

**ORDINANCE NO. 30-25**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN  
AGREEMENT WITH K.E. McCARTNEY & ASSOCIATES, INC. TO PERFORM  
THIRD-PARTY REVIEW SERVICES FOR THE STATE ROUTE 83  
SIDEWALK PROJECT (LOR SR83-16.76, PID 119934)  
AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Avon applied for and was awarded a Systemic Safety Grant by the Ohio Department of Transportation (ODOT) to construct sidewalks on each side of State Route 83 (Center Road) between Kinzel Road and Falcon Crest Avenue, said project being known as the LOR-SR83-16.76 Sidewalk Project, PID 119934; and

**WHEREAS**, a recent ODOT policy change for projects funded with federal dollars requires municipalities with a Consulting City Engineer to have a separate Third-Party Reviewer if the Consulting City Engineer's firm provides design engineering services for the project; and

**WHEREAS**, the new ODOT policy went into effect after the time the Consulting City Engineer Ryan Cummins, P.E. and his firm CVE began work on the project; and

**WHEREAS**, the Service Director prepared a scope of services and identified K.E. McCartney & Associates as a reputable engineering company familiar with ODOT processes; and

**WHEREAS**, due to the limited services needed to fill the Third-Party Reviewer role for the State Route 83 Sidewalk Project, it was not necessary to follow a Quality Based Selection (QBS) process as the anticipated cost of such services was anticipated to be less than \$50,000.00; as such the Service Director selected K.E. McCartney & Associates to serve in the role; and

**WHEREAS**, K.E. McCartney & Associates prepared a cost proposal to provide Third-Party Reviewer services for the State Route 83 Sidewalk Project and submitted it for the city's consideration; and

**WHEREAS**, City Council has reviewed the contract for professional third-party review services submitted by K.E. McCartney & Associates, and it finds the agreement to be in the best interests of the health, safety, and welfare of the citizens of Avon in facilitating proper project oversight.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:**

Section 1 - That the Mayor is hereby authorized to execute a contract with K.E. McCartney & Associates, Inc. for Third-Party Review Services related to the Rt. 83 (Center Road) Sidewalk Installation Project, LOR-SR83-16.76 Sidewalk Project, PID 119934, in substantially the form as set forth in the attached Exhibit A, which when finalized, shall be incorporated herein by this reference.

Ordinance No. 30-25 (Con't.)

Section 2 - Payment in the amount up to **Six Thousand, Five Hundred Forty-Five Dollars and 88/100 Cents (\$6,545.88)** shall be made from the State Route 83 Pedestrian Walkway Program Fund No. 473.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage 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 actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to meet established ODOT's project timelines; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: April 14, 2025

DATE SIGNED: April 14, 2025

By: Brian Fischer  
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR April 15, 2025

[Signature]  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior  
John A. Gasior, Law Director

ATTEST:

Barbara J. Brooks  
Barbara Brooks, Clerk of Council

Posted: April 16, 2025  
Electronically and at City Hall as  
Provided by Council

Prepared by:  
John A. Gasior, Esq.  
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 30-25, passed by the Council of said City on April 14, 2025.

IN WITNESS WHEREOF, I have on this 15th day of April 2025, affixed my signature and official seal.

Barbara J. Brooks  
Barbara J. Brooks, Clerk of the Council  
of the City of Avon, Ohio

## Engineering Services Agreement

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
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| <b>Engineer:</b><br>K.E. McCartney & Associates, Inc.<br>52 N. Diamond St.<br>Mansfield, Ohio 44902                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Client:</b><br>City of Avon<br>36080 Chester Road<br>Avon, Ohio 44011                                                                                                                                                                                                                                                                                                            |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <b>Project No.</b><br>PID 119934 (CM- )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Date:</b><br>April 1, 2025                                                                                                                                                                                                                                                                                                                                                       |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <b>Project Name:</b><br>LOR-SR83-16.76 Sidewalks Third Party Review                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Location:</b><br>Avon, Ohio                                                                                                                                                                                                                                                                                                                                                      |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <b>Scope of Services:</b><br><p>K.E. McCartney &amp; Associates, Inc., (ENGINEER) shall provide Owner's Representative and Third Party Review services to the City of Avon (CLIENT) for the above-referenced project. Services shall consist of performing design reviews for the Stage 3 Plans and Final Tracing Submittal Packages to ODOT.</p> <p>The ENGINEER shall provide review comments of plan packages to confirm compliance with LPA Scope of Services Form.</p> <p>The ENGINEER shall provide verification that the quantities carried to the General Summary, Sub Summaries, and Estimate are applicable to the work.</p> <p>The ENGINEER shall provide verification that the estimated unit costs are reasonable based on current and historic ODOT bid data.</p>                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <b>Special Conditions:</b> <ol style="list-style-type: none"> <li>Additional services are any services not listed in the Scope of Services; and will be billed hourly on a cost-plus fixed fee per employee basis using a labor multiplier based on Engineer's current ODOT approved overhead rate at the time additional services are performed plus reimbursable expenses. Additional Services will be completed following approval by the Client.</li> <li>Subconsultants, if required, will be billed pursuant to Item 3.8 of the Standard Terms and Conditions.</li> <li>Client signature, direction by Client to proceed with services, and/or issuance of a Purchase Order by the Client serves as acceptance of this agreement.</li> <li>All permit fees are the responsibility of the Client.</li> <li>Labor rates and reimbursable expenses may be adjusted to reflect current costs. Engineer's labor multiplier may be adjusted annually based on changes to Engineer's ODOT approved overhead rate.</li> </ol>                                       |                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <b>Fee Arrangement:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Hourly on a cost-plus fixed fee per employee basis with an estimated total fee of <b>\$6,545.88</b> per the enclosed EXHIBIT A - Fee Proposal. Labor multiplier is 3.19 based on Engineer's ODOT approved overhead rate. Total fee is based on the following assumed distribution of compensation: <ol style="list-style-type: none"> <li>Third Party Review \$ 6,545.88</li> </ol> |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <table border="1"> <tr> <td colspan="2"><b>Offered by: (Engineer):</b></td> <td colspan="2"><b>Accepted by: (Client):</b></td> </tr> <tr> <td colspan="2">  </td> <td colspan="2">  </td> </tr> <tr> <td colspan="2">           Signature         </td> <td colspan="2">           Signature         </td> </tr> <tr> <td colspan="2">           Date         </td> <td colspan="2">           Date         </td> </tr> <tr> <td colspan="2">           Ryan Simon, P.E. / Director of Construction         </td> <td colspan="2">           Bryan K. Jensen, Mayor         </td> </tr> <tr> <td colspan="2">           Printed name / title         </td> <td colspan="2">           Printed name / title         </td> </tr> <tr> <td colspan="2"></td> <td colspan="2">           Signature indicates the authority to bind the Client to the terms herein         </td> </tr> </table> |                                                                                                                                                                                                                                                                                                                                                                                     | <b>Offered by: (Engineer):</b>                                                       |  | <b>Accepted by: (Client):</b> |  |  |  |  |  | Signature |  | Signature |  | Date |  | Date |  | Ryan Simon, P.E. / Director of Construction |  | Bryan K. Jensen, Mayor |  | Printed name / title |  | Printed name / title |  |  |  | Signature indicates the authority to bind the Client to the terms herein |  |
| <b>Offered by: (Engineer):</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                     | <b>Accepted by: (Client):</b>                                                        |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
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| Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                     | Signature                                                                            |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                     | Date                                                                                 |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| Ryan Simon, P.E. / Director of Construction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                     | Bryan K. Jensen, Mayor                                                               |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| Printed name / title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                     | Printed name / title                                                                 |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                     | Signature indicates the authority to bind the Client to the terms herein             |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |
| <b>Agreement Documents include:</b><br>Standard Terms and Conditions, Pages 2.1 – 2.6<br>Reimbursable Expenses, Page 3.1<br>Exhibits, if provided.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                      |  |                               |  |                                                                                     |  |                                                                                      |  |           |  |           |  |      |  |      |  |                                             |  |                        |  |                      |  |                      |  |  |  |                                                                          |  |

## STANDARD TERMS AND CONDITIONS

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### SECTION 1 - SCOPE

1.1 Scope of Services. The ENGINEER shall provide the services consistent with the standard of care, as identified in "Scope of Services" (SERVICES), as identified as the responsibility of the "Project Team" which shall be defined as the ENGINEER, its agents and employees.

1.2 Notice to Proceed. SERVICES required under this AGREEMENT shall not commence until the ENGINEER receives a signed AGREEMENT from the CLIENT.

1.3 Changes in the Scope of Services. The CLIENT may, at any time, by executing an "Amendment to CLIENT-ENGINEER Agreement", make changes within the general scope of the AGREEMENT or SERVICES to be performed. If such changes cause increases or decreases in the ENGINEER'S costs, an equitable adjustment shall be made and this AGREEMENT shall be amended. The costs of such changes shall be negotiated and reduced to writing prior to performance of the SERVICES and in a manner consistent with this initial agreement.

1.4 Opinion of Probable Construction Cost. CLIENT acknowledges and agrees that ENGINEER has no control over cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, or over competitive bidding or market conditions. Thus, ENGINEER's estimates of project construction cost will be made on the basis of its employees' experience and qualifications and will represent its professional judgment as experienced professionals, familiar with the construction industry. ENGINEER does not guarantee that proposals, bids or actual construction cost will not vary from its Opinion of Probable Construction Cost. If the CLIENT wishes an additional opinion as to the probable construction cost, the CLIENT shall employ an independent cost estimator.

1.5 Time Period. The ENGINEER shall perform its services per the standard of care within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in "ENGINEER'S Scope of Services", and are hereby agreed to be reasonable. If, through no fault of ENGINEER, such periods of time or dates are changed, or the orderly and continuous progress of ENGINEER's services is impaired, or ENGINEER's services are delayed or suspended, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably. If CLIENT authorizes changes in the scope, extent, or character of the PROJECT, then the time for performance of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably. CLIENT shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER's performance of its services.

1.6 Delays. ENGINEER is not responsible for delays due to factors beyond its control. If CLIENT requests changes in project, or CLIENT (or its other contractors or consultants) engages in acts or omissions that delay the project or ENGINEER's services, then compensation for, and time of performance of ENGINEER's services shall be adjusted appropriately. CLIENT shall promptly notify ENGINEER in writing when CLIENT learns of any fact(s) or development that affects scope or timing of ENGINEER's services.

1.7 Substantial Completion. SERVICES shall be considered substantially complete for statute of limitation and statute of repose purposes on the date of the final invoice submitted by ENGINEER to CLIENT.

### SECTION 2 - CLIENTS RESPONSIBILITIES

The following are the responsibility of the CLIENT, including but not limited to:

2.1 Designate in writing before ENGINEER's commencement of SERVICES CLIENT'S representative with authority to receive information and transmit instructions for CLIENT. Changes in this individual may require additional fees.

2.2 Designate in writing before ENGINEER's commencement of SERVICES CLIENT'S requirements for Project, including objectives and constraints, design and construction standards, bonding and insurance requirements and contract forms.

2.3 Provide in writing all available information pertinent to Project relevant to the SERVICES, which ENGINEER may rely upon.

2.4 Arrange for safe access by ENGINEER upon public and private property as reasonably necessary.

2.5 Examine documents presented by ENGINEER, obtain legal and other advice as CLIENT deems appropriate, and render written decisions and approvals within reasonable time.

2.6 Obtain consents, approvals, licenses, and permits necessary for project and not included in ENGINEER's Scope of Services.

2.7 Advertise for, and open, bids when scheduled. ENGINEER may assist in these procedures at the applicable rates, if requested in writing.

2.8 Provide, or arrange to have provided, other services necessary for Project but not within scope of ENGINEER's services.

## STANDARD TERMS AND CONDITIONS

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### SECTION 3 - COMPENSATION AND PAYMENT

3.1 Basis of Compensation. The CLIENT shall pay the ENGINEER as defined in the Fee Arrangement. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total amount unless the Fee Arrangement is based on hourly work or ENGINEER gives notice to CLIENT of changes or delays per Section 1 above, or is approved in writing by the CLIENT.

3.2 Labor, Overhead, Profit. Appropriate amounts are incorporated in the Fee Arrangement to account for labor, overhead, profit, and reimbursable expenses, subject to the terms and conditions of this Agreement.

3.3 Invoicing. Invoices shall be submitted every 4 weeks or monthly depending on ENGINEER's current invoicing schedule.

3.4 Payment. Invoices are due and payable within thirty days of receipt by CLIENT.

3.5 Not Used.

3.6 Overtime. For hourly contracts, the ENGINEER will bill overtime hours at standard hourly rates multiplied by 1.5. Overtime will not require authorization by CLIENT as long as the Total Fee authorized in the Fee Arrangement, if any, is not exceeded.

3.7 Not Used.

3.8 Engineer's Consultants. ENGINEER may retain such Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the SERVICES, subject to reasonable, timely, and substantive notice and objections by CLIENT. Charges from such consultants used on the project will be billed to the CLIENT at a factor of 1.15.

3.9 Not Used.

3.10 Satisfaction with Services. Payment of any invoice by the CLIENT to ENGINEER shall constitute CLIENT's satisfaction with and acceptance of ENGINEER's SERVICES to the date of payment as fully compliant with this Agreement.

3.11 Disputed Invoice. If the CLIENT objects to any portion of an invoice, the CLIENT shall so notify ENGINEER in writing within seven (7) business days beginning the day after receipt of the invoice. The CLIENT shall identify in writing the specific cause of the disagreement and the amount in dispute, and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due that cannot be resolved within ten (10) business days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) days in accordance with the Dispute Resolution provision of this Agreement.

3.12 Suspension of Services. If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, ENGINEER may suspend performance of services upon seven (7) calendar days' notice to the CLIENT. ENGINEER shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon payment in full by the CLIENT, ENGINEER shall resume services under this Agreement.

3.13 Termination of Services. If the CLIENT fails to make payment to ENGINEER in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by ENGINEER.

### SECTION 4 - INSURANCE AND INDEMNIFICATION

4.1 Insurance. The ENGINEER shall provide and maintain, until this AGREEMENT is completed, the following insurance, in the amounts specified herein:

|                         |                       |                             |                            |
|-------------------------|-----------------------|-----------------------------|----------------------------|
| Professional Insurance: | \$1,000,000 per claim | General Liability Insurance | \$1,000,000 per occurrence |
|                         | \$1,000,000 Aggregate |                             | \$1,000,000 Aggregate      |

4.2 Not Used.

4.3 Not Used.

## STANDARD TERMS AND CONDITIONS

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### SECTION 5 - ALTERNATIVE DISPUTE RESOLUTION

5.1 Dispute Resolution. If a dispute arises between the parties relating to this AGREEMENT, the parties agree to promptly schedule meetings between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

5.2 Mediation. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the CLIENT and the ENGINEER agree that all disputes between them arising out of or relating to this AGREEMENT or the Project shall be submitted to nonbinding mediation. If the mediation is successful in reaching a settlement in writing, such settlement is binding upon the parties to this agreement.

The CLIENT and the ENGINEER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their contractors, subcontractors, sub consultants, suppliers and fabricators, thereby providing for mediation as the primary method of dispute resolution among the parties to all those agreements.

If mediation is unsuccessful, then the parties agree to resolve such dispute through litigation in the jurisdiction of the courts in the location of the CLIENT's office, Lorain County, Ohio.

### SECTION 6 - TERMINATION

6.1 Termination for Cause. Without limiting or impacting ENGINEER's right to terminate this AGREEMENT as described above, the CLIENT may terminate this AGREEMENT, or any part thereof, for cause in the event the ENGINEER defaults in performing thereunder or in providing the CLIENT upon written request with adequate assurance of due performance, or if the ENGINEER breaches any term or condition of the AGREEMENT; provided, the ENGINEER fails to cure the alleged default within five (5) business days of receipt of written notice from the CLIENT specifying the alleged default. In the event of termination for cause, subject to payment by the CLIENT, the ENGINEER will be paid for SERVICES which have been completed and which were not a reason for the termination, less a reasonable amount CLIENT shall determine will be necessary to cure the default. CLIENT shall not be liable to the ENGINEER for any amount otherwise payable to the ENGINEER under the AGREEMENT, and the ENGINEER shall be liable to the CLIENT for any and all direct damages which result from the default or breach.

6.2 Termination for Convenience. The CLIENT may at any time and for any reason terminate the AGREEMENT, or any part thereof, for its sole convenience. At the time specified by the CLIENT in writing to the ENGINEER, ENGINEER shall immediately cease performance of SERVICES under the terminated AGREEMENT and shall immediately cause all suppliers and sub consultants to cease performance thereunder. The ENGINEER shall be paid for services completed under this AGREEMENT to the point of ENGINEER's receipt of the written notice of termination.

### SECTION 7 - ELECTRONIC MEDIA

7.1 File Maintenance. ENGINEER is not required to maintain copies of the electronics files beyond 60 days after project completion or contract termination and once all electronic files or copies thereof have been turned over to the CLIENT. Project completion is defined as final payment to the contractor(s) for all work performed.

7.2 Data Files. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

7.3 Acceptance Period. The CLIENT agrees that ENGINEER will not be held liable for the completeness or correctness of the electronic media after an acceptance period of 30 days after delivery of the electronic files. ENGINEER'S the sealed drawings that accompany submittal to the CLIENT shall govern over electronic media. During this period, the CLIENT may review and examine these files; any errors detected during this time will be corrected by ENGINEER as part of the basic agreement. Any changes requested after the Acceptance Period will be considered additional services to be performed on a time and materials basis, at ENGINEER's cost per this Agreement plus overhead & profit.

### SECTION 8 - STANDARD TERMS AND CONDITIONS

8.1 Standard of Care. The SERVICES performed by the ENGINEER under this AGREEMENT shall be performed using the care and skill ordinarily used by members of the ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. The ENGINEER makes no certifications, warranties or guarantees, express or implied, related to the services performed by the ENGINEER under this AGREEMENT.

8.2 Quality Control. The ENGINEER shall be responsible for the quality control of its SERVICES and shall make revisions or corrections resulting from its negligent errors, ambiguities or omissions, or will re-perform its SERVICES without additional cost to the CLIENT, but subject to the terms of this AGREEMENT.

## STANDARD TERMS AND CONDITIONS

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8.3 Administration and Exchange of Information. The ENGINEER is responsible for the administration of its SERVICES. The ENGINEER is responsible for administration and exchange of information with the CLIENT. All communications and exchanges of information will be performed through the designated representative of the CLIENT unless otherwise authorized by the ENGINEER.

8.4 Ownership of Documents and Data. All tangible and electronic media items prepared by ENGINEER are instruments of service and ENGINEER retains all common law, statutory and other reserved rights, including without limitation, copyrights. CLIENT may retain copies for reference, but reuse on another project without ENGINEER's written consent is prohibited. Said items are not intended to be suitable for completion of this Project by others.

8.5 Submittal or distribution of items in connection with the Project is not publication in derogation of ENGINEER's rights.

8.6 Any use or reuse of original or altered files by the CLIENT or others without written verification by ENGINEER of CADD adaptation for the specific purpose intended shall be at the CLIENT'S risk and full legal responsibility. Any verification of such adaptation by the CLIENT will entitle ENGINEER to additional compensation at the then current rate.

8.7 It is understood that the ENGINEER is not a municipal advisor and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act to any public entity or obligated person. CLIENT should ensure that the public entity or obligated person discuss all information and material provided by the ENGINEER with any and all internal or external advisors and experts that the public entity or obligated person deems appropriate before acting on the information or material.

8.8 Responsibility. It is understood that in performing engineering services, ENGINEER is not authorized to act as CLIENT's representative in regard to contractual matters or duties with CLIENT's customer, vendor, or others who may be involved in the Project. ENGINEER is a Professional Corporation. The proposed undertaking is made solely by such Corporation and the Principals and Shareholders of the Corporation have no personal liability with respect to the proposed undertaking.

8.9 Disclaimer; Asbestos or Hazardous Substances. It is understood that the handling or removal of asbestos, asbestos products, or hazardous substances involves certain health risks which require specific safety measures on the jobs, including measures for the protection of employees of CLIENT, Contractors or Subcontractors, not for protection of the general public. Such responsibility for safety and safety measures is, and shall remain that of CLIENT or CLIENT's Contractors and Subcontractors and not the ENGINEER.

8.10 Disclaimer; ADA-Americans with Disabilities Act. ADA, a civil rights law, is a complaint driven act that will be defined through the legal court system in the coming years. ENGINEER, its principals, shareholders, and staff shall assume no legal responsibility for the accuracy of any recommendations or other information contained in its design solutions. Neither shall liability be assumed for the outcome of decisions, contracts, commitments, or obligations made on the basis of ENGINEER's recommendations or design solutions.

8.11 Prevailing Law. The construction, interpretation and performance of this AGREEMENT shall be governed by and construed in accordance with the laws of the State of OHIO.

8.12 Severability. The invalidity or unenforceability of any particular provision of this AGREEMENT shall not affect the other provisions hereof, and this AGREEMENT shall be construed in all respects as if such invalid or unenforceable provision were omitted.

8.13 Equal Employment Opportunity. The ENGINEER agrees not to discriminate against any employee or applicant for employment because of race, religion, color, handicap, sex, age, national origin, or status as veteran.

8.14 Taxes, Royalties and Expenses. The ENGINEER shall pay all taxes, royalties and expenses incurred in connection with its SERVICES under this AGREEMENT.

8.15 Subject Headings. The subject headings of the Sections and Subsections of this AGREEMENT are included for convenience only and shall not affect the construction or interpretation of its provisions.

8.16 Continuing Obligation. Whenever necessary or reasonable to carry out the intention of the parties, the provisions of this AGREEMENT shall survive the expiration or termination of this AGREEMENT and shall continue in full force and effect.

8.17 Successors and Assigns. Neither the CLIENT nor the ENGINEER may assign, sublet, subcontract, or transfer any rights under or interests in this AGREEMENT without the written consent of the other. Except for the nonassignability of this AGREEMENT as herein provided, it shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns, and each represents to the other that the undersigned are authorized to execute this AGREEMENT on behalf of the respective parties.

8.18 Books and Records. The ENGINEER agrees to maintain reasonably proper books, records, documents, papers and shall apply consistent accounting practices to properly reflect actual transactions on its accounting books and records in accordance with the rules and regulations of the national accounting governing board. Additionally, the ENGINEER shall use such books and records to provide accurate historical cost data as a basis for pricing this AGREEMENT. The ENGINEER agrees to save and make available all such records for audit or review by the CLIENT, or any other

## STANDARD TERMS AND CONDITIONS

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governmental funding agency at all reasonable times during the term of this AGREEMENT and for a period of three years after final payment is made to the ENGINEER.

8.19 Deficiencies. CLIENT shall not be responsible for discovering deficiencies in the technical accuracy of ENGINEER's services. However, CLIENT shall be diligent in its review of ENGINEER's communications and written materials and shall promptly notify the ENGINEER of any known or suspected deficiencies by CLIENT in ENGINEER's services.

8.20 Survival. All express representations, waivers, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

8.21 Waiver of Consequential Damages. Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the CLIENT nor the ENGINEER shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

8.22 Hidden Conditions. A condition is hidden if concealed by existing conditions or structure or is not capable of investigation by reasonable visual observation. If the ENGINEER has reason to believe that a condition may exist, the CLIENT shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the CLIENT fails to authorize such investigation after such notification, or (2) the ENGINEER has no reason to believe that such a condition exists, the ENGINEER shall not be responsible for the existing conditions, hidden conditions, or any resulting damages or losses resulting therefrom.

8.23 Betterment. If a required item or component of the Project is omitted from the ENGINEER's documents, the ENGINEER shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been included or required in the ENGINEER's original documents. In no event will the ENGINEER be responsible for any costs or expense that provides betterment or upgrades or enhances the value of the Project.

8.24 Construction Activities. The ENGINEER shall not be responsible for the acts or omissions of any person performing any construction Work or for instructions given by the CLIENT or its representatives to anyone performing any construction Work, nor for construction means and methods or job-site safety. The ENGINEER has authority to advise the CLIENT that the contractor's Work shall be rejected for not conforming to the construction documents, but only the CLIENT has the authority to reject and/or stop the Work of the contractor(s).

8.25 ENGINEER's Status during Construction. If the "ENGINEER's Scope of Services" includes Construction Phase Services, The ENGINEER shall act as the CLIENT's representative in accordance with EJCDC C-700 "Standard General Conditions of the Construction Contract" except as limited by the "ENGINEER's Scope of Services". A resident project representative will only be used if specifically included in the "ENGINEER's Scope of Services".

8.26 Design without Construction Phase Services. If the "ENGINEER's Scope of Services" does not include Construction Phase Services, it is understood that the ENGINEER's services do not include Construction Phase Services, and as such the services will be provided by the CLIENT. The CLIENT assumes all responsibility for interpretation of the ENGINEER's documents and construction observation, and CLIENT waives any claims against ENGINEER that may be in any way connected thereto.

8.27 Confidential Information. The ENGINEER agrees that CLIENT's confidential information, if designated as such by CLIENT, may not be disclosed to others. However, notwithstanding the foregoing, the disclosure of CLIENT's confidential information is permitted:

- 1) if such information has become known to the public generally through no fault of the ENGINEER
- 2) if the information is regularly given to third parties without restriction on use or disclosure
- 3) if the information was provided to the ENGINEER prior to this agreement
- 4) if the ENGINEER must comply with any law, rule or regulation
- 5) if the ENGINEER must comply with its applicable professional codes of ethics or standards and conduct
- 6) if the ENGINEER must defend itself or litigate in a lawsuit or any other dispute resolution.

8.28 Relationship of the Parties. All services provided by ENGINEER are for the sole use and benefit of the CLIENT. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the ENGINEER

## REIMBURSABLE EXPENSES

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| Reimbursable         | Rate                    | Note                    |
|----------------------|-------------------------|-------------------------|
| Mileage              | Current IRS Rate / Mile |                         |
| Concrete Control Kit | \$15.00 / Day           |                         |
| Survey Total Station | \$200.00 / Day          |                         |
| Survey 3D Scanner    | \$750.00 / Day          |                         |
| Survey Lidar Drone   | \$600.00 / Day          |                         |
| GIS GPS Unit         | \$150.00 / Day          |                         |
| CCTV Truck           | \$76.00 / Hr.           | Includes one way travel |
| Vac Truck            | \$76.00 / Hr.           | Includes one way travel |
| Imagery Drone        | \$150.00 / Day          |                         |



**Construction Administration & Inspection Services**  
**Fee Proposal Summary - EXHIBIT "A"**

**Client:** City of Avon  
**Description:** Third Party Review - PID 119934  
**Project:** LOR-SR83-16.76 Sidewalks

**LABOR**

| <u>Phase</u>          | <u>Estimated Hours</u> |                                  |
|-----------------------|------------------------|----------------------------------|
|                       | <u>Project Manager</u> | <u>Project Engineer</u>          |
| Total Regular Hours   | 4.0                    | 40.0                             |
| Total Overtime Hours  | ---                    | ---                              |
| Hourly Rate \$        | 83.00                  | \$ 43.00                         |
| OT Hourly Rate        | ---                    | ---                              |
| Sub Total - Labor \$  | 332.00                 | \$ 1,720.00                      |
|                       |                        | Total - Labor \$ <u>2,052.00</u> |
| Labor Multiplier 3.19 |                        | Total - Labor \$ <u>6,545.88</u> |

*Note: Labor will be billed hourly on a cost-plus fixed fee per employee basis using a labor multiplier based on KEM's ODOT approved overhead rate.*

Grand Total \$ 6,545.88

# Hourly Rate Calculations

Instructions - Insert information in yellow highlighted cells only. On Sheet 2, input information to determine rates per classification. Hourly rates will be calculated automatically.

Agreement No.:

C-R-S:

Firm Name:

|                                 |
|---------------------------------|
|                                 |
| Third Party Review - PID 119934 |
| K.E.McCartney & Assoc., Inc.    |

Company Overhead: 189.18%

Average Overhead: 159.98%

Cost of Money: 3.68%

Net Fee %: 10%

The Company records OT premium as: Direct Labor

Does the company anticipate billing overtime? Yes

| Classification            | 1.5X OT? | Avg. Raw Rate | Overhead | C.O.M  | Fixed Fee | Computed Straight Time/OT Exempt Billing Rate <sup>1</sup> | Computed Overtime Billing Rate <sup>1</sup> |
|---------------------------|----------|---------------|----------|--------|-----------|------------------------------------------------------------|---------------------------------------------|
| Project Manager           | No       | \$83.00       | \$157.02 | \$3.05 | \$21.45   | \$265                                                      | \$265                                       |
| Assistant Project Manager | No       | \$47.50       | \$89.86  | \$1.75 | \$12.35   | \$151                                                      | \$151                                       |
| Sr. Project Engineer      | No       | \$44.50       | \$84.19  | \$1.64 | \$11.05   | \$141                                                      | \$141                                       |
| Project Engineer          | No       | \$43.00       | \$81.35  | \$1.58 | \$11.05   | \$137                                                      | \$137                                       |
| Project Inspector         | Yes      | \$34.50       | \$65.27  | \$1.27 | \$8.45    | \$109                                                      | \$160                                       |
| Construction Technician 2 | Yes      | \$22.00       | \$41.62  | \$0.81 | \$5.85    | \$70                                                       | \$102                                       |
| Construction Technician 1 | Yes      | \$20.00       | \$37.84  | \$0.74 | \$4.55    | \$63                                                       | \$92                                        |
|                           |          | \$0.00        | \$0.00   | \$0.00 | \$0.00    | N/A                                                        | \$0                                         |
|                           |          | \$0.00        | \$0.00   | \$0.00 | \$0.00    | N/A                                                        | \$0                                         |
|                           |          | \$0.00        | \$0.00   | \$0.00 | \$0.00    | N/A                                                        | \$0                                         |
|                           |          | \$0.00        | \$0.00   | \$0.00 | \$0.00    | N/A                                                        | \$0                                         |
|                           |          | \$0.00        | \$0.00   | \$0.00 | \$0.00    | N/A                                                        | \$0                                         |

<sup>1</sup> **Note:** Rounded the nearest dollar.

## Fixed Fee per Hour by Employee

|                        |                             |
|------------------------|-----------------------------|
| ODOT Agreement Number: |                             |
| C-R-S:                 | LOR-SR83-16.76 / PID 119934 |
| Firm Name:             | K.E. McCartney & Associates |

| <u>Employee Name</u> | <u>Hourly Fixed Fee</u> | <u>Group</u> |
|----------------------|-------------------------|--------------|
| TBD                  | \$ 4.55                 | 2            |
| TBD                  | \$ 5.85                 | 3            |
| 933                  | \$ 8.45                 | 5            |
| 1052                 | \$ 11.05                | 7            |
| 926                  | \$ 11.05                | 7            |
| 2882                 | \$ 11.05                | 7            |
| 1270                 | \$ 12.35                | 8            |
| 2700                 | \$ 21.45                | 15           |