

First Reading: June 6, 2023
Second Reading: dispensed

RESOLUTION 2023-039

A RESOLUTION AUTHORIZING A CONTRACT WITH TEC ENGINEERING, INC. FOR ENGINEERING SERVICES AND DISPENSING WITH A SECOND READING

WHEREAS, the Board of Township Trustees is making improvements to sidewalks in the Township (the “Euclid Road Sidewalks Improvement Project”) and wishes to provide for engineering services in regard to the project; and

WHEREAS, the Board of Township Trustees desires to contract for engineering services and has followed the procedure set forth in Ohio Revised Code for selection of an engineering firm for the Euclid Road Sidewalks Improvement Project; and

WHEREAS, the Board of Trustees desires to proceed with the sidewalks improvement and to contract with TEC Engineering, Inc. for engineering services for the Euclid Road Sidewalks Improvement Project;

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

SECTION 1. The attached proposal from TEC Engineering, Inc. is hereby approved, and the Township Administrator is hereby authorized and directed to contract with TEC Engineering, Inc. to provide the engineering and survey services for the Euclid Road Sidewalks Improvement Project.

SECTION 2. The contract price for the engineering services shall not exceed \$109,065.00.

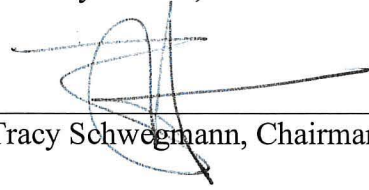
SECTION 3. The Board upon at least a majority vote does hereby dispense with the requirement that this resolution be read on two separate days, and hereby authorizes the adoption of this Resolution upon its first reading.

SECTION 4: This resolution shall take effect on the earliest date allowed by law.

VOTE RECORD:

Mr. James AyE Ms. Schwegmann AyE Mr. Weidman ABSENT


PASSED at the meeting of the Board of Trustees this 6th day of June, 2023.



Tracy Schwegmann, Chairman

Absent

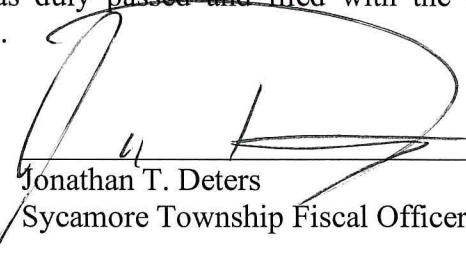
Thomas J. Weidman, Vice Chairman



Thomas C. James Jr., Trustee

AUTHENTICATION

This is to certify that this Resolution was duly passed and filed with the Sycamore Township Fiscal Officer, this 6th day of June, 2023.



Jonathan T. Deters
Sycamore Township Fiscal Officer

APPROVED AS TO FORM:



Lawrence E. Barbieri, Law Director

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into this 6 th day of June 2023 by and between Sycamore Township, whose address is 8540 Kenwood Road, Cincinnati, Ohio 45036 ("Client") and TEC Engineering, Inc., an Ohio corporation, whose address is 7288 Central Parke Boulevard, Mason, OH 45040 ("TEC").

SECTION 1. GENERAL DESCRIPTION OF PROJECT

Client hereby retains TEC to perform and TEC hereby agrees to perform the Services (as defined in Section 2) in accordance with the terms and conditions set forth in this Agreement. The project in connection with which the Services will be provided is generally described as follows: Euclid Road Sidewalk Improvements (the "Project").

SECTION 2. GENERAL DESCRIPTION OF PROFESSIONAL SERVICES

The professional services to be provided by TEC are described in Attachment 1 to this Agreement, which is incorporated herein by reference (the "Services").

SECTION 3. CONTACT PERSON

Client and TEC shall each appoint a contact person who shall have the authority to act on behalf of each party, including, by way of illustration and not by way of limitation, to define the scope of the Services, transmit instructions, receive information, and recommend changes in the Services (the "Contact Persons"). The Contact Person for Client shall be: STEVE REUTELSHOFER, and the Contact Person for TEC shall be: EDWARD WILLIAMS.

SECTION 4. DATE OF COMMENCEMENT; DURATION

The Date of Commencement for the Services provided pursuant to this Agreement shall be the later of (a) the date on which the Agreement is fully executed and (b) the date agreed in writing by the Contact Persons. TEC shall perform the Services with commercially reasonable due diligence and meet or exceed the final date (12/31/2023) specified by Sycamore Township in the original scoping document dated March 10, 2023, subject delays attributable to Force Majeure (as defined in Section 6.22) and delays caused by or attributable to any act or neglect of Client or by any agent, employee, or other person or entity in privity with Client (other than TEC) (a "Client Delay").

SECTION 5. COMPENSATION

Client shall pay TEC the sum of ONE HUNDRED NINE THOUSAND SIXTY FIVE and 00/100 Dollars (\$109,065.00) for TEC's performance of the Services pursuant to this Agreement, subject to adjustment as expressly provided in, and pursuant to, this Agreement.

SECTION 6. TERMS AND CONDITIONS

6.1 Invoice Procedures and Payment: TEC shall submit invoices to Client for the Services rendered during each invoicing period, which shall generally be on a monthly basis. The amount of each invoice shall be determined on the actual work performed method whereby TEC will provide the total number of hours or percentage of the Services accomplished during the invoicing period. Such invoices shall also separately list reimbursable expenses, if applicable. In no event shall the aggregate amount of such invoices exceed the maximum amount set forth in Section 5. Such invoices shall be submitted not more frequently than monthly by TEC and shall be due and

payable within thirty (30) days of the date of the invoice. Any undisputed invoices not paid by Client within forty-five (45) days of receipt shall bear interest from the date due until the date paid at an interest rate of ten percent (10%) per annum.

6.2 Expert Witness Services: It is understood and agreed that TEC's services under this Agreement do not include any participation in any litigation. Should such services be required, a Professional Service Agreement Addendum may be negotiated between Client and TEC describing the services desired and providing a basis for compensation to TEC.

6.3 Opinion of Probable Construction Cost/Cost Estimates: Client hereby acknowledges that TEC cannot and does not represent or warrant that opinions or estimates of probable construction or operating costs provided by TEC will not vary from actual costs incurred by Client.

6.4 Indemnification: TEC agrees to indemnify and hold harmless Client, its agents, officials and employees, against any and all suits or claims that may be based on any injury to persons or property to the extent that such suits or claims are a result of the gross negligence or willful misconduct of TEC or any person employed by TEC

6.5 Insurance: TEC shall carry, throughout the term of this Agreement, workers compensation insurance, commercial general liability insurance, professional liability insurance, and automobile liability insurance. Upon the written request of Client, Client shall be named as a co-insured under any such policy if such coverage is available. Upon the written request of Client, TEC shall provide Client a current copy of each insurance policy prior to commencement of the Services.

6.6 Assignment/Third Parties: Neither Client nor TEC will assign or transfer its interest in this Agreement without the written consent of the other; provided, however, TEC reserves the right to subcontract any portion of the Services with prior written consent of Client. Nothing in this Agreement shall be construed as creating any rights, benefits, or causes of actions for any third party against TEC or Client.

6.7 Termination; Delay; Suspension: Client may terminate this Agreement for any reason. Upon any such termination, Client shall pay TEC for the Services provided up to the date of such termination together with all reimbursable expenses incurred up to the date of such termination. In the event the Project is suspended or delayed, Client may delay or suspend TEC's performance of the Services immediately upon written notice to TEC. If Client delays or suspends TEC's performance of the Services for more than thirty (30) days, (a) TEC may terminate this Agreement upon giving fifteen (15) days written notice or (b) the compensation payable to TEC pursuant to Section 5 may be equitably renegotiated and mutually agreed to be the parties hereto. Upon any such termination described in subsection (b) above, Client shall pay TEC for the Services provided up to the date of such termination together with all reimbursable expenses incurred up to the date of such termination.

6.8 Default: If Client defaults in their obligations under this Agreement, and such default continues for more than ten (10) days after written notice (with respect to defaults relating to the payment of money) or thirty (30) days after written notice (with respect to all other defaults), the non-defaulting party shall have all remedies available at law or in equity, including, without

limitation, termination of this Agreement. Notwithstanding the foregoing, prior to terminating this Agreement, the non-defaulting party shall provide a termination notice to the defaulting party which notice shall describe the default in reasonable detail. If the defaulting party cures the default within such seven (7) day period, the non-defaulting party's termination notice shall be null and void.

6.9 Disputes: If a controversy or claim arises out of or relates to this Agreement, or the breach thereof, then the parties agree to make a good faith effort to settle the issue through direct discussion between the parties prior to having recourse to a judicial forum. If the parties are not able to so settle the issue, the controversy or claim shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall be responsible for their own expenses.

6.10 Standard of Care: TEC agrees to perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

6.11 Waiver: No waiver of any condition or agreement in this Agreement by either Client or TEC will imply or constitute its further waiver of that or any other condition or agreement.

6.12 Relationship: TEC is an independent contractor to Client in performing the Services under this Agreement and is not an employee, agent, joint-venturer, or partner of Client.

6.13 Client's Responsibilities: Client shall promptly provide TEC all pertinent data, criteria, and information including but not limited to: design objectives and constraints, space and use requirements, operational information, budgetary limits, flexibility and expandability requirements, and any other available project data such as sketches, reports, prior designs, soil, tests, surveys, and plans. TEC shall be entitled to rely on any and all information provided pursuant to this Section 6.13. Client shall review TEC's work thoroughly and promptly, provide direction as necessary, and, if at any time, Client becomes aware of any defect, shall promptly give notice of such defect in the work or services provided. Client shall provide access to the project site to the extent necessary or appropriate in connection with the performance of the Services.

6.14 Bankruptcy: If TEC or Client is adjudged to be bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such event shall be deemed a default by such party under this Agreement.

6.15 Change Orders; Additional Services: During the course of the term of this Agreement, Client shall have the right to request changes in the Services and/or to request additional services from TEC. Any such changes requested by Client shall be effective only if contained in a change order ("Change Order") signed by Client and TEC, which provides for (a) the adjustment, if any, in the compensation payable to TEC pursuant to Section 5, (b) the method of payment of any such increase and (c) the extension, if any, of the time for completion of the Services.

6.16 Execution of this Agreement: Neither Client nor TEC will be bound under this Agreement until both Client and TEC have duly executed and delivered to the other this Agreement. If this Agreement has been executed first by TEC and has not been executed by Client prior to July 31, 2023, at 11:59 p.m., TEC shall have the right to revoke its signature to this Agreement, in which event this Agreement shall be null and void and of no force or effect.

6.17 Severability: If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, provision will be added as a part of this Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

6.18 Captions; Exhibits: The captions are inserted in this Agreement only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Agreement. The exhibits and attachments to this Agreement, if any, are incorporated into the Agreement.

6.19 Attorneys' Fees: If either party shall bring an action against the other party related to the breach of any term, covenant or provision of this Agreement, or otherwise arising out of this Agreement, each party will be responsible for their own expenses and attorneys' fees expended or incurred in connection therewith.

6.20 Preparation of Agreement: This Agreement has been prepared by TEC and its professional advisors and reviewed by Client and its professional advisors. TEC, Client, and their separate advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either TEC or Client or against either TEC or Client merely because of their efforts in preparing it.

6.21 Authorization: If Client signs this Agreement as a corporation, limited liability company or partnership, each of the persons executing this Agreement on behalf of Client warrants to TEC that Client is a duly authorized and existing corporation, limited liability company or partnership, that Client has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Client is authorized to do so. Upon TEC's request, Client will provide evidence satisfactory to TEC confirming these representations.

6.22 Force Majeure: The performance by TEC of its obligations under this Agreement will be excused by delays due to strikes, lockouts, labor trouble, inability to procure labor or materials or reasonable substitutes for them, failure of power, governmental requirements, restrictions or laws, fire or other damage, war or civil disorder, or other causes beyond the reasonable control of the party delayed (collectively, "Force Majeure").

6.23 Entire Agreement, Amendments, Governing Law: This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this

Agreement shall be valid unless made in writing and signed by both parties hereto. This Agreement shall be governed by the laws of the state where the Services are performed.

6.24 Notices: Any notice required hereunder shall be sufficiently given when sent to the Contact Person for Client or TEC via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth in the introductory paragraph above, or by personally delivering such notice to the party to be in receipt thereof.

6.25 Confidentiality: TEC agrees that the terms set forth in this Agreement and the information obtained by TEC in connection with the performance of the Services shall remain confidential and shall not be revealed or disclosed to any person or party except (a) with the written consent of Client; (b) as may be disclosed to TEC's attorneys, accountants and other representatives that are involved in the consummation of this Agreement and the Services; (c) as may be required by applicable law; (d) as may be necessary in connection with assisting TEC in obtaining necessary governmental approvals; and (e) in connection with any litigation or dispute resolution between the parties.

IN WITNESS WHEREOF, TEC and Client have duly executed this Agreement. The effective date of this Agreement shall be the last date whereby all parties listed below have executed this Agreement. Such date shall be recorded in the first paragraph of this Agreement.

SYCAMORE TOWNSHIP, OHIO

TEC ENGINEERING, INC.

Signed: 

Signed: 

Typed: TRACY KELLUMS

Typed: Rihab Saleh

Title: ADMINISTRATOR

Title: CEO

Date: 6/6/23, 2023
JUNE 6, 2023

Date: 6/7/2023, 2023

Attachment 1: Proposal

May 25, 2023

Steve Reutelshofer
Sycamore Township
8540 Kenwood Road
Sycamore Township, Ohio 45036

RE: Euclid Road Sidewalk Improvements

Dear Mr. Reutelshofer:

TEC Engineering, Inc. is pleased to provide the following scope and proposal for survey and design services for the Euclid Road Sidewalk Improvements in Sycamore Township, Ohio. Based on our understanding of the scope of services, TEC proposed the following:

Topographic Survey

TEC will provide a full topographic survey of the project area to ensure the existing basemap clearly represents the field conditions. The topographic survey will include:

- i. Contact OUPS and Utilities for Existing Facility Info
- ii. Research Existing Right-of-Way (County and City Records)
- iii. Set Control and Level Loop
- iv. Full Topographic Survey
- v. Develop CAD Basemap including Right-of-Way locations

Design

TEC will provide construction plans for the Euclid Road Sidewalk Improvements per the scope of services provided by the Township. TEC will submit a Stage 1, Stage 2, Stage 3 and Final design. All reviews will be submitted to the Township prior to submission to the County, including drainage design.

Design will be performed in OpenRoads Designer and CAD files will be submitted to the Township at the completion of this project.

In additional to this proposal, the assumptions apply:

- i. The project will design a sidewalk on the north side of Euclid Road
- ii. Retaining Wall Design
 - a. Prepare drawings for gravity block retaining walls at various locations. Drawings will include:
 - iii. Wall plan and profile sheet(s)
 - iv. Wall detail sheets
 - b. Prepare special provisions for retaining wall(s).
2. Plans will be submitted to Hamilton County for review after approved by Sycamore Township
3. Utility coordination will be provided by the Township at the conclusion of the design. Utility coordination will be provided by TEC during the design process.

4. Storm design is included, if needed. All other utility design will be performed by the utility owner.
5. The development of R/W plats or legal descriptions are not included in this fee. If needed, they can be provided by TEC at an additional cost.
6. All work is to be performed within Sycamore Township boundaries.
7. Public Involvement
 - a. Prepare for and attend a public open house. ENGINEER will provide exhibits, sign in sheets, comment sheets, and handouts. Two staff members will attend the Open House.
 - b. Collect public comments and prepare a summary table. Provide responses to public comments.
 - c. Prepare for and attend a public meeting. ENGINEER will provide exhibits, sign in sheets, comment sheets, handouts, and a PowerPoint presentation. Two staff members will attend the meeting.
 - d. Collect public comments and prepare a summary table. Provide responses to public comments.
8. Solar Powered Rectangular Rapid Flashing Beacon Design
 - a. Evaluate site near Pineneedle Ln for best location and prepare notes/drawings. Coordinate with City of Madeira and HCEO.

Fee

Our fee for the scope listed above will be **one hundred nine thousand sixty five dollars (\$109,065)**. This project will be billed to you on a lump sum basis.

Schedule

TEC will begin work immediately after your notice to proceed. TEC and the Township will establish staged submission deadlines. Final design will be provided no later than December 31, 2023.

We appreciate the opportunity to provide you with this proposal and look forward to working with you on this project. If you have any questions regarding this proposal, please do not hesitate to call me at (513) 701-9804.

Sincerely,



Edward R. Williams, PE, PTOE, RSP
Vice President