

ORDINANCE 09-70 AC CMS

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE AGREEMENT WITH KS ASSOCIATES, INC. OF ELYRIA, OHIO, FOR BIDDING AND CONSTRUCTION SERVICES FOR THE PUBLIC IMPROVEMENTS AT THE EAST COLLEGE STREET PROJECT IN THE CITY OF OBERLIN, OHIO AND DECLARING AN EMERGENCY.

WHEREAS, the Development Agreement between the City of Oberlin and Sustainable Community Associates does specifically state that the City "shall be responsible for the costs of bidding, construction and construction administration for the Public Improvements"; and

WHEREAS, in order to proceed expeditiously, Sustainable Community Associates, with the consent of the City of Oberlin Public Works Department, did engage KS Associates, Inc. to prepare the bidding documents for the Public Improvements for the East College Street Project; and

WHEREAS, KS Associates, Inc. did perform said work, first under contract to Sustainable Community Associates and now under contract to the City of Oberlin Public Works Department; and

WHEREAS, the combined amounts of these contracts with KS Associates, Inc. exceed \$25,000.

NOW THEREFORE BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the agreement with KS Associates, Inc. of Elyria, Ohio for Bidding and Construction Services for the East College Street Project in the City of Oberlin, is hereby amended to provide payment for additional necessary services rendered, and the City Manager is hereby authorized and directed to enter into a revised contract in the amount of \$38,685.00.

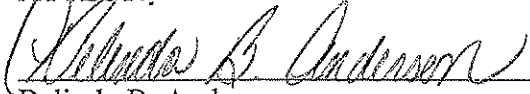
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

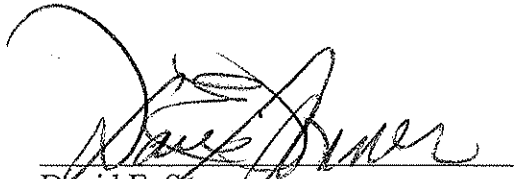
"to allow for timely payment for services rendered" and shall take effect immediately upon passage.

PASSED: 1st Reading – September 21, 2009(E)
2nd Reading -
3rd Reading -

ATTEST:



Belinda B. Anderson
CLERK OF COUNCIL



David E. Sonner
PRESIDENT OF COUNCIL

POSTED: 9/22/2009

EFFECTIVE DATE: 9/21/2009

September 17, 2009



Mr. Jeff Baumann
Public Works Director
City of Oberlin
85 South Main Street
Oberlin, Ohio 44074

Land Development

Transportation

Government Services

Land Surveying

**Re: East College Street Project – Public Improvements
KS Project No. 09157**

Dear Mr. Baumann:

I want to take this opportunity to discuss the additional services KS has performed on the East College Street Public Improvements.

KS prepared the bid set of plans and specifications for the public improvements over a period of time from August 2008 to May 2009. We have submitted detailed time records for verification of these efforts.

Our work for the public improvements included:

- Bid Book
- Specifications
- Bid Forms
- Plans for Public Improvements.

The cost of this work under a time and material basis is \$21,485. KS respectfully requests payment of this amount.

Feel free to contact me should you have any questions regarding this issue.

Sincerely,

KS ASSOCIATES, INC.

A handwritten signature in black ink that reads 'Jeffrey R. Keefe'.

Jeffrey R. Keefe, P.E., P.S., CRESC, CPSWQ
Director of Land Development Services

cc: Lynn S. Miggins, P.E., President, KS Associates, Inc.
Project File / Billing File / LDG Proposal File

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KS Associates, Inc.
Civil Engineers + Surveyors
260 Burns Road, Suite 100
Elyria, Ohio 44035
P 440 365 4730
F 440 365 4790
www.ksassociates.com



June 23, 2009

Mr. Jeff Baumann
Public Works Director
City of Oberlin
85 South Main Street
Oberlin, Ohio 44074

Land Development
Transportation
Government Services
Land Surveying

**Re: East College Street Project – Public Improvements
City of Oberlin Bidding and Construction Services Proposal
KS Project No. 09157**

Dear Mr. Baumann:

At your request, KS Associates (KS) is submitting this proposal for Bidding and Construction Administration Services for the public improvements portion of the East College Street project. Under contract with SCA, KS has previously prepared the civil improvement plans and specifications and Integrated Architecture (IA) has prepared the architectural plans and specifications to be utilized for this public project. Following is our scope of services and fee estimate.

Task 1 - Bidding Phase (Public Improvements)

It is our understanding that the City of Oberlin will be responsible for advertising, soliciting bids, opening and reviewing bids, preparing bid tabulations and making a contract award. KS will support the City during the bidding phase by performing the following services:

- Modify previously completed bid documents to include new front end documents as provided by the City.
- Incorporate separate bid tabulation sections within the documents for General Trades, Electrical Trades, and Combined Trades.
- Incorporate alternates as directed by the City.
- Uploading the bidding documents and coordinating with eBlueprint to facilitate the printing and distributing of drawings and specifications.
- Establishing the cost for printing and distributing bid documents through eBlueprint and including that cost in the Invitation to Bid. eBlueprint will be instructed to invoice the City of Oberlin for all printing costs, excluding those purchased directly by the Contractors associated with this project.
- Attending a pre-bid meeting and preparing minutes of the meeting.
- Responding to contractors' civil engineering related bid questions.
- Issuing civil engineering related addenda as required. Addenda will be distributed to all Contractors and parties listed on the plan holders list and the cost for addenda printing and distribution will be borne by the City of Oberlin through eBlueprint.

KS Associates, Inc.
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260 Burns Road, Suite 100
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Mr. Jeff Baumann
East College Street – Public Improvements
City of Oberlin Bidding and Construction Services Proposal
June 23, 2009
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Bidding Services will be invoiced at our normal hourly rates with a suggested budget of \$12,000.00 (approximately 120 hours).

Task 2 - Construction Administration Services (Public Improvements)

We understand that City of Oberlin will be responsible for all Construction Administration (CA) services. KS will support the City upon request. Possible CA services may include but not be limited to:

- Attending job meetings (including preparation and travel time).
- Responding to Contractor Requests for Information (RFI).
- Reviewing Shop Drawings.
- Reviewing contractor-suggested substitutions.

Construction Administration Services will be invoiced at our normal hourly rates with a suggested budget of \$4,000.00 (approximately 40 hours).

Task R01 - Reimbursable Expenses

Reimbursable expenses may include but not be limited to:

- Mileage expenses
- Shipping and mailing expenses.

We suggest an initial budget of \$200.00.

Summary of Tasks and Fees

Task 1	Bidding Services	\$12,000.00 (budget)
Task 2	Construction Administration Services	\$4,000.00 (budget)
Task R01	Reimbursable Expenses	<u>\$200.00 (budget)</u>
Total Bidding and Construction Services		\$16,200.00 (budget)

Mr. Jeff Baumann
East College Street – Public Improvements
City of Oberlin Bidding and Construction Services Proposal
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Thank you for the opportunity to present this proposal, which remains valid for 30 days from the date of issue. Your signature on a copy of this letter affirms your agreement with the terms and conditions contained herein, as well as agreement with the attached standard conditions.

Feel free to contact me should you have any questions regarding this proposal.

Sincerely,

KS ASSOCIATES, INC.



Jeffrey R. Keefe, P.E., P.S., CPESC, CPSWQ
Director of Land Development Services

Enclosures: Standard Conditions Form, Hourly Rate Schedule

cc: Lynn S. Miggins, P.E., President, KS Associates, Inc.
Reed R. Boden, Project Engineer, KS Associates, Inc.
Project File / Billing File / LDG Proposal File

Terms of the enclosed agreement accepted:

By: Jeff Baumann
Title: Public Works Director
Date: 7.8.09

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STANDARD CONDITIONS

Fee

The total fee shall be understood to be an estimate, based upon Scope of Services, and shall not be exceeded without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Reimbursable expenses will be invoiced with a mark-up of no greater than 10%.

Billings/Payments

Invoices for services and reimbursable expenses shall be submitted, at KS's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or the maximum legal rate) per month will be applied to the unpaid balance after 30 days from the invoice date. KS shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and KS shall have no liability for any resultant delays or damages incurred by the Client as a result of such suspension/termination. Retainers shall be credited on the final invoice. The Client agrees to pay all costs of collection, including but not limited to reasonable attorney's fees.

Standard of Care

In providing services under this Agreement, KS will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. KS will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of KS's part of the Project. Regardless of any other term or condition of this Agreement, KS makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

Consequential Damages

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

Unforeseeable Conditions

A condition is unforeseeable if concealed or is not capable of investigation by reasonable visual observation. If KS has reason to believe that such a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after such due cause of action in favor of a third party notification, or (2) KS has no reason to believe that such a condition exists, KS shall not be responsible for the existing conditions or any resulting damages or losses resulting therefrom.

Hazardous Materials/Mold

KS shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including mold. The Client shall inform KS of any potentially hazardous condition prior to KS performing the services.

Indemnifications

The Client agrees, to the fullest extent permitted by law, to indemnify and hold KS and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorneys' fees and defense costs) caused in whole or in part by its acts, errors or omissions and those of anyone for whom they are legally liable. KS further agrees to indemnify the Client for damages arising from its own negligent errors, acts or omissions.

Limitation of Liability

In recognition of the relative risks and benefits of the project to both the Client and KS, the Client agrees, to the fullest extent permitted by law, to limit KS's total liability to the Client or anyone making claims through the Client, for any and all damages or claim expenses (including attorney's fees) arising out of this Agreement, from any and all causes, to the amount of KS's fee, or another amount agreed upon in writing and signed by both parties.

Termination of Services for Convenience

This Agreement may be terminated upon written notice by the Client for its convenience. In the event of termination, the Client shall pay KS for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Termination of Services for Default

This Agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the Client shall pay KS for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Ownership of Documents

All documents produced by KS under this Agreement, including electronic files, shall remain the property of KS and may not be used by this Client for any other purpose without the written consent of KS. Any such use or reuse shall be at the sole risk of the Client who shall defend, indemnify and hold KS and its subconsultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to KS and its subconsultants.

Defects in Service

The Client shall promptly report to KS any defects or suspected defects in KS's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify KS shall relieve KS of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

Construction Activities

KS shall not be responsible for (1) the acts or omissions of any one performing any of the Work, (2) the instructions given by the Client or its representatives to any one performing any of the Work, (3) the means and methods of anyone performing any of the Work, (4) job-site safety.

Dispute Resolution

In the case of a claim or dispute between the Client and KS, at least one principal from each party shall enter into a negotiation to resolve the dispute. If the parties cannot reach resolution, the claim or dispute shall then be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect. Unless otherwise specified, the laws of the State of Ohio shall govern this Agreement.

Relationship of the Parties

All services provided by KS are for the sole use and benefit of the Client. Nothing in this Agreement shall create a contractual relationship with or against either the Client or KS.

KS ASSOCIATES, INC.
2008 BILL RATE SCHEDULE FOR THE LAND DEVELOPMENT GROUP
BY STAFF TYPE

<u>Staff Type</u>	<u>Bill Rate</u>
Group Leader	144.00
Project Manager	92.00
Project Engineer	87.00
CAD Tech 6	71.00
CAD Tech 3	56.00