

ORDINANCE NO. 204

AN ORDINANCE TO EMPLOY A REGISTERED PROFESSIONAL ENGINEER TO PERFORM SUCH ENGINEERING SERVICES AS THE COUNCIL OF THE VILLAGE OF SPENCER REQUIRES FOR THE PLANNING AND GENERAL SUPERVISION OF THE CONSTRUCTION OF A MUNICIPALLY OWNED SEWAGE COLLECTION SYSTEM AND SEWAGE TREATMENT PLANT TO ESTABLISH RATES FOR SAID ENGINEERING SERVICES AND TO DECLARE AN EMERGENCY

BE IT ORDAINED by the Council of the Village of Spencer, Ohio, three-fourths of its elected members concurring herein as follows:

SECTION 1. That Morris E. Nall & Associates of Cleveland, Ohio hereinafter referred to as the "Engineer", be and he is hereby employed and appointed as engineer for the purpose of planning and generally supervising the construction of a municipally owned sewage collection system and sewage treatment plant complete with all appurtenances.

SECTION 2. That the Mayor and the Clerk of the Village of Spencer are hereby authorized and directed to enter into a written agreement for engineering services with said ENGINEER which shall provide as follows:

"That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A -ENGINEERING SERVICES

That the ENGINEER shall furnish basic engineering services as follows:

1. The ENGINEER will conduct preliminary investigations required to determine project feasibility.
2. The ENGINEER will prepare preliminary plans and cost estimate.
3. The ENGINEER will prepare an engineering report following FHA instructions and guides.
4. The ENGINEER will furnish ten copies of the preliminary engineering report, cost estimates, and layout maps to the OWNER.
5. The ENGINEER will attend conferences with the OWNER and representatives of the FHA and other interested parties.
6. After the preliminary engineering report has been reviewed by FHA and the OWNER directs the ENGINEER to proceed, the ENGINEER will perform the necessary design surveys, accomplish the detailed design of the project, prepare detailed plans, specifications and contract documents, and make a final cost estimate based on the final design for the entire system. However, design surveys, as used in this Section A-6, are understood to be limited to those required to perform the design and to prepare the detailed plans and specifications. It is understood that in the design and preparation of detailed plans and specifications for such elements of water works and sewerage projects as water treatment plants, sewage treatment plants, dams and reservoirs, the design surveys for such elements also shall be performed by the ENGINEER but the ENGINEER shall be additionally compensated therefor as provided in Sections D and E hereof. It is also understood that if subsurface explorations such as borings, soil tests and the like are required to determine amounts of rock excavation or

foundations conditions, the ENGINEER will furnish supervision of said explorations without additional charge, but the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others, shall be paid for by the OWNER as set out in Sections D and E hereof.

7. The contract documents furnished by the ENGINEER under Section A-6 above shall utilize standard FHA forms for the notice to bidders, instructions to bidders, proposal form, contract agreement form, general conditions, and payment and performance bonds. Special conditions and the notice of award and the notice to proceed shall also be prepared by the ENGINEER. All of these documents shall be subject to FHA approval.

8. Prior to the advertisement for bids, the ENGINEER for each contract will provide not to exceed 10 copies of detailed plans, specifications, and contract documents for use of the OWNER, FHA, and the appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of not to exceed 10 copies of such plans, specifications, and contract documents shall be included in the basic compensation paid to the ENGINEER.

9. The ENGINEER will furnish additional copies of plans, specifications and contract documents as required by prospective bidders, material suppliers, and other interest parties, but may charge for the actual cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER five sets of the plans, specifications, and contract documents for execution, the cost of these sets being included in the basic compensation paid to the ENGINEER. Original documents, survey notes, tracings, and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER.

10. The plans prepared by the ENGINEER under the provisions of Section A-6 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare, and furnish to the OWNER without any additional compensation, three copies of a map showing the needed construction easements and permanent easements the land to be acquired, and the names of the property owners involved. Property surveys, property plats, legal descriptions, and negotiations for land rights shall be accomplished by the OWNER, unless the OWNER requests the ENGINEER to perform these services. In the event the ENGINEER is requested to perform such services, the ENGINEER shall be additionally compensated as set out in Sections D and E hereof.

11. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, and make recommendations for awarding contracts for construction.

12. The ENGINEER will interpret the intent of the plans and specifications to protect the OWNER against defects and deficiencies in construction on the part of the contractors. The ENGINEER will not, however, guarantee the performance by any contractor.

13. The ENGINEER will check and approve any necessary shop and working drawings furnished by the contractors.

14. The ENGINEER will provide horizontal and vertical control for all structures in the form of bench marks or reference points to be used by the contractor in staking the construction.

15. The ENGINEER will provide general engineering inspection of the work of the contractors as construction progresses. The ENGINEER will provide detailed construction inspection as provided in Section C hereof upon the written request of OWNER and for the additional compensation set forth in said Section C. The ENGINEER does not guarantee the performance of the contractor(s) by the ENGINEER'S performance of such detailed construction inspection. The ENGINEER'S undertaking hereunder shall not relieve the contractor of his obligation to perform the work in conformity with the plans and specifications and in a workman like manner; shall not make the ENGINEER an insurer of the contractor's performance; and shall not impose upon the ENGINEER any obligation to see to it that the work is performed in a safe manner.

16. The ENGINEER will cooperate and work closely with FHA representatives.

17. The ENGINEER will review and approve estimates for progress and final payments.

18. The ENGINEER will make final inspection of all construction and a written certification of final inspection to the OWNER and FHA.

19. The ENGINEER will provide the OWNER with one set of reproducible "as-built" plans, and two sets of prints at no additional cost to the OWNER. Such plans will be based upon information provided by the contractor or OWNER in cases where resident inspection is not provided by the ENGINEER.

20. The ENGINEER will prepare notices and advertisement of final payments if required by state statutes.

21. The ENGINEER will be available to furnish engineering service and consultations necessary to correct all unforeseen project operating difficulties for a period of one year after the date of final inspection and acceptance of the facility by the OWNER and FHA. This service will include instruction of the OWNER in initial project operation and maintenance but will not include supervision of normal operation of the system. Such consultation and advice shall be furnished without additional charge except for travel and subsistence costs as provided in Section E hereof.

22. The ENGINEER further agrees to obtain and maintain at the ENGINEER'S expense, such insurance as will protect him and the OWNER from claims under the Workman's Compensation Act and from all claims for bodily injury, death, or property damage which may arise from the negligent performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this Agreement.

#### SECTION B - COMPENSATION FOR BASIC ENGINEERING SERVICES

That the OWNER shall compensate the ENGINEER for basic engineering services based on percentages of the Total Actual Construction

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MEDINA, OHIO 44256

Costs shown in Table I and Table II set forth in Attachment I which is attached hereto and made a part hereof. The percentage factors applicable shall be those figures adjacent to the Total Actual Construction Cost column. The appropriate percentage factor shown in Table II shall be applicable to all compensation computations except those with respect to the following items; Sanitary Sewers, Pumping Stations and Sewage Treatment Plants

to which items the percentage factor shown in Table I shall apply; provided, however, if the total actual construction costs is less than the lowest total actual construction cost figure shown on Attachment I, the OWNER agrees to pay the ENGINEER

a total fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The construction costs on which the compensation for basic engineering services is determined shall exclude legal fees, administrative costs, engineering fees, land rights acquisition costs, water costs, and interest expense incurred during the construction period. The compensation for basic engineering services shall be payable as follows:

1. The sum of Three thousand Dollars (\$3,000.00) after the review of the preliminary engineering report by the FHA and acceptance by the OWNER.
2. A sum which together with the specific sum set forth in Section B-1 above equals seventy percent (70%) of the total compensation based on the final cost estimate after completion and submission of the final plans, specifications, costs estimates, and contract documents, and the acceptance of the same by the OWNER and FHA.
3. A sum equal to ten percent (10%) of the total compensation based on construction contract costs immediately after the construction contracts are awarded.
4. A sum equal to twenty percent (20%) of the total compensation based on the actual construction cost will be paid on a periodic basis during the construction period on percentage ratios identical to those approved by the ENGINEER as a basis upon which to make partial payments to the contractor(s). However, final payment under this paragraph and of such additional sums as are due the ENGINEER by reason of any necessary adjustments in the payment computations will be in an amount so that the aggregate of all sums paid to the ENGINEER will equal one hundred percent (100%) of the basic compensation determined on actual total construction costs. Final payment shall not be made until it is determined that all services required by this Agreement have been completed except for the services set forth in Section A-21 hereof. If the total actual construction cost is less than the lowest total actual construction cost figure shown on Attachment I and the fee to be paid to the ENGINEER is a specific amount as set forth above, the percentage payments due the ENGINEER under Section B-2 thru 4, inclusive, shall be computed by applying the applicable percentage to the specified total fee.

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SECTION C - COMPENSATION FOR RESIDENT INSPECTION

If the OWNER requests in writing the ENGINEER will provide detailed, full-time, resident, construction inspection, including construction staking, and the OWNER agrees to pay the ENGINEER for such service in accordance with the schedule set out in Section E hereof. The ENGINEER will render to OWNER for such services an itemized bill, separate from any other billing, at the end of each month for compensation for such services performed hereunder during such month, the same to be due and payable by OWNER to the ENGINEER on or before the 10th day of the following month.

SECTION D - ADDITIONAL ENGINEERING SERVICES

In addition to the foregoing services, the following services may be required upon written authorization of the OWNER and approval of the FHA:

1. Site surveys for water treatment plants, sewage treatment works, dams and reservoirs.
2. Laboratory tests, well tests, borings, specialized geological, hydraulic, or other studies recommended by the ENGINEER.
3. Property surveys, descriptions of needed land and easement rights and maps, plans, or estimates related thereto; assistance in negotiating for land and easement rights.
4. Necessary data and filing maps for water rights, water adjudication, and litigation.
5. Redesigns ordered by the OWNER after final plans have been accepted by the OWNER and FHA.
6. Appearances before courts or boards on matters of litigation related to the project.
7. Where a project involves design and construction of a lagoon, an adjustment in basic compensation amounting to  
\$ 0.00 per site acre shall be added to basic compensation set forth in Section B.

Payment for the services specified in this Section D shall be in accordance with the schedule set out in Section E hereof. The ENGINEER will render to OWNER for such services an itemized bill, separate from any other billing, at the end of each month for compensation for services performed hereunder during such month, the same to be due and payable by OWNER to the ENGINEER on or before the 10th day of the following month.

SECTION E - Schedule of RATES AND CHARGES FOR ADDITIONAL ENGINEERING SERVICES

<u>PERSONNEL</u>	<u>RATE PER HOUR</u>
<u>SURVEY</u>	
Four-man party	\$ <u>22.00</u>
Three - man party	\$ <u>17.00</u>
Two - man party	\$ <u>12.00</u>
<u>Construction Inspection</u>	
Resident Engineer	\$ <u>10.00</u>
Resident Inspector	\$ <u>6.50</u>

Engineering and General Supervisor

Principal or Officer of Firm	\$ 15.00
Project Engineer	\$ 10.00
Field or Design Engineer	\$ 10.00
Field or Office Assistant	\$ 6.50
Land Surveyor	\$ 8.00

REIMBURSABLE EXPENSES

1. Travel from office at \$0.10 per mile, or at actual out-of-pocket cost, plus time at above rates for both ways.
2. Actual cost of subsistence and lodging.
3. Actual cost of long-distance telephone calls; telegrams, express charges, and postage other than ordinary first-class.
4. Actual cost of materials required for the job and used in surveying, drafting, and allied activities, including printing and reproduction costs.
5. Actual cost of special tests and services of special consultants, as referred to in Section D of this agreement.

This agreement shall not become effective until approved by FHA. Such approval shall be evidenced by the duly authorized representative of FHA in the space provided at the end of this Agreement. The approval so evidenced by FHA shall in no way commit FHA to render financial assistance to the OWNER, but in the event assistance is granted the approval shall signify that the provisions of this Agreement are consistent with the requirements of FHA.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

Attachment 1 ( Rev. 12-20-67)  
FHA Form 442-19

AGREEMENT FOR ENGINEERING SERVICES

Cost of Construction

Basic Minimum Fees

Schedule 1

Less than \$100,000	Payroll Cost Plus A Percentage
\$ 100,000 - \$ 500,000	\$ 12,000 plus 7.5% of amount in excess of \$ 100,000
500,000 - 1,000,000	42,000 plus 6.0% of amount in excess of 500,000
1,000,000 - 5,000,000	72,000 plus 5.5% of amount in excess of 1,000,000.
5,000,000 - 100,000,000	292,000 plus 5.25% of amount in excess of 5,000,000.

Schedule 2

Less than \$100,000	Payroll Cost Plus A Percentage
\$ 100,000 - \$ 500,000	\$ 9,000 plus 6.0% of amount in excess of \$ 100,000
500,000 - 1,000,000	33,000 plus 5.0% of amount in excess of 500,000
1,000,000 - 5,000,000	58,000 plus 4.5% of amount in excess of 1,000,000

5,000,000 - 100,000,000 238,000 plus 4.25% of amount in excess of 4,000,000

Projects - Schedule 1

Dams, and Hydraulic Structures Ground or Underground Water  
Intercepting, Relief, Storm Storage Facilities  
or Sanitary sewers Water Intakes and Sewage Outlets  
Pumping Stations Water, Sewage and Industrial  
Treatment Plants

Projects - Schedule 2

Irrigation and Drainage Water Distribution Systems and  
Ditches Elevated Storage Tanks  
Retaining Walls Water Transmission Pipelines"

SECTION 3. The Council of the Village of Spencer does hereby confirm and approve any and all actions taken by either party thereto under the terms and agreements of the above stated contract.

SECTION 4. This ordinance is hereby declared to be an emergency measure, necessary for the immediate preservation of the public health, safety and welfare of the Village and for the further reason execution of such engineering contract is necessary in order to move forward with the Village Sanitary Sewer project which is urgently needed by the community and therefore this Ordinance shall take effect and be enforced immediately from and after its passage.

PASSED: July 25, 1968

Donald Brown  
Mayor

ATTEST:

Melford L. Taylor  
Village Clerk

CERTIFICATION BY THE CLERK

I hereby certify that the foregoing Ordinance No. 204  
was published by posting five copies thereof in the following public  
places for a period of fifteen (15) days:

Farmers Savings Bank  
Jim's Saw-Mow Mkt  
Spencer Post Office  
Schuch Bros Hdqrs.  
Hershey's Barber Shop

The date of posting said Ordinance was July 27 1968.

Melba L. Taylor  
Clerk