

RESOLUTION NO. 108-22
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON
THE 5TH DAY OF December, 2022.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH FISHBECK, THOMPSON, CARR AND HUBER, INC., DBA FISHBECK, OF GRAND RAPIDS, MICHIGAN FOR THE DESIGN OF MOT – CENTERVILLE STATION IMPROVEMENTS PHASE 1 PROJECT (SS-6).

WHEREAS, the City is desirous of obtaining professional design services to assist in the preliminary and final design of MOT -Centerville Station Road Resurfacing Project (the “Project”); and

WHEREAS, the City of Centerville advertised for qualifications for the Project; and

WHEREAS, **Fishbeck, Thompson, Carr and Huber Inc. dba Fishbeck of Grand Rapids, Michigan (“Fishbeck”)** was the most qualified design company in that they have unique knowledge of such services and a demonstrated ability to assist in accomplishing the objectives of the City; and

WHEREAS, Fishbeck submitted an acceptable fee proposal for the scope of services for the Project in the total amount of 1,086,936.38.


NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the qualification and fee proposal submitted by **Fishbeck of Grand Rapids, Michigan** for the design of MOT – Centerville Station Improvements Phase 1 Project (SS-6), is hereby accepted in the amount of \$1,086,936.38.

Section 2. That the City Manager is hereby authorized to execute a contract with Fishbeck substantially similar to the copy attached hereto as exhibit “A” and do all things necessary to execute the contract with **Fishbeck**, as stated above.


Section 3. This resolution shall become effective at the earliest date allowed by law.

PASSED this 5th day of December, 2022.



Mayor, City of Centerville, Ohio

ATTEST:



Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of Resolution Number 108-22 passed by the Council of the City of Centerville, Ohio on the 5th day of December, 2022.



Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

SERVICE AGREEMENT ADDENDUM #1

THIS SERVICE AGREEMENT ADDENDUM #1 "Addendum" is made and entered into at Centerville, Ohio, on the date(s) set forth at the end hereof, by and between the **City of Centerville, OHIO**, an Ohio municipal corporation, 100 West Spring Valley Road, hereinafter referred to as the "City," and Fishbeck, Thompson, Carr & Huber, Inc. dba Fishbeck, a Michigan corporation registered to do business in Ohio, of Grand Rapids, Michigan hereinafter referred to as the "Consultant". In consideration of the mutual promises and covenants contained herein, the parties hereto agree that this Addendum supplements the Fishbeck Professional Services Agreement and its terms and conditions "Agreement" as follows:

WITNESSETH:

WHEREAS, the City and the Consultant mutually desire to contract with each other to perform the services for this project, which include the Scope of Work attached hereto and hereinafter referred to as "Supplemental Specifications" and as set forth in the Agreement; and

WHEREAS, the Consultant is uniquely qualified, experienced and willing to perform said Work, when there is an Agreement specifying the rights and duties of each party; and

WHEREAS, the City and the Consultant mutually desire to perform the obligation embodied in Supplemental Specifications.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with intent to be legally bound, agree as follows:

ARTICLE ONE: AMENDMENT OF AGREEMENT/ACCEPTANCE OF THIS ADDENDUM

This Addendum amends and is incorporated by reference into the Agreement. In the event of any conflict or inconsistency between the Agreement and this Addendum, the terms of this Addendum shall control, and shall amend, restate, and supersede any conflicting or inconsistent terms in the Agreement regardless of whether the provisions of this Addendum are prefaced with “notwithstanding anything else to the contrary” or similar language. The term “**Agreement**” refers to the Agreement listed above, and as the context requires, such Agreement as amended by this Addendum.

This Addendum will serve as a written amendment to the Agreement, even if this Addendum is agreed, executed, or otherwise accepted or confirmed by Consultant as indicated herein, rather than executed or signed by the applicable Consultant. For the avoidance of doubt, if the Agreement provides, for example, that it may only be amended “in writing” by “a writing” or “an instrument” (or words of similar meaning) that is “executed” or “signed” (or words of similar meaning) by both parties, this Agreement will serve as a written amendment to the Agreement meeting such requirements as long as it is agreed, executed, or otherwise accepted or confirmed by the Consultant.

This Addendum will be deemed agreed, accepted, and confirmed by the Consultant upon execution on the signature page or by Consultant’s full or partial performance of the Agreement.

Any provision of the Agreement that provides that the City will indemnify, hold harmless, protect, defend, reimburse (and any other phrases of similar meaning) are hereby stricken and are null and void. City will not, under any circumstance, indemnify, hold harmless, protect, defend, reimburse (or do any other similar act for or on behalf of) any Consultant.

Any and all confidentiality and nondisclosure obligations of City are subject to City's compliance with Ohio Revised Code Section 149.43 (as it exists today or may hereafter be amended). City's compliance with the foregoing statute will be at City's sole and absolute discretion.

ARTICLE TWO: SCOPE OF WORK

The Consultant agrees to perform the services embodied in the Scope of Work attached hereto and hereinafter referred to as "Supplemental Specifications." Said Supplemental Specifications is incorporated by reference as written hereinafter in full.

ARTICLE THREE: SCHEDULE OF PAYMENTS

To compensate the Consultant for services rendered in accordance with the terms embodied in the Compensation for Professional Services attached hereto and hereinafter referred to as "Supplemental Specifications," the City agrees to pay the Consultant an amount not to exceed nine hundred eighty eight thousand one hundred eighty six dollars (\$988,186). Said Supplemental Specifications are incorporated by reference as if written hereinafter in full.

ARTICLE FOUR: TERM

The Term of this Agreement shall be from date of last execution by all parties, the date upon which the Agreement is authorized and awarding this Agreement, whichever event occurs last, and shall terminate on December 31, 2027 (the "Term"). The parties agree that any additional periods for which the Work is undertaken shall be subject to competitive bidding and that this Agreement in no way may be extended beyond the Term.

ARTICLE FIVE: CONFLICT OF INTEREST

This Agreement in no way precludes, prevents, or restricts the Consultant from obtaining and working under an additional contractual arrangement(s) with other parties aside from the City, assuming that such other contractual work in no way impedes the Consultant's ability to perform the services required under this Agreement. The Consultant hereby represents warrants and agrees that at the time of entering into this Agreement, it has no interest in nor shall it acquire any interest, direct or indirect, in any agreement which will impede its ability to perform the required services under this Agreement.

ARTICLE SIX: ASSIGNMENTS

The parties expressly agree that this Agreement shall not be assigned by the Consultant without the prior written approval of the City, which approval may be withheld in the sole discretion of the City.

ARTICLE SEVEN: GOVERNING LAW

This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of the State of Ohio.

ARTICLE EIGHTH: INTEGRATION AND MODIFICATION

This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement.

ARTICLE NINE: SEVERABILITY

If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE TEN: TERMINATION

This Agreement may be terminated by either party only upon notice, in writing, upon the other party no later than at least sixty (60) days in advance of the effective date of the termination. The City may also terminate this Agreement in the event that the City is of the opinion that the Consultant is carrying out the terms of this Agreement in an unreasonable, unprofessional, or unworkmanlike manner. Said termination for this particular reason shall occur upon the provision of a written notice of termination to the Consultant at least thirty (30)

calendar days in advance of the date of the proposed termination, stating in the termination notice the reason for said termination. The City, in its sole discretion, may allow the Consultant to cure the reason for the termination provided the cure of the reason is accomplished within thirty (30) days of the date of the forwarding of the termination notice. The parties further agree that should the Consultant become unable for any reason to complete the work called for by virtue of this Agreement, that to the extent applicable, such work as the Consultant has completed upon the date of its inability to continue the terms of this Agreement shall become the property of the City, and further the City shall not be liable to tender and/or pay to the Consultant any further compensation after the date of the Consultant's inability to complete the terms hereof, which date shall be the date of termination unless extended by the City. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Consultant; and the City may withhold any compensation to the Consultant for the purpose of set-off until such time as the amount of damages due the City from the Consultant is agreed upon or otherwise determined. Additionally, the parties further agree that should the Consultant become unable for any reason to complete the work called for by virtue of this Agreement, the City may, in its sole discretion, call the performance bond due, in full, if any, as and for such non-performance, and/or as liquidated damages.

ARTICLE ELEVEN: COMPLIANCE

The Consultant, at its sole cost, agrees to comply with all applicable federal, state, and local laws in the conduct of work hereunder. The Consultant accepts full responsibility for payment of all unemployment compensation insurance premiums, worker's compensation premiums, benefits as mandated by the Patient Protection and Affordable Care Act (PPACA), all income tax deductions, pension deductions, prevailing wages, if applicable, and any and all other taxes or payroll deductions required for the Consultant and all employees engaged by the Consultant for the performance of the work authorized by this Agreement. The costs of any health insurance benefits required by the PPACA shall be the responsibility of the Consultant and shall not be billed directly to the City. The Consultant shall comply with the requirements of the PPACA and any and all associated costs and/or penalties. It shall be the responsibility of the Consultant to report, track and determine employee hours that are eligible to be offered insurance benefits.

ARTICLE TWELVE: PERFORMANCE AND DISCIPLINE

Unless otherwise provided in this Agreement or the exhibits or supplemental specifications attached hereto, the Consultant shall provide and pay for, to the extent applicable, all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Consultant shall enforce strict discipline and good order among the Consultant's employees and other persons carrying out this Agreement. The Consultant shall not permit employment of persons not skilled in tasks assigned to them. The Consultant shall perform all

Work in a reasonable, professional and workmanlike manner and all Work shall be of at least the quality provided for in this Agreement.

ARTICLE THIRTEEN: DAMAGE AND LOSS

The Consultant shall promptly remedy damage and loss (other than damage or loss insured under property insurance required elsewhere in this Agreement) to property referred to in this Section caused in whole or in part by the Consultant, a subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Consultant is responsible under this Article except damage or loss attributable to acts or omissions of the City or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Consultant. The foregoing obligations of the Consultant are in addition to the Consultant's other obligations hereunder. In an emergency affecting safety of persons or property, the Consultant shall act, at the Consultant's discretion, to prevent threatened damage, injury or loss. The Consultant shall notify the City or a security arm of the City as soon as possible after such emergency arises.

ARTICLE FOURTEEN: WORKER'S COMPENSATION INSURANCE

The Consultant shall take out and maintain during the life of this Agreement Workers' Compensation Insurance for its employees and shall furnish a certificate of Workers' Compensation Insurance for its employees before the execution of this Agreement. No

contract between the City and the Consultant shall be created hereby or otherwise exist until a fully executed copy thereof has been served upon the City.

ARTICLE FIFTEEN: NON-DISCRIMINATION

During the performance of this Agreement, the Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, handicap, age, political belief or place of birth. The Consultant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Consultant, or any person claiming through the Consultant, agree not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any Consultants or subcontractors of said Consultant.

ARTICLE SIXTEEN: INDEMNIFICATION

Consultant shall indemnify, hold harmless and, not excluding the City's right to participate, defend the City, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against all liabilities, claims, actions, damages, losses, and expenses

including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees, or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the Consultant for the City.

ARTICLE SEVENTEEN: RELATIONSHIP

Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, association or joint venture with the Consultant in the conduct of the provisions of this Agreement. The Consultant shall at all times have the status of an independent Consultant without the right or authority to impose tort, contractual or any other liability on the City.

ARTICLE EIGHTEEN: DISCLOSURE

The Consultant hereby covenants that it has complied with the City's disclosure policy which requires anyone contracting with the City to disclose to the City any business relationship or financial interest that said Consultant has with an employee of the City or of any other City, agency, elected official or commission of the City of Centerville, such an employee's business, or any business relationship or financial interest that a Centerville elected official, City, agency or commission employee has with the Consultant or in the Consultant's business.

ARTICLE NINETEEN: INSURANCE REQUIREMENTS

Consultant and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees, or subcontractors and Consultant is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: “The City of Centerville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including completed operations”.
- b. Coverage shall be primary and non-contributory.
- c. Associated bid number, job number, or project number should be referenced on the certificate.
- d. The Policy should contain an unintentional failure to disclose endorsement.
- e. The policy should include a notice of occurrence endorsement – CEO, President, CFO, Risk Manager, or General Counsel.
- f. Contractor’s subcontractor shall be subject to the same minimum requirements identified above.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. Coverage shall be primary and non-contributory.
- b. Policy should be endorsed with an unintentional failure to disclose wording.
- c. The policy should include a notice of occurrence endorsement – CEO, President, CFO, Risk Manager, or General Counsel.
- d. Associated bid number, job number, or project number should be referenced on the certificate.
- e. Contractor’s subcontractor shall be subject to the same minimum requirements identified above.

3. Workers' Compensation and Employers' Liability

Workers' Compensation Statutory

Service Contract

Ohio Employers' Liability

Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation in favor of the City of Centerville.
- b. Contractor’s subcontractor shall be subject to the same minimum requirements identified in this section.

4. **Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim/Aggregate	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that continuous coverage will be maintained for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

- 1. On insurance policies where the City of Centerville is named as an additional insured, the City shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after sixty (60) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **the City of Centerville, Ohio.**

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business with the City of Centerville with an “A.M. Best” rating of not less than A IX. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Municipal Attorney, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

ARTICLE TWENTY: PERFORMANCE BOND

No performance bond is required for this Agreement.

ARTICLE TWENTY-ONE: NOTICES

Any notices required or authorized to be given shall be deemed to be given when mailed by certified or registered mail, postage prepaid, as follows: if to the City, to the City's address as shown on the face of this Agreement; if to the Consultant, to the Consultant's address as shown on the face of this Agreement.

ARTICLE TWENTY-TWO: HEADINGS

Organization of the Specifications into divisions, sections and articles and arrangement of Drawings shall not control the Consultant in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade. Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

ARTICLE TWENTY-THREE: AUTHORITY TO BIND PRINCIPAL

Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

ARTICLE TWENTY-FOUR: AMENDMENT TO AGREEMENT/ACCEPTANCE

Conflicts with Agreement: This Agreement amends and is incorporated by reference into any agreement submitted by Contractor or Consultant (“Contractor’s Agreement”). In the event of any conflict or inconsistency between this Agreement and the Contractor’s Agreement, the terms of this Agreement shall control, and shall amend, restate, and supersede any conflicting or inconsistent terms in the Contractor’s Agreement regardless of whether the provisions of this Agreement are prefaced with “notwithstanding anything else to the contrary” or similar language. The term “Contractor’s Agreement” or “Agreement” refers to any additional

agreement provided by Contractor, and as the context requires, such Contractor's Agreement as amended by this Agreement.

Acceptance of this Addendum and Agreement: This Addendum and Agreement will be deemed agreed, accepted, and confirmed by the applicable parties.

NOTICE: THIS ADDENDUM/AGREEMENT MUST BE SIGNED AND RETURNED WITHIN THIRTY (30) DAYS OF NOTIFICATION OR THE OFFER TO ENTER INTO THIS AGREEMENT SHALL BE WITHDRAWN AND THIS AGREEMENT SHALL BE VOID.

The parties have hereunto set their hands this _____ day of _____, 20__.

**Signed and acknowledged
in the presence of:**

CITY OF CENTERVILLE

Wayne S. Davis
City Manager

CONSULTANT

Name:

Title:

APPROVED AS TO FORM BY:

Scott A. Liberman
Municipal Attorney

Date: _____

CERTIFICATION OF FISCAL OFFICER

The undersigned, as Director of Finance of the City of Centerville, hereby certifies that funds sufficient to meet the requirements of this Contract have been lawfully appropriated for such purpose and are in the treasury, or in the process of collection.

By: _____
Director of Finance