

RESOLUTION NO.: 2011-R07
SPONSOR: MAYOR NORTON
INTRODUCED: FEBRUARY 8, 2011

ASSIGNED TO: FINANCE

A RESOLUTION AUTHORIZING THE CITY OF GREEN TO ENTER INTO A CONTRACT WITH FLOYD BROWNE GROUP TO PROVIDE MUNICIPAL ENGINEERING SERVICES THROUGH 2013, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Green wishes to procure the services of an engineering firm to provide certain engineering services; and

WHEREAS, the City of Green followed the Revised Code requirements for quality based selection of engineering services; and

WHEREAS, Floyd Browne Group was the highest ranked firm in the quality based selection process; and

WHEREAS, an agreement for engineering services has been negotiated with Floyd Browne Group; and

WHEREAS, Floyd Browne Group and its predecessors have provided engineering services to the City since 1993; and

WHEREAS, the current contract with Floyd Browne Group expired on December 31, 2010 and the City Engineer has recommended that the City enter into a new agreement with Floyd Browne Group.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO THAT:

SECTION ONE:

City Council authorizes the Mayor to enter into an agreement between the City of Green and Floyd Browne Group for engineering services for the term of January 1, 2011 through December 31, 2013. A copy of the Agreement is attached as Exhibit "A".

SECTION TWO:

City Council authorizes the Finance Director to make payment to Floyd Browne Group for engineering services through the established purchase order process.

SECTION THREE:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION FOUR:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: Feb. 22, 2011
Molly Stevens
Molly Stevens, Clerk

[Signature]
Joel Reed, Council President

APPROVED: Feb 23, 2011
[Signature]
Richard G. Norton, Mayor

COPIED _____
SVCE ZONE PARK ROAD ENG
LAW (FIN) (MAY) (PLAN) FIRE

ENACTED EFFECTIVE: Feb 23, 2011

ON ROLL CALL: Colopy -yes DeVitis -yes France -yes Manwaring -yes
Reed -yes Summerville -yes Smole -yes Adopted 7-0

Suburbanite publication on Feb. 27 and March 6, 2011

Molly Stevens
Molly Stevens, Clerk

2/08/2011 Approved as to form and content by Stephen J. Pruneski, Law Director [Signature] 2/8/11

CONTRACT FOR ENGINEERING SERVICES
BETWEEN
CITY OF GREEN, OHIO
AND
FLOYD BROWNE GROUP

This CONTRACT, entered into as of this ___ day of _____, 2011, by and between Floyd Browne Group, of Ohio with offices located at 450 Grant Street, Akron, Ohio (hereinafter referred to as the "ENGINEER") and the CITY OF GREEN, OHIO (hereinafter referred to as the "CITY");

WITNESSETH THAT:

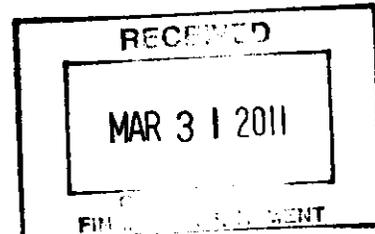
WHEREAS, the CITY, has determined the need to develop and implement a program that requires certain professional engineering services (hereinafter referred to as "SERVICES"); and

WHEREAS, the CITY, on the ___ day of _____, 2011, passed Resolution No. _____ designating the ENGINEER as the CITY'S Engineer from January 1, 2011 through December 31, 2013; and

WHEREAS, the ENGINEER is willing to render the Services desired by the CITY for the consideration hereinafter expressed.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the parties hereto agree that the CITY shall engage the services of the ENGINEER as set forth herein, under the terms and conditions of this CONTRACT as follows:

1. Scope of Engineering Services. The ENGINEER shall perform all engineering services which the CITY determines to be necessary for the satisfactory completion of this CONTRACT as described in the General Provisions attached to and made part of this Agreement.
2. City Engineer Designation. The ENGINEER will select and designate a licensed professional ENGINEER to act as the CITY ENGINEER and who will be in responsible charge of all those engineering services performed under this CONTRACT. The designated ENGINEER will be subject to the approval of the CITY. Unless modified in writing by either party and accepted by the other, the duties of the ENGINEER shall not be construed to exceed those services specifically set forth in this CONTRACT.
3. Authorization, Progress and Completion. Notice to Proceed with the work described in the General Provisions, on a project to project basis, shall be granted in writing by the Mayor of the CITY within 30 days after the CITY'S acceptance of project scope and costs. The ENGINEER shall not proceed with the work without such Notice.



4. **Providing Information.** The CITY will provide full information as to its requirements for the PROJECT and furnish the ENGINEER for its use during the PROJECT, information, data, reports, and records available with the CITY which the ENGINEER determines to be useful for carrying out the work on this PROJECT.
5. **Access and Approval.** The CITY shall make all arrangements for the ENGINEER to enter upon public and private property as required by the ENGINEER for the performance of the Services under this CONTRACT. The CITY shall furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for the performance of this CONTRACT.
6. **Compensation.** The ENGINEER shall be compensated for services rendered and costs incurred under this CONTRACT on the basis of Direct Labor Costs, as described in Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses".
7. **Payment.** The ENGINEER shall invoice the CITY regularly after the end of ENGINEER'S accounting month for services rendered and costs incurred during the preceding accounting month. The amounts due on invoicing shall be payable when invoiced, and the CITY shall pay such amounts within thirty (30) days of invoicing. Said invoice shall detail by task the services performed and the amount of time spent on the project during that period.
8. **Nature of Services.** The ENGINEER is employed to render a professional service only and any payments made to it are compensation solely for such services as it may render and recommendations it may make in carrying out the work. The ENGINEER warrants that its findings, opinions, recommendations, factual presentations, or professional advice were promulgated after following a practice usual to the engineering profession.

GENERAL PROVISIONS

Attached to and made a part of LETTER AGREEMENT, dated _____, 2011 between CITY OF GREEN (OWNER) and Floyd Brown Group, (ENGINEER) in respect of the Project described therein.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 General.

1.1.1. ENGINEER shall perform for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2 Study and Report Phase.

After written authorization to proceed, ENGINEER shall:

1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.2. and assist OWNER in obtaining such data and services.

1.2.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.

1.2.4. Provide analyses of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

1.2.5. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.

1.2.6. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth ENGINEER's findings and recommendations. This Report will be accompanied by ENGINEER's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Costs, allowance for engineering costs and contingencies, and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others for OWNER pursuant to paragraph 3.2. The total of all such costs, allowances, etc., are hereinafter called "Total Project Costs".

1.2.7. Furnish the necessary copies of the Study and Report documents and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Study and Report Phase are amended and supplemented as indicated in paragraph 2 of Exhibit A "Further Descriptions of Basic Engineering Services and Related Matters".

1.3. Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.3.1. In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the Project.

1.3.2. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

1.3.3. Advise OWNER if additional data or services of the types described in the first subparagraph of paragraph 3.2. are necessary and assist OWNER in obtaining such data and services.

1.3.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Total Project Costs.

1.3.5. Furnish the necessary copies of the above Preliminary Design documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.4. Final Design Phase.

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1.4.1. On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs, prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications (which will be prepared in conformance with the sixteen division format of the Construction Specifications

Institute).

1.4.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with appropriate authorities.

1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.4.4. Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineers' Joint Contract Documents Committee), and assist in the preparation of other related documents.

1.4.5. Furnish the necessary copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.5 Bidding or Negotiating Phase.

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.5.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-

bid conferences and receive and process deposits for Bidding Documents.

1.5.2. Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.5.3. Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.5.4. Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.5.5. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in paragraph 5 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

1.6 Construction Phase.

During the Construction Phase:

1.6.1. *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1983 edition) of the Engineers' Joint Contract Documents Committee. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said

Standard General Conditions shall not be modified, except to the extent provided in paragraph 6 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.6.2. *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor(s) while it is in progress:

1.6.2.1. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work, is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.

1.6.2.2. The Resident Project Representative (and any assistants) will be ENGINEER's agent or employee and under ENGINEER's supervision. The duties and responsibilities of the Resident Project Representative (and assistants) are set forth in Exhibit B "Duties, Responsibilities and limitation of Authority of Resident Project Representative".

1.6.2.3. The purpose of ENGINEER's visits to and representation by the Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a great degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

1.6.3. *Defective Work.* During such visits and on the basis of such observations, ENGINEER may disapprove of or reject Contractor(s)' work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.6.4. *Interpretations and Clarifications.* ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.6.5. *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto 1.6.6. *Substitutes.* ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of the second subparagraph of paragraph 2.1.2.

1.6.6. *Inspections and Tests.* ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.6.7. *Disputes between OWNER and Contractor.* ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.6.8. *Applications for Payment.* Based on ENGINEER's on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:

1.6.8.1. ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.6.8.2. By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct

or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.6.9. *Contractor(s)' Completion Documents.* ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.

1.6.10. *Inspections.* ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.6.9.2.

1.6.11. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or suppliers' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.6.1. through 1.6.11., inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

1.7 Operational Phase.

During Operational Phase, ENGINEER shall, when requested by OWNER:

1.7.1. Provide assistance in the closing of any financial or related transaction for the Project.

1.7.2. Provide assistance in connection with the refining and adjusting of any equipment or system.

1.7.3. Assist OWNER in training OWNER's staff to operate and maintain the Project.

1.7.4. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

1.7.5. Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to ENGINEER and which ENGINEER considers significant.

1.7.6. In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.

The duties and responsibilities of ENGINEER during the Operational Phase are amended and

supplemented as indicated in paragraph 7 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1. Normal and customary engineering services do not include service in respect of the following categories of work which are usually referred to as Additional Services.

2.1.1. If OWNER wishes ENGINEER to perform any of the following Additional Services, OWNER shall so instruct ENGINEER in writing, and ENGINEER shall perform or obtain from others such services and will be paid therefore as provided in the Letter Agreement:

-Preparation of applications and supporting documents for governmental financial support of the Project in addition to those required under Basic Services; preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

-Services to make measured drawings of or to investigate existing conditions or facilities.

-Services resulting from significant changes in the general scope, extent or character of the Project or major changes in documentation previously accepted by OWNER where changes are due to causes beyond ENGINEER's control.

-Providing renderings or models.

-Preparing documents for alternate bids requested by OWNER for work which is not executed or for out-of-sequence work.

-Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements,

cash flow and economic evaluations, feasibility studies, appraisals and valuations.

-Furnishing the services of independent professional associates or consultants for other than Basic Services.

- If ENGINEER's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, or from the construction contract containing cost plus or incentive-savings provisions for Contractor's basic compensation, or from arranging for performance by persons other than the principal prime contractors or from administering OWNER's contracts for such services.

-Services in connection with field surveys for design purposes and engineering surveys and staking out the work of Contractor(s).

-Services during out-of-town travel other than visits to the site.

-Preparation of operating and maintenance manuals to supplement Basic Services under paragraph 1.7.3.

-Preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

2.1.2. When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from OWNER, and ENGINEER will be paid therefor as provided in the Letter Agreement:

-Services in connection with work directive changes and change orders to reflect the

changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

-Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor; and evaluating unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

-Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

-Additional or extended services during construction made necessary by (1) work damage by fire or other causes during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by any Contractor.

SECTION 3 - OWNER'S RESPONSIBILITIES

3.1. OWNER shall provide all criteria and full information as to OWNER's requirements for the Project; designate a person to act with authority on OWNER's behalf in respect of all aspects of the Project; examine and respond promptly to ENGINEER's submissions; and give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the work.

3.2. OWNER shall also do the following and pay all costs incident thereto:

-Furnish to ENGINEER borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning and deed restrictions; all of which ENGINEER may rely upon in performing services hereunder.

-Guarantee access to and make all provisions for ENGINEER to enter upon public and private property.

-Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of Contractor(s)' applications for payment, and any inspection services to determine if Contractor(s) are performing the work legally.

-Provide engineering surveys to establish reference points for construction.

-Furnish approvals and permits from all governmental authorities having jurisdiction over the Project.

-If more than one prime contractor is to be awarded for construction, designate a party to have responsibility and authority for coordinating the activities of the various prime contractors.

3.3.1. OWNER shall pay all costs incident to obtaining bids or proposals from Contractor(s).

SECTION 4 -MEANING OF TERMS

4.1. As used herein the term "this Agreement" refers to the Letter Agreement to which these General Provisions are attached and to these General Provisions, Exhibit A "Further Description of Basic Engineering Services and

Related Matters" and Exhibit B "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", as if they were part of one and the same document.

4.2. The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to paragraph 3.2. [Construction Cost is one of the items comprising Total Project Costs which is defined in paragraph 1.2.6.].

4.3. Direct Labor Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; but does not include indirect payroll related costs or fringe benefits.

4.4. Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposal from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents and similar Project-related items in addition to those required under Section 1; and if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, when compensation for

Basic Services is on the basis of cost plus a fixed fee, Direct Labor Costs or Payroll Costs method of payment, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques times a factor of 1.10.

SECTION 5 - MISCELLANEOUS

5.1. Reuse of Documents.

All documents including Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extension of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5.2 Opinions of Cost.

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or

market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgement as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.2. ENGINEER's services to modify the Contract Documents to bring the Construction Cost within any limitation established by OWNER will be considered Additional Services and paid for as such by OWNER.

5.3. Other Provisions Concerning Payments.

If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement therefor, the amounts due ENGINEER will be increased at the rate of 1% per month from said thirtieth day, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges.

5.4 Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon sixty days' written notice. In the event of any termination, ENGINEER will be paid for all services rendered to the date of termination, including all Reimbursable Expenses.

5.5 Controlling Law.

This Agreement is to be governed by the law of the State of Ohio.

5.6 Successors and Assigns.

5.6.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.6.2. the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.6.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

5.6.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

**EXHIBIT A TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011**

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

1. This is an exhibit attached to and made a part of the General Provisions attached to Letter Agreement made on _____, 2011 between City of Green (OWNER) and Floyd Browne Group (ENGINEER) providing for professional engineering services. The Basic Services of ENGINEER as described in Section 1 of the said General Provisions are amended or supplemented as indicated below and the time periods for the performance of certain services as indicated in said General Provisions are stipulated as indicated below.

2. During the Study and Report Phase ENGINEER shall:

Furnish detailed scope as requested.

The Study and Report Phase Services will be completed and the Report submitted within TBD calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

3. During the Preliminary Design Phase ENGINEER shall:

Furnish detailed scope as requested.

The Preliminary Design Phase Services will be completed, and ENGINEER's Final Design Phase documentation and opinion of costs submitted within TBD calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

4. During the Final Design Phase ENGINEER shall:

Furnish detailed scope as requested.

The Final Design Phase Services will be completed and Contract Documents and ENGINEER's opinion of costs submitted within TBD calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

5. During the Bidding or Negotiating Phase ENGINEER shall:

Furnish detailed scope as requested.

6. During the Construction Phase ENGINEER shall:

Furnish detailed scope as requested.

7. During the Operational Phase ENGINEER shall:

Furnish detailed scope as requested.

**EXHIBIT B TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011**

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE.

This is an Exhibit attached to, made a part of and incorporated by reference with the General Provisions attached to Letter Agreement made on _____, 2011, between CITY OF GREEN (OWNER) and FLOYD BROWNE GROUP, (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents and in particular the specific limitations set forth in paragraph 1.6 of the General Provisions to the Letter Agreement are applicable.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

PAGE 2 - EXHIBIT B TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF
THE RESIDENT PROJECT REPRESENTATIVE.**

B. Duties and Responsibilities of RPR

1. *Schedules*: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings*: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. *Liaison*:
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR'S superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR'S operations affect OWNER'S on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. *Shop Drawings and Samples*:
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.
5. *Review of Work, Rejection of Defective Work, Inspections and Tests*:
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof, and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

PAGE 3 - EXHIBIT B TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF
THE RESIDENT PROJECT REPRESENTATIVE.**

6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. *Modifications:* Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
8. *Records:*
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.
9. *Reports:*
 - a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
 - d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
10. *Payment Requests:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

PAGE 4 - EXHIBIT B TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF
THE RESIDENT PROJECT REPRESENTATIVE.**

11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
12. *Completion:*
 - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
 - b. Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
 - c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the General Provisions to the Letter Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advise or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

**EXHIBIT C TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011**

Payments to ENGINEER for Services and Reimbursable Expenses

C.1. Methods of Payment for Services and Expenses of ENGINEER

C.1.1. For Basic Services. OWNER shall pay ENGINEER for Basic Services as follows:

C.1.1.1. General. An amount equal to ENGINEER's Direct Labor Cost times a factor of 3.20 for all services performed by principals and employees engaged directly on the Project.

C.1.1.2. Resident Project Representative Services. For services of ENGINEER's Resident Project Representative performed or furnished under paragraph 1.6 an amount equal to ENGINEER's Direct Labor Cost times a factor of 3.20 for services performed by principals and employees engaged directly in resident Project representation.

C.1.1.3. Operational Phase Services. For Operational Phase services performed or furnished under paragraph 1.7, an amount equal to ENGINEER's Direct Labor Cost times a factor of 3.20 for services performed or furnished by principals and employees engaged directly on the Project.

C.1.1.4. ENGINEER's Consultants. For services of ENGINEER's Consultants engaged to perform or furnish Basic Services, the amount billed to ENGINEER therefor times a factor of 1.10.

C.1.2. For Additional Services. OWNER shall pay ENGINEER for Additional Services as follows:

C.1.2.1. General. For services of ENGINEER's principals and employees engaged directly on the Project performed or furnished pursuant to paragraph 2.1 an amount equal to ENGINEER's Direct Labor Cost times a factor of 3.20.

C.1.2.2. ENGINEER's Consultants. For services of ENGINEER's Consultants performed or furnished pursuant to paragraph 2.1, the amount billed to ENGINEER therefor times a factor of 1.10.

C.1.2.3. *Serving as a Witness.* For services performed by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding, at an amount equal to Engineer's Direct Labor Cost times a factor of 3.50 (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph C.1.2.1.). Compensation for ENGINEER's Consultants for such services will be on the basis provided in paragraph C.1.2.2.

**PAGE 2 - EXHIBIT C TO GENERAL PROVISIONS ATTACHED TO LETTER AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES
DATED _____, 2011**

C.1.3 For Reimbursable Expenses. OWNER shall pay ENGINEER for Reimbursable Expenses.

The amount payable for Reimbursable Expenses will be the charge actually incurred by or the imputed cost allocated by ENGINEER therefor times factor of 1.10.

C.2. Other Provisions Concerning Payments.

C.2.1. Preparation of Invoices. The amount billed for ENGINEER's services will be based on the Direct Labor Cost (multiplied by a factor, if any, as stated above incurred at the time of billing).

C.2.3 Payments Upon Termination.

C.2.3.4. In the event of termination during any phase of the Basic Services, ENGINEER will be paid for services performed or furnished in accordance with this Agreement during that phase on the basis of ENGINEER's Direct Labor Cost times a factor of 3.20 for services performed or furnished during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project.

EXHIBIT D
Standard Hourly Rate Schedule

The schedule of hourly rates, itemized according to employee classification, represents the full range of staff that can be called upon to serve our clients' needs. These figures are in effect until December 31, 2012.

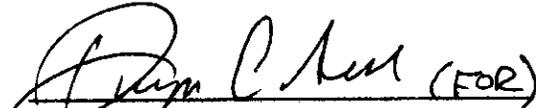
| Employee Classification | Hourly Rates |
|---|--------------------------------|
| Principal Director | \$125 - \$185 |
| Senior Group Leader Senior Project Manager Senior Environmental Scientist Project Consultant Construction Manager | \$110 - \$150 |
| Group Leader Project Manager Construction Manager | \$100 - \$145 |
| Senior Project Engineer Team Leader Project Manager | \$90 - \$125 |
| Project Engineer Project Scientist Project Surveyor Senior Designer Senior Landscape Architect | \$75 - \$100 |
| Engineer Landscape Architect Operations Superintendent Resident Rep., Inspector Senior Designer Senior Survey Crew Chief | \$65 - \$110 |
| Engineer Land Planner Senior Designer Project Technician Survey Crew Chief Project Assistant | \$50 - \$90 |
| Project Assistant Resident Rep. Operator Designer | \$40 - \$75 |
| Survey Crew GPS Construction and General | \$150 - \$165 \$100 - \$145 |

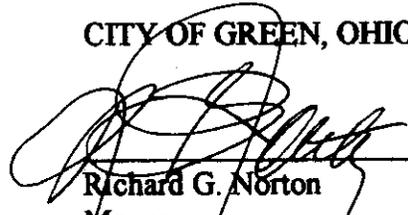
9. Insurance Coverage. The ENGINEER shall indemnify and hold harmless the CITY, its employees and offices and shall obtain general public liability insurance coverage satisfactory to the CITY in the amount of \$1,000,000.00, and property damage insurance in the amount of \$1,000,000.00, insuring against loss or injury arising out of the activities of any employee or other personnel working under the control or supervision of the ENGINEER. The ENGINEER will obtain coverage adequate to protect it from claims for damages because of bodily injury, sickness, disease, or death, and from claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
10. Integration. This Agreement represents the entire understanding of CITY and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by the party to be charged.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this CONTRACT as of the date first above written.

FLOYD BROWNE GROUP

CITY OF GREEN, OHIO


Bradley J. Bendle, P.E.
Project Manager

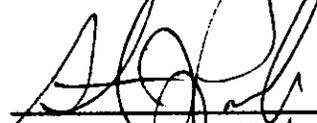

Richard G. Norton
Mayor


Dwayne A. Groll, P.E.
Vice President

Date: _____

Date: 3.2.11

APPROVED AS TO FORM:


Stephen J. Primeski
Law Director