from the test borings will be retained until the completion of construction. Continued storage or other disposition of samples can be made at your expense upon written request.

The scope of our geotechnical engineering services does not include any environmental assessment or investigation for the presence or absence of wetlands or hazardous or toxic materials in the soil, bedrock, surface water, groundwater or air, on or below or around the site.

If this Proposal-Agreement meets with your approval, please sign the Proposal-Agreement form and return a signed copy to our office to serve as our authorization to proceed. If you provide verbal or another form of authorization to proceed, it is understood that you are in agreement with all of the terms and conditions of this revised Proposal-Agreement and our services will be provided based on that understanding.

Enclosed herewith is a reprint of "Important Information About Your Geotechnical Engineering Proposal" published by ASFE, Professional Firms Practicing in the Geosciences, which our firm would like to introduce to you at this time.

We thank you for this opportunity to provide our fee schedule and estimate of the costs of the proposed geotechnical services. We look forward to being your Geotechnical Consultants for the project. If you have any questions concerning the enclosed information, or if we may be of any other service to you, please do not hesitate to contact us.

Respectfully submitted,
THELEN ASSOCIATES, INC.



Steven D. Proffitt
Marketing Associate

SDP:krb

Enclosure: ASFE Information

GENERAL CONDITIONS

To assure a clear understanding of all matters related to our mutual responsibilities, the following conditions for the technical services by Thelen Associates, Inc., hereinafter called Thelen, are made a part of this proposal-agreement.

- 1) Without the Client's authorization, the fee schedule rates shall be held fixed until sixty (60) calendar days after the date of this proposal-agreement.
- 2) The Client will be invoiced for services rendered, payable upon receipt, unless otherwise agreed. The Client shall pay an additional charge of one-and-one-half percent (1.5%) of the invoiced amount per month for any payment not received by Thelen within thirty (30) calendar days of date of invoice. The Client shall pay any attorney's fees or other costs incurred by Thelen to collect any delinquent amount.
- 3) The Client shall place at the disposal of Thelen all available information pertinent to the project site including boundary, topographic, and utility surveys, probing and subsurface exploration reports, field and laboratory tests, schematic layouts, sketches, cross sections, site plans, the known or possible presence of hazardous materials, and any other information pertinent to the existing and proposed conditions upon which Thelen can rely as background data in completing the technical and/or professional services under this proposal-agreement. ~~The Client agrees to waive any claim against Thelen, and to defend and hold Thelen harmless from any claim or liability for injury or loss allegedly arising from Thelen damaging underground utilities or other man-made objects that were not properly located on plans furnished to Thelen. Client further agrees to compensate Thelen for any time spent or expenses incurred by Thelen in defense of any such claims, in accordance with Thelen's prevailing fee schedule and expense reimbursement policy.~~
- 4) The Client shall guarantee ingress and egress upon public and private lands and shall obtain approval of all governmental authorities as required for Thelen or its agents to perform its work under this proposal-agreement.
- 5) The Client understands that Thelen's services under this proposal-agreement are limited to geotechnical services and do not include any environmental investigation or assessment, and that Thelen has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials, including notifying any governmental body or the potentially affected public. The existence or discovery of hazardous materials constitutes a changed condition under this proposal-agreement.
- 6) In subsurface explorations and materials testing, the actual conditions or characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations and explorations have been made or testing performed. Because of these uncertainties, changed or unanticipated conditions may occur that could affect the Client's estimated or actual costs, for which Thelen is not responsible. If Thelen discovers such conditions or circumstances that it had not anticipated, Thelen will notify the Client in writing of any such changed conditions. The Client and Thelen agree that they will then negotiate in good faith the terms and conditions of this proposal-agreement. If Thelen and the Client cannot agree upon amended terms and conditions within thirty (30) calendar days after notice, Thelen may terminate this proposal-agreement and be compensated for its work in progress.
- 7) The Client recognizes that he is solely responsible for the selection of the general contractor, subcontractors, sub-subcontractors, materialmen and others (herein collectively the Contractor), and that Thelen is not responsible for the construction means, methods, techniques, sequences or procedures incidental to the Contractor's work, nor for the Contractor's obligations for project site safety matters, safety programs and measures, including but not limited to Occupational Safety and Health Act (OSHA) regulations, nor is Thelen liable for defects or deficiencies in the Contractor's work. Thelen will be available for consultation if Client believes the Contractor's work is deficient in any manner.
- 8) The Client shall give prompt written notice to Thelen whenever the Client observes or otherwise becomes aware of any defect in the project. The Client and Client's personnel, Contractors and Subcontractors shall promptly report to Thelen any defects or suspected defects in Thelen's work in order that Thelen may take prompt, effective measures which in Thelen's opinion will minimize the consequences of a defect in service.
- 9) If retained as the Client's representative for construction review services, Thelen will provide technical and/or professional personnel who will make observations and run field tests as the Geotechnical Engineer deems necessary, and thereby provide an opinion as to whether the Contractor's work is proceeding in accordance with the project specifications. On the basis of Thelen's on-site observations and tests, Thelen will assist the Client in assessing the progress of the Contractor's work. Thelen cannot guarantee against defects and deficiencies in the work of the Contractor occurring in Thelen's absence from the site.

GENERAL CONDITIONS, Continued

- 10) All documents, including reports, logs, drawings, field notes, laboratory test data, calculations, estimates and other documents prepared by Thelen as instruments of service shall remain the property of Thelen. The Client agrees that the Client and his agents will use these documents solely in connection with the project, and not for the purpose of making subsequent extensions or enlargements thereto, and he will not sell, publish or display them publicly. Re-use for extensions of the project, or for new projects, shall require written permission of Thelen and shall entitle Thelen to further compensation at a rate to be agreed upon by the Client and Thelen. Thelen retains the rights of ownership of any patentable or copyrightable concepts arising from Thelen's services.
 - 11) Thelen makes no warranty, either expressed or implied, as to its findings, recommendations, specifications, drawings or professional advice, except that the same will be promulgated after being prepared in accordance with the generally accepted professional engineering principles and practices in the field of civil engineering at this time, including but not limited to geotechnical engineering and materials testing. Thelen's services will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Thelen will perform its professional services in a manner consistent with sound engineering practices.
 - 12) All legal action by either party against the other for breach of this proposal-agreement or any addendum to it, or for failure to perform in accordance with the applicable standard of care, or that is essentially based upon such breach or such failure, shall be barred by the applicable statute of limitations. Such action shall be deemed to have accrued in any and all events not later than the date of Thelen's last services provided under this proposal-agreement, and as to any alleged acts or failures to act occurring after the date of Thelen's last services, not later than the date of Thelen's final invoice for services.
 - 13) Thelen shall secure and maintain such insurance as will protect it from claims under the Worker's Compensation Acts and from claims for bodily injury, death or property damage which may arise from the performance of its work under this proposal-agreement.
 - 14) Neither the Client nor Thelen will be liable to the other for any special or consequential damages of the other party, and/or its customers, including but not limited to losses, damages or claims related to the unavailability of property or facilities, construction delays, penalties, shutdowns, service interruptions, cost of capital, or loss of use, profits or revenue.
 - 15) The Client and Thelen mutually agree that Thelen's total cumulative liability to the Client arising from services under this proposal-agreement will not exceed the gross compensation received by Thelen under this proposal-agreement or \$50,000, whichever is greater. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in Thelen's services, whether alleged to arise in tort, contract, warranty, strict liability, statutory liability, or other legal theory. Upon the Client's written request, Thelen and the Client may agree to increase the limitation of Thelen's liability to a greater amount in exchange for a negotiated increase in Thelen's fee.
 - 16) ~~The Client shall hold harmless, indemnify and defend Thelen, its officers, employees and agents, from any and all liability claims, losses or damage, including reasonable legal fees, arising or alleged to arise from the performance of the services described in the proposal-agreement, unless said claims, losses or damage are caused by the negligence of Thelen, its officers, employees and agents.~~ This proposal-agreement shall not create any rights or benefits to parties other than the Client and Thelen, except such other rights as may be specifically called for herein.
 - 17) All claims, disputes or controversies arising out of, or in relation to, the interpretation, application or enforcement of this agreement, other than claims for payment of Thelen's services in Paragraph 2 above, shall be decided through Mediation. Mediation shall be conducted as follows:
 - a) in the event of any claims, disputes or other matters in question between the parties to this proposal-agreement, the parties agree first to try in good faith to settle the dispute by mediation to be conducted, if reasonably possible, by the Center for Resolution of Disputes in Cincinnati, Ohio; and
 - b) the Client and Thelen agree to use best efforts to reach a mediated settlement and agree to voluntarily exchange requested information and documents and provide witness interviews as requested.
- ~~The parties further agree that the Client will require, as a condition for participation in the project and their agreement to perform labor or services, that all Contractors, Subcontractors, Sub-subcontractors and Materialmen, whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties, shall agree to this procedure. If the Client fails to abide by this provision, the Client agrees to defend, indemnify and hold Thelen harmless from any claim or liability or injury or loss allegedly arising from Thelen's failure to perform in accordance with the applicable standard of care.~~



PROPOSAL • AGREEMENT FORM

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Date: July 13, 2009

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Client: Sycamore Township
8540 Kenwood Road
Sycamore Township, Ohio 45236-2010

Attention: Mr. Rob Molloy

Project: Geotechnical Exploration, N29246
Proposed Retaining Walls
Montgomery Road Sidewalk, Phase II
Sycamore Township, Ohio

It is hereby mutually agreed by and between Thelen Associates, Inc., Geotechnical Engineers, hereinafter called Thelen, and the aforementioned Client, that Thelen shall furnish the following technical and/or professional services for payment by the Client in accordance with the **17 general conditions (see previous pages)** and the fee schedule contained herein:

<u>ITEM</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>DESCRIPTION</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
118	1	Each	Mobilization and demobilization of drill rig	\$200.00	\$200.00
140	110	Foot	Eight (8) soil test borings by the standard drive sample method, truck-mounted drill rig	16.50	1,815.00
116	110	Foot	Cement-bentonite grout backfill	5.00	550.00
124	2	Hour	Standby time, Drill rig and crew for safety traffic control	135.00	270.00
105	2	Day	Cones & signs for safety and traffic control	100.00	200.00
113	2	Day	Arrow board rental	80.00	160.00
527	50	Each	Natural moisture content test	6.00	300.00
528	12	Each	Atterberg limits test	40.00	480.00
544	12	Each	Hydrometer analysis	70.00	840.00
199	200	Mile	Mileage for personnel	0.70	140.00
248	Open	Hour	Services of Survey Crew to determine as-drilled boring locations and ground surface elevations	BRANDSTETTER CARROL, INC. TO PROVIDE	
249	5	Hour	Services of Draftsperson	50.00	250.00
287	6	Hour	Services of Stenographer/Word Processing	35.00	210.00

Continued

<u>ITEM</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>DESCRIPTION</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
102	Open	LS	Personnel to obtain property clearance from property owners, if required		CLIENT TO PROVIDE
105	Open	LS	Street opening permits, if necessary		CLIENT TO PROVIDE
255	30	Hour	Services of Senior Registered Professional Geotechnical Engineer	\$102.50	\$3,075.00
ESTIMATED TOTAL					<u>\$8,490.00</u>

Contact Person: Mr. Rob Molloy

Email address: rmolloy@sycamoretownship.org

Telephone No.: 513-791-8447

Fax No.: 513-792-8564

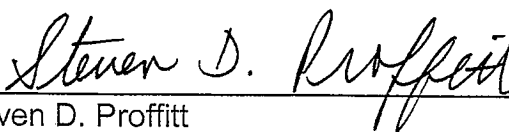
The accompanying letter dated July 13, 2009, by Thelen Associates, Inc. supports this revised Proposal-Agreement form and is made a part hereof.

If the specific conditions, services, fee schedule and 17 **general conditions (see previous pages)** for this project are acceptable to you, please sign where noted below and return a signed copy. This will also serve as our authorization to proceed.

Accepted: _____
Mr. Rob Molloy
Sycamore Township

Respectfully submitted,
THELEN ASSOCIATES, INC.

Date: _____



Steven D. Proffitt
Marketing Associate