

REQUESTED BY: CITY MANAGER, BILL KOCHER

DATE OF FIRST READING: 5/19/2018 WAIVE RULES? YES NO
FINAL ACTION DATE: 6/19/2018 VOTE: YES NO

SUSPENSION OF TWO READING RULE:

YES	NO
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ADOPTION OF ORDINANCE:

- DENISE LINGO
- JENNIFER MOODY
- ROBERT PARSONS
- JUDY PETERSEN
- JOE ROETTING
- KISHA DOSA
- CORDEL GEORGE
- TOTALS

YES	NO
<input checked="" type="checkbox"/>	<u> </u>
<u>ABSENT</u>	<u> </u>
<input checked="" type="checkbox"/>	<u> </u>
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ORDINANCE NO. 18-1855

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF MT. HEALTHY AND TEC ENGINEERING, INC. FOR THE HAM-Mt Healthy Signals Phase 2 PID No. 107296 Project.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MT. HEALTHY, STATE OF OHIO:

Section 1. That the City Manager is hereby authorized to execute an Agreement on behalf of the City of Mt. Healthy between the City of Mt. Healthy and TEC Engineering Inc. for HAM-Mt Healthy Signals Phase 2 PID No. 107296 Project, in the form as shown on Exhibit A attached.

Section 2. That this Ordinance shall be in full force and effect from and after the first date provided by law.

Passed this 19 day of June, 2018.

[Signature]
President of Council

Attest: [Signature]
Clerk of Council

Approved this 19 day of June, 2018.

[Signature]
Mayor

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into this _____ day of _____ 2018 by and between the CITY OF MT. HEALTHY, OHIO, whose address is 7700 PERRY STREET, MT. HEALTHY, OHIO 45231 ("Client") and TEC Engineering, Inc., an Ohio corporation, whose address is 7288 Central Parke Blvd, Mason, OH 45040 ("TEC").

SECTION 1. GENERAL DESCRIPTION OF PROJECT

Client hereby retains TEC to perform and TEC hereby agrees to perform the Services (as defined in Section 2) in accordance with the terms and conditions set forth in this Agreement. The project in connection with which the Services will be provided is generally described as follows: HAM-MT HEALTHY SIGNALS PHASE 2 (PID 107296) (the "Project").

SECTION 2. GENERAL DESCRIPTION OF PROFESSIONAL SERVICES

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

SECTION 3. CONTACT PERSON

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

SECTION 4. DATE OF COMMENCEMENT; DURATION

The Date of Commencement for the Services provided pursuant to this Agreement shall be the later of (a) the date on which the Agreement is fully executed and (b) the date agreed in writing by the Contact Persons. TEC shall perform the Services with commercially reasonable due diligence, subject delays attributable for Force Majeure (as defined in Section 6.23) and delays caused by or attributable to any act or neglect of Client or any agent, employee, or other person or entity in privity with Client (other than TEC) (a "Client Delay").

SECTION 5. COMPENSATION

Client shall pay TEC the sum of TWENTY-NINE THOUSAND SIX HUNDRED FORTY FIVE and 00/100 Dollars (\$29,645.00) for TEC's performance of the Services pursuant to this Agreement, subject to adjustment as expressly provided in, and pursuant to, this Agreement.

SECTION 6. TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

6.8 Default: If TEC or Client default in their obligations under this Agreement, and such default continues for more than ten (10) days after written notice (with respect to defaults relating to the payment of money) or thirty (30) days after written notice (with respect to all other defaults), the non-defaulting party shall have all remedies available at law or in equity, including, without limitation, termination of this Agreement. Notwithstanding the foregoing, prior to terminating this Agreement, the non-defaulting party shall provide a termination notice to the defaulting party which notice shall describe the default in reasonable detail. If the defaulting party cures the default within seven (7) days of receipt of such notice, the non-defaulting party's termination notice shall be null and void.

6.9 Disputes: If a controversy or claim arises out of or relates to this Agreement, or the breach thereof, then the parties agree to make a good faith effort to settle the issue through direct discussion between the parties prior to having recourse to a judicial forum. If the parties are not able to so settle the issue, the controversy or claim shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The non-prevailing party shall pay all costs associated with such arbitration, including without limitation reasonable attorneys' fees.

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

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

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

6.13 Client's Responsibilities: Client shall promptly provide TEC all pertinent data, criteria, and information including but not limited to: design objectives and constraints, space and use requirements, operational information, budgetary limits, flexibility and expandability requirements, and any other available project data such as sketches, reports, prior designs, soil, tests, surveys, and plans. TEC shall be entitled to rely on any and all information provided pursuant to this Section 6.12. Client shall review TEC's work thoroughly and promptly, provide direction as necessary, and, if at any time Client becomes aware of any defect, shall promptly give notice of such defect in the work or services provided. Client shall provide access to the project site to the extent necessary or appropriate in connection with the performance of the Services.

6.14 Severability: Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

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

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

6.17 Execution of this Agreement: Neither Client nor TEC will be bound under this Agreement until both Client and TEC have duly executed and delivered to the other this Agreement. If this Agreement has been executed first by TEC and has not been executed by Client prior to September 1, 2018, at 11:59 p.m., TEC shall have the right to revoke its signature to this Agreement, in which event this Agreement shall be null and void and of no force or effect. This Agreement may be executed and delivered via telecopy or PDF with the same force and effect as if originals of this Agreement were executed and delivered by Client and TEC.

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

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

6.20 Attorneys' Fees: If either party shall bring an action against the other party related to the breach of any term, covenant or provision of this Agreement, or otherwise arising out of this Agreement, the prevailing party in such suit shall be entitled to recover from the other party all reasonable costs, expenses and attorneys' fees expended or incurred in connection therewith. Any provisions of this Agreement providing for the recovery of attorneys' fees shall mean and include all attorneys' fees, court, expert and other consultant costs, costs incurred in appeals and/or costs in connection with a bankruptcy proceeding.

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

6.22 Authorization: If Client signs this Agreement as a corporation, limited liability company or partnership, each of the persons executing this Agreement on behalf of Client warrants to TEC that Client is a duly authorized and existing corporation, limited liability company or partnership, that Client has full right and authority to enter into this Agreement, and

that each and every person signing on behalf of Client is authorized to do so. Upon TEC's request, Client will provide evidence satisfactory to TEC confirming these representations.

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

6.24 Entire Agreement, Amendments, Governing Law: This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto. This Agreement shall be governed by the laws of the state where the Services are performed.

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

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

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

CITY OF MT HEALTHY, OHIO

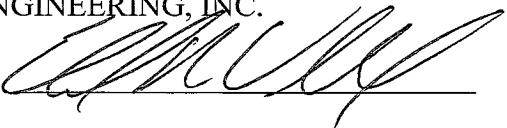
Signed: 

Typed: WILLIAM KOCHER

Title: CITY MANAGER

Date: 6-19-2018, 2018

TEC ENGINEERING, INC.

Signed: 

Typed: EDWARD WILLIAMS

Title: VICE PRESIDENT

Date: 6/22, 2018

ATTACHMENT 1