

ORDINANCE NO. 2021-28

AN ORDINANCE TO AUTHORIZE THE VILLAGE ADMINISTRATOR TO ENTER INTO A CONTRACT WITH POGGEMEYER DESIGN GROUP FOR PHASE 2 OF THE SOUTH HARTFORD IMPROVEMENT PROJECT AND TO DECLARE AN EMERGENCY

WHEREAS, Council has determined it appropriate and necessary to proceed with the South Hartford Improvement Project ("Improvement Project"); and

WHEREAS, the Village requires engineering work to be completed to proceed with the project; and

WHEREAS, the Village Administrator has received an estimate and contract for the required services; and

NOW, THEREFORE, be it ordained by the Council of the Village of Centerburg, Ohio as follows:

Section 1: That the Village Administrator is hereby authorized to enter into a contract with Pogemeyer Design Group, Inc. (A Kleinfelder Company) not to exceed \$16,500.00 (Sixteen Thousand Five Hundred Dollars) for drawings and other specifications necessary for the South Hartford Avenue Improvement Project.

Section 2: That Council declares this to be an emergency measure, such emergency rising out of the need to enter the contract in a timely manner so that the project can continue without delay.

WHEREFORE, this ordinance is declared to be an emergency and shall take effect immediately upon passage.

DATE PASSED 12/06/21

ATTEST Signature on file
CLERK OF COUNCIL

APPROVED AS TO FORM:

Signature on file
LEGAL COUNSEL

Signature on file

PRESIDENT OF COUNCIL

Signature on file

MAYOR

DATE APPROVED 12/06/21

I hereby certify that the ordinance or a summary of the ordinance was published once a week for two consecutive weeks on 12/08, 2021 and 12/15, 2021 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

Signature on file


FISCAL OFFICER

CLIENT PROFESSIONAL SERVICES AGREEMENT

South Hartford Avenue Improvements, Phase 2
Village of Centerburg, Ohio
MWPG0012.001P

This Agreement is made on: 12/16/2021 between the Village of Centerburg (Client) and Poggemeyer Design Group, Inc. (A Kleinfelder Company) (PDG). Client hereby appoints PDG to provide certain Services (as defined below), and PDG hereby agrees to perform the Services, on the following terms and conditions:

1. SCOPE OF SERVICES

Client engages PDG to provide, and PDG agrees to provide drawings and specifications necessary for the resurfacing of approximately 1,550 feet of South Hartford Avenue, from Church Street to south of Dally Street, including catch basin and curb ramp replacement. (collectively the **Services**). Additional services include bidding, engineering during construction and 60 hours of construction observation.

2. SCHEDULE AND PAYMENT

PDG shall perform the Services, and Client shall pay PDG, in accordance with the schedule and payment basis set forth in the Proposal, and as follows:

Client will pay on a **time and material basis not to exceed** the sum of **\$16,500.00** (Two Thousand and 00/100 Dollars). PDG will invoice according to its fee schedule up to the stated limit. Upon reaching the stated limit, PDG will stop performing unless the Client authorizes further work and funding in writing.

3. GENERAL CONDITIONS AND ADDENDA

THE GENERAL CONDITIONS ON PAGE 2 CONTAIN INDEMNIFICATION, LIMITATION OF LIABILITY AND OTHER IMPORTANT PROVISIONS AFFECTING THE PARTIES' LEGAL RIGHTS AND OBLIGATIONS.

Client and PDG have read, understand and agree to this Agreement, the General Conditions, the Indemnity and Limitation of Liability provisions located on Page 2, and all Proposal, Fee Schedule and addenda identified herein.

This Agreement includes the terms herein, General Conditions and any Proposal, Fee Schedule and addenda identified herein, which taken together apply to all services undertaken pursuant to this Agreement, represent the parties' entire agreement of and supersedes all agreements on the same subjects between the parties, either oral or in writing, including any Client work or purchase order.

This Agreement is governed and construed in accordance with the laws of the state where the Services are performed. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of such state and waive any right to object to any proceedings being brought in those courts. The parties hereby expressly waive any and all rights to trial by jury.

EXECUTED by the parties as of the date first written above:

CLIENT:

POGGEMEYER DESIGN GROUP, INC. (A KLEINFELDER COMPANY):

By: Signature on file

By: Signature on file

Printed Name: M. Joseph Hord

Printed Name: Timothy J. Bock, P.E.

Title: ADMEW

Title: Department Director

CLIENT PROFESSIONAL SERVICES AGREEMENT – GENERAL CONDITIONS

1. **Standard of Care.** PDG will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of PDG's profession practicing in the same locality, under similar conditions and at the date the Services are provided. PDG makes no representation, guarantee or warranty, express or implied, regarding the Services, or any communication (oral or written), certification, report, opinion, or Instrument of Service provided under or pursuant to this Agreement.
2. **Insurance.** PDG will maintain worker's compensation, commercial general liability, automobile liability and professional indemnity insurance coverage. Client will maintain adequate insurance coverage and will require and verify any contractors or parties it hires to have adequate insurance coverage. Client agrees that its failure to comply with this clause invalidates any indemnity by PDG hereunder.
3. **Pricing and Payment.** The hourly rates charged for PDG's Services are adjusted annually in January of each year to reflect changes in the various elements that comprise such hourly rates. PDG reserves the right to periodically adjust its fee schedule. Except as otherwise provided in the first page of this agreement or Proposal, Client shall pay invoices upon receipt. Invoices not paid within thirty (30) days of invoice date incur a fee of 1½ % per month from the date of invoice and suspension by PDG of all Services.
4. **Prevailing Wages.** It is Client's legal responsibility to determine whether the Project is covered under prevailing wage regulations. Unless Client specifically informs Consultant in writing that the Project is a prevailing wage project and is identified as such in Consultant's Scope of Services, Client agrees to defend, indemnify and hold harmless Consultant from and against all liabilities, losses, claims, costs and damages (including reasonable costs and attorneys fees), resulting from a determination that the Project was covered under prevailing wage regulations.
5. **Termination.** Either party may terminate this Agreement at any time upon written notice, whether for cause or for convenience, in which event Client shall pay PDG for such portion of the Services performed and materials provided up to the date of termination.
6. **Performance.** PDG will perform the Services as an independent contractor and will not act as Client's agent or employee. The parties do not intend to create, and nothing in this Agreement will be construed to create any special relationship or fiduciary duty. PDG will be subject to and operate in compliance with all federal, state and local laws and regulations. Client agrees that PDG will not be responsible for the means, methods, techniques, sequences or procedures of construction, for constant or exhaustive inspection of construction work, or for the safety procedures employed by any party other than its own employees and subcontractors. PDG will only sign certifications relating to the Services if PDG agreed in writing prior to the commencement of the Services to provide them. Such certifications are statements of professional opinion only. PDG will not be liable for delay or failure to perform its Services caused directly or indirectly by circumstances beyond its control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action or inaction, changed conditions, site inaccessibility, or delays due to actions or inactions of Client or others.
7. **Client Responsibilities.** Client agrees to provide all available material, data, and information pertaining to the Services, including, without limitation, (i) composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, (ii) hazards that may be present, (iii) nature and location of underground or otherwise not readily apparent utilities, (iv) summaries and assessments of site past and present compliance status, (v) status of any judicial or administrative action concerning the site or Project, and (vi) Client's relevant benchmarks, plans, maps, and property ownership records. Client will ensure the cooperation of Client's employees, contractors and consultants ("Client Parties") with PDG. PDG is entitled to rely upon the accuracy and completeness of all information given by Client Parties.
8. **INDEMNITY; LIMITATION OF LIABILITY.** Client will defend, indemnify and hold harmless PDG, its officers, directors, parent, affiliates, shareholders and employees, from and against any all claims, demands, causes of action, damages or other liabilities, including but not limited to attorney's fees and other legal expenses reasonably incurred by PDG (collectively, "Claims"), that arise from performance of the Services or from PDG's acts, errors or omissions in connection with the Project or this Agreement, excepting Claims arising from the sole negligence or wilful misconduct of PDG. The maximum aggregate liability of PDG in connection with this Agreement and all amendments thereto, whether based in contract or tort or otherwise in law or equity, will be limited to the greater of the compensation actually paid to PDG for the Services hereunder or \$50,000, and Client hereby releases PDG from any liability above such amount. Upon Client's written request, the parties may negotiate and enter a written amendment in accordance with clause 11 herein to increase the amount of this limitation of liability in exchange for an increased payment to PDG. As used in this clause 8, "PDG" includes PDG, its affiliates, subcontractors, and each of their respective partners, officers, directors, shareholders and employees. Neither party will be liable to the other for any special, incidental, indirect, exemplary, punitive or consequential damages however arising incurred by either PDG or Client or for which either may be liable to a third party.
9. **Reliance.** The documents provided by PDG to Client under this Agreement may be based on information obtained from sources outside PDG's control. Other than the application of prudent professional care in their evaluation, PDG does not warrant, expressed or implied the accuracy thereof. All documentation furnished to Client is intended for the benefit of the Client for the purpose stated herein and is not intended or represented to be suited for reuse by Client or others. Any reuse or provision of the documents to others without the specific written consent of PDG for the specific purposes intended will be at user's sole risk and without liability and legal exposure to PDG.
10. **Hazardous Materials; Samples.** PDG will not take title to or be liable for any hazardous materials found at any project site. Any risk of loss with respect to all materials remains with the Client or the site owner, who will be considered the generator of such materials, execute all manifests as the generator of them, and be liable for the arrangement, transportation, treatment, and disposal of all material. All samples remain the Client's property. Client agrees to promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.
11. **Amendments, Changes, Assignment, Waiver, Compliance.** This Agreement represents the entire agreement of the parties, and may be modified only in a writing signed by both parties. To the extent of any inconsistency between this Agreement and any other document, the provisions of this Agreement will always prevail. Any preprinted terms and conditions on forms used by either party in the administration of this Agreement are void and shall not act to supplement or replace these Terms and Conditions. Neither party may assign this Agreement without the other's prior written consent. Waiver of any term, condition or breach of this Agreement will not operate as a waiver of any other term, condition or breach. Client and PDG shall abide by 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, color, religion, sex or national origin. Covered contractors and subcontractors shall take affirmative action to employ and advance individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.