

(Mayor Potter)

**CITY OF KIRTLAND**

**ORDINANCE NUMBER 21-O-72**

**AN ORDINANCE CONFIRMING THE MAYOR'S REAPPOINTMENT OF THE C.W. COURTNEY COMPANY AS ENGINEERS FOR THE CITY OF KIRTLAND AND DECLARING AN EMERGENCY.**

**WHEREAS**, The C.W. Courtney Company has served admirably as the Engineer for the City of Kirtland since March 3, 2020; and

**WHEREAS**, The C.W. Courtney Company's agreement with the City of Kirtland expires on December 31, 2021; and

**WHEREAS**, The Mayor has reappointed The C.W. Courtney Company to serve as the City of Kirtland's Engineer and the parties have agreed to a three-year extension.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kirtland, Lake County, Ohio, that:

**SECTION I:** The Mayor has reappointed The C.W. Courtney Company, as Engineers for the City of Kirtland for the period commencing January 1, 2022, and ending on December 31, 2024 and requests this Council's approval of this appointment; and

**SECTION II:** The Agreement between the City of Kirtland, Ohio, and the firm of The C.W. Courtney Company is hereby approved and the Mayor is hereby authorized and directed to enter into the Agreement with The C.W. Courtney Company, a copy of which is attached hereto as Exhibit "A".

**SECTION III:**

(a) It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed 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.

(b) This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that it is necessary to provide for the engineering functions of the City; wherefore, this

Ordinance shall be in full force and effect immediately upon its passage by the affirmative vote of five (5) members of Council and approval by the Mayor, otherwise this Ordinance shall be in effect from and after its adoption at the earliest period allowed by law.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

DATE PASSED: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Submitted to the Mayor for his  
Approval on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2021.

ATTEST:

Approved by the Mayor, this \_\_\_\_ day  
of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Clerk of Council  
Engineer reappointment 2022-2024

\_\_\_\_\_  
Mayor Kevin F. Potter

**AGREEMENT  
BETWEEN THE CITY OF KIRTLAND, OHIO  
AND THE C.W. COURTNEY COMPANY**

I. **THIS AGREEMENT**, made at the City of Kirtland, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2021 by and between the City of Kirtland, Ohio, hereinafter called the “CITY”, and the firm of The C.W. Courtney Company, hereinafter called the “ENGINEER”, witnesseth;

**WHEREAS**, the CITY intends to obtain the services of a professional engineer to act in the capacity of City Engineer and whereas the firm proposes to furnish such engineering services to the CITY for a period beginning January 1, 2022 and ending December 31, 2024. The Engineer shall continue in the capacity of City Engineer subsequent to the expiration date of this contract until a successor is appointed, or until a period of ninety (90) days has elapsed, whichever occurs first. The Mayor shall have the right to designate and select from the firm of The C.W. Courtney Company the individual engineer(s) who shall personally perform the engineering services to the CITY. At this time, the Mayor designates and selects Douglas G. Courtney, PE to personally perform the engineering services to the CITY, and that Christopher L. Courtney, PE, PS shall serve as an alternate in the absence or disability of said Douglas G. Courtney.

**WHEREAS**, the Engineer currently maintains engineer’s professional liability insurance, limits of which are: \$1,000,000 per claim; \$2,000,000 policy aggregate and the City of Kirtland is listed as an additional insured; and

**THEREFORE**, in consideration of these promises, and of the mutual covenants herein set forth, the CITY and the ENGINEER agree as follows:

II. The ENGINEER agrees to furnish and perform the various professional services as are herein defined as “RETAINER SERVICES”, as follows:

A. RETAINER SERVICES: The following professional services shall be performed by the ENGINEER for the CITY, either as a matter of routine or upon request of an appropriate City official as may be designated by the Mayor.

1. Attend all Council and Planning and Zoning Commission meetings.
2. Attend up to four (4) per month of additional public, legislative or administrative meetings or conferences as requested by the Mayor.
3. Site inspection(s) and consultation with such authorized representatives of the CITY, providing such consultation requires no preparation of detailed plans, estimates or field investigations.
4. Prepare estimated budgets of engineering and/or technical services in sufficient detail for review and approval.
5. Provide assistance in the preparation of applications for financial assistance in the form of preliminary estimates of construction cost and minor engineering details.
6. Make and deliver to the Council monthly reports of the progress of improvements under its charge, stating conditions of same, together with any other matters of interest desired by the Council.
7. Provide storage for the CITY's maps, drawings, specifications, calculations, records and other materials relating to the ENGINEER's duties as City Engineer. An index of all material will be maintained and provided to the City when requested. Should issues arise as to the storage of past records of an unknown size and volume and the storage of said records proves to be a hardship for the ENGINEER, the CITY and ENGINEER may modify this provision at a later date.

B. RETAINER FEE: For services as detailed above under Article II-A, Retainer Services, a monthly retainer fee shall be paid to Douglas G. Courtney as the ENGINEER for compensation, payable in bi-weekly installments. Said payments shall be pensionable to the Ohio Public Employees Retirement System and reported as W-2 (or equivalent) wages. The ENGINEER shall be enrolled in the Ohio Public Employee's Retirement System and the City shall pay the full employer contribution. The Retainer Services shall be paid in the following amounts:

1. For the year 2022, the monthly Retainer Services shall be paid in the amount of of One Thousand Nine Hundred Fifty Dollars (\$1,950.00).
2. For the year 2023, the monthly Retainer Services shall be paid in the amount of of Two Thousand Eight Dollars (\$2,008.00).
3. For the year 2024, the monthly Retainer Services shall be paid in the amount of of Two Thousand Fifty-Eight Dollars (\$2,058.00).

III. THE ENGINEER agrees to furnish and perform additional professional services as are herein defined as "SPECIFICALLY AUTHORIZED SERVICES", as follows:

A. SPECIFICALLY AUTHORIZED SERVICES: The following professional services shall be performed by the Engineer for the City only after such services specifically have been authorized by the City:

1. Preparation, maintenance and reproduction of specifications and standards for public utilities.
2. Preparation, maintenance and reproduction of a comprehensive master plan for development of any public utilities.
3. Furnishing of preliminary investigations, studies and reports, preliminary general plans, preliminary cost estimates, and field investigation.
4. Furnishing land surveys, establishment of boundaries and monuments, line, grade, topographic, easement and right-of-way field surveys and related office plotting of notes, computations, descriptions and drafting.
5. Furnishing of line and grade surveys for the construction of public improvements.

6. Furnishing the services of a resident engineer and/or field representative to observe the work on public improvement projects and report to the City on the contractor's compliance and progress.
7. Computing and certifying of the amount of special assessments for public improvements as may be required.
8. Preparing record drawings that reflect actual construction and making said drawings available upon the request of the City.
9. Furnishing of additional surveying, architectural or engineering services as may be authorized by the CITY and not specified elsewhere herein.

B. The ENGINEER shall receive for performance of all necessary services stipulated and defined above, in Article III-A, SPECIFICALLY AUTHORIZED SERVICES, a fee equal to the following "Hourly Rates" in the below chart:

**Hourly Rates:**

Staff Description	2022	2023	2024
Principal Engineer / Municipal Engineer	\$105.00	\$108.00	\$110.00
Dual Registrant (PE / PS)	\$100.00	\$103.00	\$106.00
Registered Professional Engineer	\$95.00	\$98.00	\$101.00
Registered Landscape Architect	At cost	At cost	At cost
Assistant Engineer/Designer-Drafter	\$75.00	\$78.00	\$80.50
CADD Drafter	\$65.00	\$67.00	\$69.00
Chief Registered Surveyor	\$80.00	\$82.50	\$85.00
Registered Surveyor	\$75.00	\$77.00	\$79.00
Contract Administrator / Chief Construction Inspector	\$55.00	\$56.50	\$59.00
Construction Inspector	\$45.00	\$46.50	\$48.00
2-Person Survey Crew	\$125.00	\$129.00	\$130.00
1-Person Survey Crew with GPS/Robotic Equipment	\$90.00	\$93.00	\$95.00
Clerk	\$25.00	\$25.50	\$26.00
Services by Others	At cost	At cost	At cost

The above rates include all transportation, materials, supplies, reproduction costs, overhead, etc. that are required to complete a specific project or task.

Payments for the aforesaid professional services are to be paid monthly by the CITY upon receipt of a detailed statement of time and expenses from the ENGINEER.

IV. The ENGINEER agrees to furnish and perform professional services as are herein defined as "PUBLIC IMPROVEMENT PROJECTS", as follows:

A. PUBLIC IMPROVEMENT PROJECTS: The following professional services shall be performed by the ENGINEER on specific public improvements for the CITY only after such services have been specifically authorized by the CITY:

1. Preparation of detailed construction plans, specifications, cost estimates and construction proposals for public improvements.
2. Placing copies of plans and specifications on view in the ENGINEER's office for information of equipment and material suppliers
3. Being available for interviews with prospective bidders during the period of advertisement for construction bids.
4. 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.
5. Visits at necessary intervals 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 consult with CITY representatives.
6. Review and checking of all detailed construction drawings, all shop and erection drawings, and other information submitted by contractors for compliance with design concept and requirements of the contract documents. This performance includes similar checking of laboratory, shop and mill reports of materials and equipment.

7. Furnishing supplementary detailed working drawings, specifications, and written instructions as may be necessary throughout the construction period to interpret the contract plans and documents and to resolve actual field conditions encountered.
  8. Checking interim and final estimates for payment to contractors.
  9. Review of all operation and performance tests required by the contract specifications.
  10. Provide in writing recommendations concerning completion and final acceptance of the construction work.
- B. For sanitary sewer projects including new installations, repairs, rehabilitation, and other sanitary sewer related projects, and for street projects including complete pavement replacement, widening an/or repair, the ENGINEER shall receive as compensation for the performance of said services stipulated and defined above, in Article IV-A, PUBLIC IMPROVEMENT PROJECTS, a fee based upon the cost of construction according to the following schedule:

<u>PROJECT CONSTRUCTION COST</u>	<u>FEE</u>
\$ 0 to \$ 100,000	10% of the project cost or the Hourly Rate as found in Section III-B, whichever is less
\$ 100,000 to \$ 500,000	13% of the first \$100,000 plus 7.6% of any amount over \$100,000
\$ 500,000 to \$ 1,000,000	8.7% of the first \$500,000 plus 6.3% of any amount over \$500,000
\$ 1,000,000 to \$ 5,000,000	7.5% of the first \$1,000,000 plus 6.1% of any amount over \$1,000,000
Over \$ 5,000,000	6.4% of the first \$5,000,000 plus 5.6% of any amount over \$5,000,000

- C. For all other public improvement projections other than sanitary sewer and street projects as described above, the ENGINEER shall receive as compensation for the performance of said services stipulated and defined above, in Article IV-A,



PUBLIC IMPROVEMENT PROJECTS, a fee based upon the cost of construction according to the following schedule:

<u>PROJECT CONSTRUCTION COST</u>	<u>FEE</u>
\$ 0 to \$ 100,000	10% of the project cost or the Hourly Rate as found in Section III-B, whichever is less
\$ 100,000 to \$ 500,000	10% of the first \$100,000 plus 6.5% of any amount over \$100,000
\$ 500,000 to \$ 1,000,000	7.2% of the first \$500,000 plus 5.2% of any amount over \$500,000
\$ 1,000,000 to \$ 5,000,000	6.2% of the first \$1,000,000 plus 5.1% of any amount over \$1,000,000
Over \$ 5,000,000	5.2% of the first \$5,000,000 plus 4.6% of any amount over \$5,000,000

D. In all cases, the construction cost for application of percentage fees shall be exclusive of the costs for land or right-of-way acquisition, engineering, surveys, legal services or similar administrative expenses.

Payment for services in accordance with Section IV shall be made monthly based upon the Engineer's estimate of work progress and shall be in proportion to the services performed for each phase equal to the following percentages of the total base fee payable:

<u>Project Phase</u>	<u>Percentage of Base Compensation</u>
Preliminary Design	25%
Final Design Phase	45%
Bidding or Negotiating	10%
Construction Administration Phase	20%

The fee for services shall be based upon the ENGINEER's opinion of the probable cost for construction but shall be adjusted to actual construction cost when a contract for construction is awarded. Should requirements of the state agencies having jurisdiction entail revisions of contract documents or plans as a condition to

approval, such revisions shall be made by the ENGINEER at no additional expense to CITY. If, however, the CITY orders a change in scope or alterations in contract drawings or other documents after they have been approved by the state, the CITY and the ENGINEER shall agree upon the amount of compensation to be paid for such work prior to the commencement of the work.

If any portion of a project is deleted or otherwise not constructed, compensation shall be payable to the extent services are performed in accordance with the percentage fee schedule set forth in this Section; based on either: (1) the lowest and best bid or negotiated proposal; or (2) if no such bid or proposal is received, the most recent opinion of the probable construction cost.

The base compensation provided in this Section shall cover engineering services including but not limited to preliminary designs and estimates, complete detailed plans and specifications, preparation of monthly and final estimates for contractor's payments. The above schedule of fees does not include various supplementary services such as additional services resulting from significant changes in the general scope or design of the project, furnishing services necessitated by delays beyond the control of the ENGINEER and other services as enumerated below:

1. Land surveys related to establishment of boundaries and monuments and related office calculations and drafting.
2. Line, grade, topographic, easement and rights-of-way field surveys and related office calculations, drafting and legal descriptions.
3. Field surveys for construction layout staking.
4. Work related to filing subdivisions, staking of lots and related land planning and partitioning functions.
5. Preparation of detailed rights-of-way plans.
6. Preparation of Dedication or Vacation Plats.
7. Preparation of record (as-built) drawings following construction.
8. Calculations of special assessments.
9. Preparation of utility rate studies.
10. Procuring special permits, easements, or rights-of-way.

11. Furnishing scale models, perspectives or color renderings.
12. Preparation of operating and maintenance manuals.
13. Startup assistance and operator training.
14. Specialized foundation recommendations.
15. Construction inspection.
16. Shop, mill, field, or laboratory inspection of materials.
17. Specialized traffic studies.
18. Cost of work related to subsurface explorations.
19. Environmental impact statements and other governmental permits.

Said enumerated services above shall be provided by the ENGINEER on an hourly basis in accordance with the found in Section III-B.

V. PERFORMANCE BY CITY: This proposal is based upon the understanding that the CITY, without expense to the ENGINEER, will:

1. Make available to ENGINEER all information, reports and other data in its files that are pertinent to the work herein proposed.
2. Provide all test borings or other soils investigations which are required for the proper design of the improvements.
3. Furnish testing laboratory services for inspection and testing materials and/or equipment as may be necessary to assure compliance with contract specifications.
4. Furnish all legal and/or land appraisal services which may be required.

VI. CONFLICT OF INTEREST: Unless otherwise directed by the CITY, the ENGINEER, including all staff members, shall not be employed, have any financial interest in, or receive compensation from any developer for planning of or in seeking approval of any subdivision or development within the corporate limits of the CITY during the time the ENGINEER is employed as City Engineer.

VII. CONFIDENTIALITY: The ENGINEER shall not, either during or after the term of the Contract, disclose to any third party, or use for its own benefit, any confidential information relative to the services or the business of the CITY without the written consent of the CITY. The provisions of this section shall survive the satisfaction of the obligations and the completion of the term of this Contract.

VIII. TERMINATION: In the event the CITY or the ENGINEER desires to terminate the Agreement, it will be effective ninety (90) days after written notification by the party desiring to terminate.

The ENGINEER shall be permitted to complete all started projects and design work in process only upon authorization by the City; all other services shall cease at the end of the ninety (90) days. After the effective date of the termination, the ENGINEER shall return to the CITY all maps, drawings and other CITY records within fourteen (14) days.

**IN WITNESS WHEREOF**, the parties hereto have affixed their hands and seals at the City of Kirtland, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Witness:

**CITY OF KIRTLAND, OHIO**

\_\_\_\_\_  
Kevin F. Potter, Mayor

Witness:

**THE C.W. COURTNEY COMPANY**

\_\_\_\_\_  
Douglas G. Courtney, Chief Operating Officer