AGREEMENT

Between

CITY OF WILLOUGHBY HILLS, OHIO

&

RICHARD L. BOWEN + ASSOCIATES, INC.

For

CITY ENGINEERING SERVICES

THIS AGREEMENT made at Willoughby Hills, Ohio, effective February 1, 2013 by and between the CITY OF WILLOUGHBY HILLS, 35405 Chardon Road Willoughby Hills, OH 44094 [hereinafter referred to as "CITY"], and RICHARD L. BOWEN + ASSOCIATES, INC., 13000 Shaker Boulevard, Cleveland, Ohio, 44120 [hereinafter referred to as "CONSULTING ENGINEER"]; and PIETRO A. DiFRANCO, P.E. [hereinafter referred to as "CITY ENGINEER"]; and DANIEL J. COLLINS, P.E. [hereinafter referred to as "ASSISTANT CITY ENGINEER"].

WHEREAS, the CITY intends to employ a qualified Engineering and Architectural Consulting Firm authorized in the State of Ohio to perform professional engineering and architectural services necessary to meet the challenges and needs of the community through the coming years for and on behalf of the CITY as hereafter set forth; and

WHEREAS, the Mayor selected CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER as the persons and firm most qualified to perform the professional services required at a price that is fair and reasonable to the CITY;

WHEREAS, the Mayor desires said Agreement and terms thereof through January 31, 2015;

NOW THEREFORE, the CITY, CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, each acknowledging the sufficiency of the consideration contained in the terms and conditions of the Agreement, agree as follows:

SECTION 1. BASIC SERVICES.

1.1 The SERVICES required to be performed by the CITY ENGINEER, ASSISTANT CITY ENGINEER, and the CONSULTING ENGINEER under this Agreement shall be the basic services provided to the CITY.

1.2 The CITY ENGINEER shall receive a retaining fee in the sum of Six Thousand Five Hundred Dollars ($6,500.00) per annum unless increased by Council. The ASSISTANT CITY ENGINEER shall receive a retaining fee in the sum of Six Thousand Five Hundred Dollars ($6,500.00) per annum unless increased by Council. The retaining fees shall be paid on a monthly basis commencing upon the effective date of this ordinance, and the amounts shall be subject to the contribution by the CITY and the CITY ENGINEER and ASSISTANT CITY ENGINEER, respectively, to OPERS for which they shall perform the following services:

(a) Give advice to Council, the Mayor, residents, builders, etc. and other proper administrative officials on problems pertaining to engineering, zoning, building, etc.

(b) Prepare formative or preliminary sketches, layouts, estimates or reports, concerning the advisability of proceeding with any public improvements contemplated by the Council.

(c) Make recommendations regarding the engineering features of dedication plans, utility plans and such other requests of persons or firms as will require the use of the special knowledge possessed by the CITY ENGINEER and/or ASSISTANT CITY ENGINEER.

(d) Attend regular City Council and Planning Commission meetings as needed and directed by the Mayor. The Mayor, in his sole discretion, shall determine when attendance at other meetings is needed.

(e) Minor consultation and site inspection(s) with such authorized representatives of the City, providing such consultation requires no preparation of detailed plans, estimates or field investigations.

(f) Provide assistance in the preparation of applications for Financial Assistance in the form of preliminary estimates of construction cost and minor engineering detail.

(g) In providing the BASIC SERVICES set forth in paragraphs (a) through (c) above, CITY ENGINEER and/or ASSISTANT CITY ENGINEER shall be available and accessible to the Mayor a minimum of twenty (20) hours per month as set forth by a mutually agreed upon quarterly calendar denoting set dates and times of availability. CITY ENGINEER and/or ASSISTANT CITY ENGINEER shall insure that they are at all times accessible to the Mayor. When the CITY ENGINEER and ASSISTANT CITY ENGINEER are temporarily unavailable on such days to provide services due to illness, vacation or similar events, they may designate a qualified engineer in the CONSULTING ENGINEER'S office to temporarily provide such services.

Other than the retaining fee and OPERS contribution stated above, CITY ENGINEER and ASSISTANT CITY ENGINEER shall not receive any other wages or benefits from the CITY pursuant to this Agreement. All other fees and expenses are excluded from OPERS and are subject to the terms applicable to independent contractors.

SECTION 2. ADDITIONAL SERVICES.

2.1 The CONSULTING ENGINEER shall designate the CITY ENGINEER, ASSISTANT CITY ENGINEER, or another qualified engineer to furnish the following additional services to the CITY, if requested, according to the schedule or rates set forth in Paragraphs 2.2 and 2.3, and the authorizing procedures set forth in Section 4:

(a) Prepare all necessary plans, profiles, specifications, and estimates of cost of every kind for public improvements including, but not limited to, minor roads and streets, off-street parking lots, retaining walls, sidewalks, and street resurfacing.

(b) Serve as the authorized representative of the CITY and supervise the execution of public works undertaken by the CITY pursuant to plans and specifications approved by Council.

(c) Furnish to the Council and/or any other CITY official plans, specifications and estimates of the costs of public improvements for the guidance of the Council and CITY Officials, and for the information and guidance of other persons dealing with the CITY.

(d) Make and deliver to the Mayor and Council monthly reports of the progress of improvements under its charge which reports may be given orally at the City Council meetings.

(e) The CONSULTING ENGINEER'S services shall be available to any department of the CITY or any official acting in his official capacity.

(f) Assistance to the City in securing, tabulating and evaluating construction bids and furnishing an engineering assessment of the Contractor's capability to perform such public improvement.

(g) Periodic visits to the site of the work by a duly qualified representative of the Engineer throughout the active construction periods for review of the progress and quality of the construction work to assure compliance with the specifications and to provide consultation with CITY representatives. The Engineer shall not be responsible for, nor have control of, construction means, methods, techniques, sequences; or for safety programs in connection with the work by the Contractor(s).

(h) Acknowledge the services of a certified residential Building Official and Residential Plans Examiner and provide those services as back up for the City Building Commissioner as per Residential Code of Ohio, Administrative Code, Chapter 1.

2.2 The CITY shall reimburse the CONSULTING ENGINEER for services rendered as follows:

(a) For work done under Section 2.1 which involves public improvement project contracts to be awarded by the Board of Control, the compensation shall be in accordance with the following fee schedule:

If the actual Cost of the Improvement Project is				Engineering Fee for Design of Improvement Project shall be
$	0	to	100,000	12%
	100,001	to	500,000	Base fee of 12% of the first $100,000 plus 7.5% of the amount over $100,000
	500,001	to	1,000,000	Base fee of 8.4% of the first $500,00 plus 6.8% of the amount over $500,000
	1,000,0001	to	5,000,000	Base fee of 7.2% of the first $1,000,000 plus 6.2% of the amount over $1,000,000

The fees are payable as follows:

(1) Seventy-five percent (75%) of the total fee shall be paid when contract plans, specifications and detailed estimates are completed and submitted to the CITY.

(2) The remaining twenty-five percent (25%) of the total fee shall be payable in pro rata monthly payments in accordance with the estimated percentages of work completed by construction, until the aggregate of all payments shall equal the total remaining amount due under this Agreement as provided for in this Agreement.

(3) That if any authorized work (covered by this Agreement) being performed by the CONSULTING ENGINEER shall be suspended, postponed, or abandoned prior to the completion and submission of the work to the CITY, the CONSULTING ENGINEER shall be reimbursed for services rendered on account of it, the payment shall be based as far as possible on the fee established in this Agreement or where the Agreement cannot be applied, then the basis shall be at the rate per diem. Payment for this work shall be within ninety (90) days of suspension, postponement or abandonment.

(4) The fee provided in Section 2.2(a) hereof, shall cover all engineering services need for the improvement project, including preliminary estimates and reports, complete detailed plans and specifications, and preparation of monthly and final estimates for contractors' payments.

2.3 For engineering services not heretofore specified, the CONSULTING ENGINEER shall be compensated on a time spent basis as set forth in the schedule of hourly rates below, plus expenses, supplies and transportation.

(a) SCHEDULE OF HOURLY RATES

City Engineer or Associate	$	90.00
Assistant City Engineer	$	90.00
Surveyor	$	70.00
Project Engineer	$	80.00
Draftsman	$	60.00
Designer	$	70.00
Construction Observation (City Projects)	$	50.00
Clerical/Administrative Assistant	$	35.00
Two Man Field Crew	$	110.00
Three Man Field Crew	$	160.00
Architect	$	135.00

(b) The aforementioned Schedule of Rates in Section 2.3(a) shall cover the following services which the CONSULTING ENGINEER may provide:

(1) Property, topographic, boundary, right-of-way, or grade surveys
(2) Line and grade stakes
(3) Resident Engineer
(4) Inspection of Construction
(5) Shop, mill or field inspection of materials
(6) Calculations of special assessments
(7) Cost of borings or other sub-surface explorations
(8) For special surveys, reports, etc., involving work not let by publicly bid contract for any and all duly authorized services not specified in Section 1 or 2, nor incident to nor in any way connected with the construction of public improvements.

(c) Payment for services as heretofore set forth in Section 2.3 shall be made at the completion of each service and upon billing by the CONSULTING ENGINEER, setting forth the time, expense, supplies and transportation furnished.

SECTION 3. DOCUMENTS.

3.1 Plans and specifications, sketches, maps, drawings, linens, plats and similar finished documents prepared for the CITY and by the CITY ENGINEER, ASSISTANT CITY ENGINEER, or the CONSULTING ENGINEER, when completed, shall be deposited with the City, and shall be retained by the City as a record of the City of Willoughby Hills. The CITY shall have all property and proprietary rights with respect to such prepared documents.

SECTION 4. AUTHORIZATION FOR ADDITIONAL ENGINEERING WORK.

4.1 Engineering work other than that provided for in Section 1 shall not be undertaken by the CONSULTING ENGINEER unless specifically requested by the Mayor and authorized by purchase order approved by the Director of Finance or separate written contract signed by the Mayor and approved by the Director of Law and the Director of Finance. No other official shall authorize the CONSULTING ENGINEER to perform additional engineering services.

In the event of an emergency necessitating immediate additional services by the CONSULTING ENGINEER, services may be rendered pursuant to purchase order requested and approved by the Mayor and Director of Finance. The Mayor shall be the sole judge of whether a bona fide emergency exists.

SECTION 5. STATUS REPORT

5.1 On the first day of the month in which the term of this Agreement ends the CONSULTING ENGINEER shall provide a status report, in writing, of all work and projects then in process. A copy of such report shall be provided to the Mayor, and the Directors of Finance, and Law, and City Council.

SECTION 6. AUTOCAD

6.1 All sewers, water, sidewalks, and paving plans and plats shall be finalized by the CONSULTING ENGINEER in electronic format (AutoCAD) and shall be retained as hereinbefore provided, as a record of the City, with the City having all property and proprietary rights in such documents.

SECTION 7. TERM OF APPOINTMENT AND AGREEMENT

7.1 The term of the CONSULTING ENGINEER, CITY ENGINEER and ASSISTANT CITY ENGINEER and of this Agreement shall be for a twenty-four (24) month period commencing on February 1, 2013, and concluding on January 31, 2015. Beyond the aforementioned twenty-four (24) month period, this Agreement shall automatically continue under the conditions contained herein if the CITY and CONSULTING ENGINEER mutually do not discuss further terms.

7.2 It is further agreed that the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER shall be permitted to conclude engineering services after the term of his appointment and its agreement has ended, for sewer, water, paving, and sidewalk projects previously authorized by the City Administration and/or Council during term through the design phase thereof, which includes plans, profiles, specifications and estimates of cost as provided in Sections 1 and 2 of this Agreement.

7.3 This Agreement is non-exclusive to the extent that nothing herein shall be construed to prevent the CITY from engaging other City Engineers for specific projects during the term of this Agreement.

SECTION 8. COST

8.1 In reference to the provision of this Contract between the CITY and the CONSULTING ENGINEER permitting the CITY ENGINEER and/or ASSISTANT CITY ENGINEER to contract for material and supplies at cost, upon the expense of the CITY, it is agreed that no materials and supplies shall be so authorized by CITY ENGINEER or ASSISTANT CITY ENGINEER, for no single project, at a cost of Five Hundred Dollars ($500.00) or more, without prior authorization from the Mayor.

SECTION 9. ACCEPTANCE OF OTHER EMPLOYMENT

9.1 Neither the CITY ENGINEER, the ASSISTANT CITY ENGINEER, nor the CONSULTING ENGINEER shall, without the consent of Council, during the term of this Agreement, accept any employment from any firm or corporation engaged in the business of establishing subdivisions or erecting buildings, or under contract for any public improvement, within the City of Willoughby Hills. The CITY ENGINEER, the ASSISTANT CITY ENGINEER, and the CONSULTING ENGINEER out of or relating to this Agreement or the breach of it will be decided by mediation if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Ohio, County of Lake.

SECTION 10. DISPUTES

10.1 Except as this agreement otherwise provides, all claims, counterclaims, disputes and other matters in question between the CITY and the CITY ENGINEER, the ASSISTANT CITY ENGINEER, and the CONSULTING ENGINEER out of or relating to this Agreement or the breach of it will be decided by mediation if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Ohio, County of Lake.

SECTION 11. TERMINATION OF AGREEMENT

11.1 It is expressly understood and agreed that either the CITY or CITY ENGINEER and the CONSULTING ENGINEER may terminate this Agreement at any time by giving 30 days advance written notice to the other party either personally to the representative of that party who signed this Agreement, or by registered mail, return receipt requested, addressed to the principal office of that party. The ASSISTANT CITY ENGINEER shall not have any right to terminate this Agreement.

11.2 In the event that this Agreement is terminated by either the CITY or the CITY ENGINEER and the CONSULTING ENGINEER, the CITY ENGINEER and the CONSULTING ENGINEER shall only be entitled to be compensated for any BASIC SERVICES, ADDITIONAL SERVICES, and/or Other Engineering Services, as defined above, performed to the date of termination performed. Such compensation shall be based on the provisions set forth herein, if possible. For any services rendered to which these provisions do not apply, payment shall be based upon a per diem rate for the actual time spent rendering the services, computed by using the average rate for such services rendered by other comparable firms in Lake County, Ohio.

11.3 The Engineer shall be permitted to complete all started projects and design work in process only upon authorization of the Mayor and City Council; all other services shall cease at the end of thirty (30) days. The Engineer shall return to the City all maps, drawings and other City Records.

SECTION 12. INSURANCE

12.1 The CITY ENGINEER and CONSULTING ENGINEER shall comply with all workers' compensation laws of the State of Ohio and shall carry at least the following minimum private insurance coverage:

a. General Liability and Comprehensive Automobile Liability Insurance in an amount not less than One Million Dollars ($1,000,000.00 aggregate) for injuries, including those resulting in death, to any personal, and property damage. Said insurance shall be maintained in full force and effect during the life of this Agreement and shall protect the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, their employees, agents,

and representatives from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from the negligent or wrongful acts, errors or omissions of the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, their employees, agents or representatives in the performance of the services under this Agreement.

b. Valuable Papers insurance in an amount sufficient to assure the restoration of any drawings, project manual pages, field notes, or similar data relating to the work under this Agreement, in the event of their loss or destruction, during the life of this Agreement.

c. Professional Liability Insurance in an amount $2,000,000.00 aggregate, $1,000,000.00 per claim shall be carried by the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER to provide coverage for any errors, omissions or negligence by CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, and their employees, agents, and representatives.

12.2 Certificates showing the CITY ENGINEER and CONSULTING ENGINEER are carrying all of the above described insurances in at least the above specified minimum amounts shall be furnished to the City Finance Director before the CITY is obligated to make any payment to the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER for any services rendered by them under this Agreement. Such certificates for all such required insurances shall name the CITY as an additional insured party, except for professional liability insurance and workers' compensation, and shall provide for advance written notice to the CITY of not less than thirty (30) days prior to the effective date of any modification or cancellation of any such coverage.

SECTION 13. INDEMNIFICATION

13.1 The CONSULTING ENGINEER hereby agrees to indemnify and hold the CITY harmless from and against any and all losses, damages, settlements, costs, charges, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and

character arising out of the acts, omissions and/or negligence of the CONSULTING ENGINEER'S employees, subcontractors, materialmen, agents or others acting in concert with the CONSULTING ENGINEER.

SECTION 14. MISCELLANEOUS

14.1 Nothing contained in this Agreement shall be construed as creating any personal liability on the part of any employee or official of the CITY.

14.2 No assignment by a party hereto of any rights, obligations, or interests in this Agreement shall be permitted without the prior written consent of the other party; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

14.3 CITY and CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER each binds itself, its partners, successors, assigns and legal representatives to all of the covenants, agreements and obligations contained in the Agreement.

14.4 If any provision of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid, and unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 The interpretation, construction and enforcement of the provisions of this Agreement shall be made in strict conformance with the laws of the State of Ohio and the ordinances of the City of Willoughby Hills.

14.6 This Agreement shall be construed to inure to the benefit of, and be binding upon, all of the parties, and their respective successors in interest and assigns.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year, and at the place, above first written.

CITY:
CITY OF WILLOUGHBY HILLS, OHIO

_____
Mayor Robert Weger

_____
Date

CITY ENGINEER:
PIETRO A. DiFRANCO, P.E.

_____
Pietro A. DiFranco, P.E.

_____
Date

ASSISTANT CITY ENGINEER:
DANIEL J. COLLINS, P.E.

_____
Daniel J. Collins, P.E.

_____
Date

CONSULTING ENGINEER
RICHARD L. BOWEN +
ASSOCIATES, INC.

_____

(By) _____ (its) _____

_____
Date

Approved as to Legal Form:

_____
Thomas Lobe, Director of Law

Date: _____