

ORDINANCE NO. 185-17

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH EMH&T TO CONDUCT ENVIRONMENTAL SERVICES FOR THE CHAMPION CREEK MULTI-PURPOSE PATH.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Mayor is hereby authorized and directed to enter into an Agreement with EMH&T to conduct environmental services for the Champion Creek Multi-Purpose Path.

SEC. 2: That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.

SEC. 3: That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.

SEC 4: That the funds to cover this Agreement, in the amount of \$10,200.00 are available in Account No. 108-0610-54411.

SEC. 5: 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 any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 6: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: December 11, 2017

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: December 12, 2017

SIGNED: Dennis Hanwell
Mayor



Ord. 185-17
E.M.A

November 22, 2017

Mr. Patrick Patton, PE
City Engineer
City of Medina
132 N. Elmswood Avenue
Medina, Ohio 44256

Subject: Proposal for Environmental Services for the MED-Champion Creek (PID 95489), City of Medina Project #968

Dear Mr. Patton,

EMH&T is pleased to submit our proposal to conduct environmental services for the proposed Champion Creek bicycle and streetscape enhancements in the City of Medina, Medina County, Ohio. The project consists of the installation of approximately 0.95 miles of 5-foot wide bike lanes within the existing paved surface of S. Court Street; the installation of approximately 0.49 miles of signed, shared use path along S. Court Street, Lafayette Road, S. Broadway Street, and Grant Street; Installation of Streetscape

The project has funding through the Ohio Department of Transportation (ODOT) and must follow the ODOT-Local Public Agency (LPA) process. As such, the project must follow the applicable laws and regulations of the National Environmental Policy Act (NEPA), following ODOT's environmental process. In order to obtain "environmental clearance" from ODOT, EMH&T will perform the following services, adhering to ODOT's procedures, protocols and guidance documents:

*Note that the services below generally follow the SCOPE OF SERVICES document provided to EMH&T on November 17, 2017. In order to satisfy ODOT's NEPA requirements, a Property Owner Notification/Public Involvement Letter (following ODOT's minimal Public Involvement standards) and an Ecological Exempt Form (to document no ecological resource impacts) must also be completed.

C2 Level Categorical Exclusion Document

Based on the *Programmatic Categorical Exclusion Agreement* between FHWA and ODOT (February 13, 2015), it is assumed the project can be cleared as a Level C2 Categorical Exclusion. As such, EMH&T will prepare a C2 Form for the project using ODOT's EnviroNet platform. Efforts include ensuring that appropriate documentation (i.e. location mapping, photo log, drinking water mapping, FEMA mapping, EJ/UP mapping, etc.) will be uploaded to the on-line Project File as necessary. A full Purpose and Need statement is not required, but a brief statement of the project's purpose will be included in the project description. Details about utilities and right-of-way must also be included in the project description, per recent direction by ODOT. Per our discussion with ODOT-District 3 environmental staff, the project description also needs to include a discussion regarding how this proposed project has "independent utility" (i.e. that is a single and complete project that can be constructed absent the construction of other projects in the project area).

Public Involvement

Property Owner Notification/Public Involvement Letters

Following ODOT's *Public Involvement Manual*, a project of this type must include mailing of a property owner notification letter with the standard ODOT public involvement (PI)/request for public input language. The letters must be mailed to all property owners adjacent to the project area. EMH&T will prepare these letters, a mailing address list, and project location aerial mapping (for inclusion with the letters). The letters will include the required ODOT NEPA Assignment language. The draft letters will be provided to the City for their review and to put on City letterhead. EMH&T will be responsible for mailing the letters.

Newspaper Advertisement

Per the provided SCOPE OF SERVICES document, and in keeping with ODOT's PI requirements, the City will run a newspaper advertisement about the project and will allow for the 30 days of public comment. EMH&T will prepare the project description for the newspaper advertisement, which will include the required ODOT NEPA Assignment language. The City will be responsible for posting and paying for the news ad.

Regulated Materials Review (RMR)

EMH&T will perform a Regulated Materials Review (RMR) following ODOT's *Regulated Materials Review Guidelines* (July, 2017) and any subsequent updates that are expected in January 2018. This scope and fee covers the existing database review and preparation of the RMR Form.

If any sites are identified that require a Phase I or II Environmental Site Assessment (ESA), EMH&T can provide a separate proposal for this service.

Section 106 Scoping Request Form

EMH&T will prepare a Section 106 Scoping Request Form (SRF) package per ODOT standards. This document will include sufficient photographs to accurately document the existing conditions of the project corridors.

The project is located in the Medina Public Square Historic District. Based on our conversation with ODOT-District 3 environmental staff, the SRF must also include documentation of coordination with the local historic office, and written confirmation that the office has no concerns about this project. EMH&T will draft the letter for the local historic office and provide it to the City. The City will be responsible for getting the appropriate signatures on the letter from the local historic office (since it is expected this will be the quickest route to getting the necessary written confirmation).

This scope and fee does not cover any cultural resources surveys or documentation beyond the scope discussed above. If any additional Historic/Architecture surveys or other cultural resources documentation is required, EMH&T can provide a separate proposal for these services.

****The Historic District is a Section 4(f) resource and will be subject to Section 4(f) coordination and documentation. It is assumed that ODOT will handle all Section 4(f) coordination/documentation for this project. If EMH&T needs to assist in any Section 4(f) coordination, a separate proposal can be provided for this service.***

Ecological Exempt Form

ODOT will require that the necessary documentation for ecological resources and impacts be prepared for this project. Based on the urban nature of the project area, it is anticipated that ODOT's Ecological Exempt Form will apply to this project. This assumes that no impacts (temporary or permanent) to Champion Creek will occur as a result of this project. EMH&T will conduct the necessary agency coordination (for Threatened and Endangered species record reviews) and a site investigation to confirm the absence of sensitive ecological resources in the project area. This will be documented on the Ecological Exempt Form, which will be uploaded to the EnviroNet Project File.

This scope and fee does not cover any ecological investigations beyond the scope discussed above. If any additional ecological documentation is required, EMH&T can provide a separate proposal for these services.

FEES

We propose to furnish the above-described services for the following not to exceed fees (these fees include reimbursable direct costs, such as mileage, reprography costs, etc.):

| <u>Scope of Services</u> | |
|---|------------------|
| C2 Level Categorical Exclusion Document | \$ 3,900 |
| Public Involvement | \$ 1,000 |
| Regulated Materials Review (RMR) | \$ 1,200 |
| Section 106 Scoping Request Form | \$ 2,400 |
| Ecological Exempt Form | \$ 1,700 |
| Total | \$ 10,200 |

INVOICING

Invoices for the aforementioned services shall be due and payable within thirty (30) days of issuance. In the event that payment is not made in a timely manner, the overdue balance shall bear interest at a rate of 1.5% per month.

RIGHT-OF-ENTRY

It is understood that the Client hereby grants EMH&T, Inc. or represents and warrants (if the site is not owned by the Client) that permission has been duly granted for a Right-of-Entry by our firm, agents, staff, consultants and subcontractors, for the purpose of obtaining field information pertinent to the subject project.

TERMS AND CONDITIONS OF PROFESSIONAL SERVICE

The attached "Terms and Conditions of Professional Service" shall be considered a part of this proposal, and is incorporated in full into this proposal. Unless expressly modified by the parties in writing, this proposal and the accompanying Terms and Conditions of Professional Service shall

City of Medina
Environmental Services: MED-Champion Creek (PID 95489)
City of Medina Project # 968


November 22, 2017

constitute the final agreement of the parties. By signing this proposal, you are affirming that you have received and reviewed EMH&T's Terms and Conditions of Professional Service, and agree to be bound by the terms and conditions stated therein.

We appreciate the opportunity to submit this proposal to you and look forward to working with you on this project. If you have any questions, please do not hesitate to call me directly at (614) 775-4516.

Respectfully submitted,

EVANS, MECHWART, HAMBLETON & TILTON, INC.



Christy L. Pirkle
Senior Environmental Scientist, Associate

Acceptance and Authorization to Proceed



Authorized Signature

Dennis Hanwell, Mayor City of Medina

Client Name

12/12/2017

Print Name and Date

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Terms and Conditions of Professional Service

These terms and conditions together with any Proposal attached hereto constitute the entire agreement (hereinafter the "Agreement") between Evans, Mechwart, Hambleton & Tilton, Inc. ("EMH&T") and Client as if they were part of one and the same document.

Definitions:

"EMH&T" shall refer to Evans, Mechwart, Hambleton, and Tilton, Inc., an Ohio Corporation, and its sub-consultants. "Client" shall refer to the person, firm, or corporation that has entered into a contractual relationship with EMH&T providing for the performance of professional services. "Proposal" shall refer to the written scope of services, unit prices, and/or fixed fee provided by EMH&T to Client describing, if applicable, the nature of the services to be performed by EMH&T or its sub-consultants, and the amount and type of compensation to be paid for those services.

Authorization as Representative

Client authorizes EMH&T to take all actions on Client's behalf which EMH&T, in its sole discretion, believes to be necessary to perform the services described herein and in the Proposal.

Access to Property/Site Conditions

Client shall obtain, without cost to EMH&T, free right of access for EMH&T personnel to enter upon any land so long as such entry is reasonably necessary to perform said services. Client understands that services provided by EMH&T commonly require drilling, sampling, and other activities that may disrupt use of the premises and may disturb, alter, or damage terrain, crops and/or vegetation. Client waives all claims against EMH&T for any loss or damage to property that is based on EMH&T's disturbance, alteration, or damage to the terrain, crops and/or vegetation, including, but not limited to, the loss of use of property and the cost to restore property. EMH&T also shall have no obligation to restore the site to its original condition.

Client shall provide accurate information to EMH&T as to the size, condition and location of the project site and the location of any underground utilities, utility services, structures, manholes, and underground storage tanks. EMH&T shall be entitled to rely upon the accuracy and completeness of such information.

Standard of Care and Liability

EMH&T shall exercise reasonable care in the performance of its duties under this Contract. EMH&T makes no other warranties or representations, whether express or implied, regarding the quality of its work under this Agreement. Client agrees that the liability of EMH&T, and that of its officers, directors, employees, agents and subconsultants, arising out of EMH&T's performance hereunder shall be limited to the lesser of EMH&T's applicable insurance coverage available at the time of settlement or judgment, or the fee amount paid to EMH&T for work performed under this Agreement. Neither party shall be liable to the other for any incidental, indirect, special, punitive or consequential damages. Client must bring any cause of action arising under this Contract within one year from the time the cause of action accrues.

EMH&T shall not be liable for the acts or omissions of any person who is performing work on the project site, nor for any instructions given by Client to any person who is performing work on the project site. EMH&T shall not be responsible for any construction means and methods or job site safety.

Confidentiality of Information

EMH&T shall utilize reasonable measures to maintain confidentiality of Client information related to services described in the Proposal. Client acknowledges that EMH&T may have past or present contractual relationships with individuals or entities practicing the same or related business in the same geographic area as Client, and/or with government agencies having regulatory authority over Client's project.

Ownership of Documents

Client agrees that all reports, plans, specifications, logs, calculations, estimates, and test data, including electronic media, are EMH&T's instruments of professional service. All such material is and shall remain the sole and exclusive property of EMH&T. Provided Client meets all of its obligations including prompt payment of EMH&T invoices, Client may make and retain hard (i.e. not electronic) copies of such materials solely for use on the project. Such materials are not to be reused, in whole or in part, by Client on any other projects. Client also shall not permit or authorize a third party to use EMH&T's instruments of service on another project without the express consent of EMH&T. EMH&T shall not be required to provide or deliver electronic copies of documents unless specifically required in the Proposal. In the case of any discrepancy between any electronic files and hard copies of drawings or files, hard copies shall control. Due to the easily alterable nature of electronic files, EMH&T makes no warranties, either express or implied, with respect to electronic files if such files are provided.

Indemnity

To the fullest extent permitted by law, Client agrees to defend, indemnify, and hold EMH&T harmless, including the payment of reasonable attorney's fees to or on behalf of EMH&T, from and against any and all claims, demands, and causes of action for damages of any kind that arise out of or relate to EMH&T's performance under this Agreement and that were caused or allegedly caused by any of the following:

- a) The Client's negligence;
- b) The Client's breach of this Agreement;
- c) The Client's modification and/or misuse of EMH&T's Instruments of Service;
- d) EMH&T's activities that disturbed, altered, or damaged terrain, crops or vegetation;
- e) EMH&T's reliance on geotechnical data provided by Client or its consultant;
- f) EMH&T's use of Client's standards for non-public improvements;
- g) The construction of any non-public improvements that was not observed and inspected by EMH&T pursuant to a construction phase service contract.

Termination and Suspension

This Agreement may be terminated by either party providing written notice to the other no less than 10 calendar days in advance of the effective date of the termination. Fees, expenses, and other amounts due EMH&T shall be due and payable immediately upon termination including such amounts reasonably incurred by EMH&T in the process of stopping work after the notice of termination is received. If the project is suspended for more than 30 calendar days in the aggregate, EMH&T shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting

remobilization costs. In addition, there shall be equitable adjustment in the project schedule based on the delay caused by the suspension.

Payment

By accepting the Proposal, Client agrees to pay EMH&T, in the manner described therein, the full amount set out in the Proposal. In the event the Proposal does not provide for a fixed fee or hourly rate schedule for specific services provided, billing shall be on a value basis in accordance with EMH&T Billing Policy. Client shall be invoiced and all invoices shall be due and payable within 30 days of issuance. Unless prior agreement is made in writing, Client is liable for timely payment of invoiced amounts without regard to whether Client has received financing, payments, or income from any source, including funds related to the project for which services were provided by EMH&T. In the event payment is not made in a timely manner, the overdue balance shall bear interest at a rate of 1.5% per month. If the Client fails to make payments when due or otherwise is in breach of this Agreement, EMH&T may suspend or terminate performance of services immediately upon notice to Client. EMH&T shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension/termination. In the event legal action is necessary to enforce the payment provisions of this Agreement, EMH&T shall be entitled to collect from the Client any judgment or settlement sums due, and reasonable attorney fees, court costs, and other expenses incurred by EMH&T in connection therewith, together with the value of the time of EMH&T employees and expenses spent in connection with such collection action.

Hazardous Materials

Unless otherwise provided in the Proposal, both EMH&T and Client acknowledge that this Agreement does not contemplate the presence at the project site of any hazardous or regulated substances including asbestos. In the event that the presence becomes known of any hazardous or regulated substances on or near the project site, EMH&T may, at its option and without liability for consequential or any other damages, terminate or suspend performance of services under this Contract.

Soil Conditions

Unless specifically provided for in the Proposal, EMH&T does not provide geotechnical assessment of soil conditions and shall not be liable to Client for any damage or loss related to the soil condition, design of pavement sections, subgrade, underdrainage, backfill, and related items, whether shown or not shown on a plan prepared by EMH&T.

Americans with Disabilities Act (ADA) Requirements

Client acknowledges that ADA requirements and implementation guidelines change over time and may vary by jurisdiction. Client further acknowledges that ADA compliance involves fine tolerances that are governed by the means and methods of construction. EMH&T will exercise reasonable care in the specification of ADA compliant facilities subject to local standards and requirements. EMH&T makes no warranty or representation, either express or implied, that either public or non-public improvements will satisfy ADA requirements, implementation guidelines, and/or local requirements, regardless of whether or not said improvements are constructed in accordance with instruments of service prepared under this Agreement. Client shall verify compliance with all applicable ADA requirements and guidelines prior to accepting constructed improvements.

Opinions of Probable Construction Cost

Opinions of the probable cost of performance in accordance with instruments prepared by EMH&T are not warranted to reflect the actual cost to Client of such work. Unless otherwise specified, the construction cost of an entire project means the probable total cost to Client of those portions of the project designed and specified by EMH&T exclusive of the value and cost of EMH&T services, land, rights of way, interest and financing.

Project Submittals

EMH&T's review of submittals, substitutions, and proposed changes and modifications shall be solely for the purpose of confirming that the submitted information is in general conformance with the design and the project objectives. EMH&T shall not be responsible for variations proposed or implemented by Contractor. Contractor shall remain responsible for satisfaction of all project objectives, codes and criteria.

Performance, Delay, and Force Majeure

If a schedule is agreed to in the Proposal then EMH&T shall use reasonable efforts to perform according to said schedule. Client acknowledges that EMH&T's performance often involves public agencies and other parties that can have substantial impact on scheduling. Neither party shall hold the other responsible for damages or delay(s) in performance caused by events beyond the control of either party. Such acts or events shall include but not be limited to unusual weather, floods, epidemics, strikes, lockouts, protest demonstrations, and unanticipated site conditions.

Notice, Jurisdiction and Venue

Any notice to be given under this Agreement shall be in writing and shall be deemed duly given when delivered personally or by courier, or three business days after transmission by email or deposit in the United States mail with postage prepaid, certified or registered, return receipt requested, addressed to EMH&T or Client agent that signed the Proposal. Disputes that cannot be resolved shall be submitted to mediation prior to the initiation of litigation by either party. Client and EMH&T agree to jurisdiction and venue in Franklin County, Ohio for all actions, proceedings or disputes arising from, relating to, or in connection with this Agreement.

Applicable Law and Survival

The validity, performance, and interpretation of this Agreement shall be according to the laws of the State of Ohio. All obligations arising prior to the completion or termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between EMH&T and Client shall survive the completion of services and the termination of this Contract.

Assignment and Addendum

Neither party shall assign or transfer its interest in this Agreement without the written consent of the other party. Consent to such assignment or transfer shall not be unreasonably withheld. This Agreement may not be amended except in a writing executed by both EMH&T and Client. No alterations or modifications to the Proposal or these terms and conditions shall be effective unless affirmatively agreed to in writing by both parties.

Binding Effect of Agreement

This Agreement shall be binding upon and inure to the benefit of the parties thereto, their successors and assigns. If and to the extent that any court of competent jurisdiction holds any provisions or part thereof of this Agreement to be invalid or unenforceable as a final non-appealable order, then the remainder of the Agreement shall not be affected and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.