

**AGREEMENT
BETWEEN
COUNTY OF CUYAHOGA, OHIO
AND
KS ASSOCIATES, INC.
For
SURVEY SERVICES FOR THE CUYAHOGA COUNTY CORRECTIONS CENTER
PROJECT**

Contract No._____

This Agreement made effective as of the date upon which this Agreement is fully executed by both parties ("Effective Date") by and between the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof (the "COUNTY", and the consulting firm known as **KS Associates, Inc.** with principal office located at **600 Superior Avenue East, Suite 1300, Cleveland, OH 44114** ("CONSULTANT").

WITNESSETH:

WHEREAS, the COUNTY has determined the need to engage the CONSULTANT to perform Surveying services as may be authorized on a Task Order basis by the COUNTY for this Geotechnical Services for the Cuyahoga County Corrections Center Project agreement; and

WHEREAS, in response to the Request for Qualifications RQ 7864 for Surveying Services for the Cuyahoga County Corrections Center Project, dated December 6, 2021 ("RFQ"), incorporated herein, portions of which are attached as Exhibit A, the CONSULTANT submitted a Statement of Qualifications on or about January 12, 2022 ("Proposal"), incorporated herein, portions of which are attached as Exhibit B, which pursuant to a selection process, was determined by the COUNTY to be the most suitable for the RFQ; and

WHEREAS, the CONSULTANT has agreed to the terms and conditions for the consideration indicated herein below.

NOW THEREFORE, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the COUNTY and the CONSULTANT hereby agree as follows:

ARTICLE ONE - SCOPE OF AGREEMENT

Section 1 - Scope of Services:

The Scope of Services to be performed under this Agreement shall be as outlined and authorized on a Task Order basis. The CONSULTANT shall provide professional surveying services for the Cuyahoga County Corrections Center Project as outlined and authorized on a Task Order basis. Basic services may include, but are not limited to, the following:

Boundary Survey Services:

Prepared in compliance with Chapter 4733-37 of the Ohio Administrative Code "Minimum Standards for Boundary Surveys in the State of Ohio". Said survey should include at a minimum:

- Research of available record information for subject and adjacent parcels.
- Field investigation of the subject parcels to search for physical monuments, analyze evidence of occupation, and locate any significant features on the land.
- Boundary monuments will be set where not found. Reference monuments shall be placed where the parcel corner is unoccupiable.
- Boundary survey shall be prepared indicating all pertinent information as identified in said Chapter 4733-37. Information shall include boundary corners, evidence of occupation, lengths bearing and area for subject parcel, pertinent record data, adjacent landowner information, and surveyor's certification.

Topography Survey Services:

Topography survey shall include mapping of all existing natural or constructed features within the limits of the subject parcel (to be determined). Said topographic survey shall include at a minimum:

- Location(s) of structures, pavements, walks and all other permanent improvements.
- Location and description of fences and walls.
- Site data complete enough to produce Contours at one (1) foot intervals. All elevations shall be accurate to .01' on improved surfaces and 0.1' on unimproved surfaces.
- Existing onsite utilities as observed in the field or staked by utility owners.
- Data shall be gathered within the site (to be determined), and an area 25' outside the perimeter of the site.

Existing Conditions Plan:

Based on boundary and topographic survey services the existing conditions plan shall include at a minimum:

- North Arrow, Scale Bar, Legend, General Site Vicinity Map, and Benchmark Data.
- Detailed map showing topography area, with contours and elevations listed as needed.
- Structure locations and descriptions with inverts labeled per field location if available and record information as needed to supplement.
- Underground utility connections as shown on record drawings / field staked by others (OUPS).
- Overhead utility lines.
- Current zoning information for parcel (to be determined) & adjacent parcels along with setback requirements.

- Ownership of adjacent parcels.
- FEMA Base Flood Elevation shall be shown per current Flood Insurance Rate Maps.
- Base mapping shall be produced on 24" x 36" paper at an appropriate scale to show all data; additional pages as needed to show greater detail.
- Digital files of base mapping and Existing Conditions Plan(s) shall be provided in Civil 3D 2019 or greater. Existing sanitary, storm or combined gravity sewer shall be modeled in pipe networks. Existing surface shall be provided in .dwg files and an export .xml file as well.

Section 2 - Duration of the Agreement:

This Agreement will commence on the Effective Date and shall continue, unless earlier canceled or terminated pursuant to the terms of this Agreement, until all the work described in the Scope of Services, herein have been completed.

Section 3 - Administrative Procedures:

The COUNTY and the CONSULTANT agree to adhere to the following procedure for all work authorized under this Agreement:

- A.) The COUNTY will identify a Task Order and a general scope of services and ask the CONSULTANT to develop a detailed scope of services.
- B.) The COUNTY and the CONSULTANT will negotiate a fee for the Scope of Services. As part of the fee negotiation, the CONSULTANT will provide an itemized cost breakdown for the fee. If applicable, sub-consultant fees shall also be itemized.
- C.) The COUNTY will issue a Notice to Proceed to the CONSULTANT to perform the Task Order in the form of a standard authorization letter (which can be transmitted via e-mail). The Notice to Proceed will generally include the following:
 - 1.) The authorized Task Order and scope.
 - 2.) A schedule of completion/project work schedule
 - 3.) The negotiated fee for the Task Order. In addition, the details regarding progress reports and fee payments will be included.

Section 4 - Schedule of Completion/Project Work Schedule:

The CONSULTANT shall start work on authorized Task Orders as outlined in the Notice to Proceed for the Task Order. The Notice to Proceed will also contain a schedule of completion/project work schedule for the authorized Task Order. Any modifications to be made to the schedule of completion/project work schedule of an authorized Task

Order will only be made by mutual written agreement from both the COUNTY and the CONSULTANT.

Mutually approved schedule of completion/project work schedule for authorized Task Orders shall be incorporated into this Agreement as if fully rewritten herein. Any permission for the extension of a Task Order's duration shall not constitute a change in scope.

ARTICLE TWO - GENERAL CONDITIONS, TERMINATION OF AGREEMENT, INSURANCE, REQUIREMENTS, INDEMNIFICATION AND MISCELLANEOUS ITEMS

Section 1 - General Conditions, the COUNTY's Responsibilities:

The COUNTY shall:

- A.) Provide written approvals, as specified in Article One of this Agreement, or as mutually agreed to by the COUNTY and CONSULTANT, in a timely manner. Reports, testing, plans and specifications shall be approved by the COUNTY as to scope, form, content and method of presentation prior to final acceptance by the COUNTY; and
- B.) Make available to the CONSULTANT reports, drawings, plans, and any other pertinent data on file in the office of the COUNTY which are applicable to the work covered in this Agreement; and
- C.) Upon receipt of and acceptance of the final tracings and reports, make or otherwise arrange for the reproduction of the plans required for record and construction bidding purposes; and
- D.) Prepare or arrange for the preparation of contract forms, bidding sheets, advertisements and awarding of the construction contract; and
- E.) Provide or make arrangements for field engineering, supervision and inspection of the construction contract and abatements; and
- F.) Serve notice to property owners, within fourteen working days, for any required rights-of-entry which the CONSULTANT may require to perform their contractual obligations of this Agreement, upon written request of the CONSULTANT.
- G.) COUNTY hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by COUNTY to CONSULTANT. If COUNTY does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to CONSULTANT, COUNTY shall obtain a license or right to use, including the right to sublicense to CONSULTANT. COUNTY hereby grants CONSULTANT the right to use the intellectual property associated

with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. COUNTY represents that CONSULTANT's use of such documents will not infringe upon any third parties' rights.

Section 2 - General Conditions, the CONSULTANT's Responsibilities:

The CONSULTANT shall:

- A.) Provide at its own expense all technical and professional services, testing, labor, equipment and materials required for the execution of this Agreement, except as enumerated otherwise and elsewhere in this Agreement. In addition, they shall employ certified environmental professionals and laborites, etc., as necessary, to be responsible for the gathering of data, sampling, surveying, testing, assessing, monitoring and training of the work covered by this Agreement. Any work covered under this Agreement which requires the stamp of a registered or certified professional shall be stamped with the appropriate seal of the registered or certified professional in the State of Ohio; and
- B.) Provide and make arrangements for traffic control and/or notify the proper local authorities if the activities of the CONSULTANT and/or its sub-consultant shall, in any way, interfere with the flow of traffic or pose any hazards to the public; and
- C.) Accept responsibility for recommendations, plans and specifications embodied in the final products prepared by CONSULTANT under this Agreement and where applicable properly endorse the final products with the signature and seal of a registered professional engineer in the State of Ohio who was in responsible charge of the subject Task Order and the final products; and
- D.) Comply with all Federal, County, State and municipal laws, ordinances, resolutions, and policies applicable to the work to be done under this Agreement. CONSULTANT shall obtain Federal, State, County and/or local licenses, permits and/or clearances necessary to fulfill their obligations of this Agreement; and
- E.) Agree that all work under this Agreement shall be done under the direction and supervision of one of the officers or principals of the CONSULTANT; and
- F.) Agree that all employees of the CONSULTANT shall cooperate with representatives of the Federal Government, the State of Ohio, the COUNTY, various municipalities, or any other agency (public or private) who may be involved in the development and/or construction of this project; and
- G.) Monitor the qualifications, capabilities, and capacities of its sub-consultants to perform those items of the Scope of Services which have been delegated to them. Should the CONSULTANT be required to change or add sub-consultants through the course of this agreement, the CONSULTANT must receive written approval from the COUNTY. The CONSULTANT will be required to notify the COUNTY why a change or addition is required, how the change, addition or deletion will affect their original proposal and how this will affect the CONSULTANT'S ability to meet any

other requirements of the COUNTY before receiving written approval. Replacement of a sub-consultant from those identified in their proposal does not qualify as a reason for additional compensation per "Article 3, Section 4 Scope Changes" of this Agreement; and

- H.) All consultants and/or sub-consultants hired by CONSULTANT, to initially determine and continually monitor the qualifications, capabilities, and capacity of its sub-consultants; and
- I.) Not engage the services of any persons in the employment of the COUNTY or any other public body in the State of Ohio for any of the work covered by the terms of this Agreement, without the specific written permission of the COUNTY.
- J.) Not be responsible for: construction means, methods, or safety in connection with the project; failure of any contractor, subcontractor, vendor, or other project participant, not under contract to CONSULTANT; or procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT as services under the applicable Task Order.

Section 3 - Termination of Agreement:

This Agreement may be terminated by the COUNTY at its sole discretion by written notice to CONSULTANT. In that event, the compensation to be paid to the CONSULTANT by the COUNTY shall be determined by the COUNTY on the basis of work completed, usable maps and data available to the COUNTY.

CONSULTANT may, upon thirty (30) days' prior notice, suspend or terminate this Agreement or any Task Order in the event of material default with respect to products, service, and work performed under this Agreement.

Section 4 – Insurance:

The Consultant shall procure, maintain and pay premiums for the insurance coverage and limits of liability up to the full amount of coverages as stated in all existing policies issued to the Consultant as of the effective date of this contract and at least in the amounts indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

- (a) **Worker's Compensation Insurance** as statutorily required by the State of Ohio.

For Contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage.

(b) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;

\$1,000,000 personal & advertising injury;

\$1,000,000 general aggregate;

\$1,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(d) **Professional Liability Insurance/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering, consultants, counselors, medical professionals, legal and/or **other** professional services with a limit of liability not less than:

\$1,000,000 per claim;

\$2,000,000 aggregate.

(e) **Umbrella/Excess Liability Insurance** to provide additional insurance limits for commercial general liability and/or automobile liability, with limits of liability not less than:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the limits and terms set forth in the preceding items 1.(b)-(c).

Insurance Coverage Terms and Conditions

1. The insurance policies of the Contractor required for this Contract, shall:

(i) Name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured. This does not apply to Workers Compensation, All Risk Equipment Insurance, Professional Liability/Errors & Omissions Insurance and Technology Professional/Errors & Omissions Insurance.

(ii) Contain a waiver of subrogation provision wherein the insurer(s) waives all rights of recovery against the County.

(iv) Be primary and not in excess or contingent on any other basis;

(v) The Certificates of Insurance evidencing these coverages shall contain the following additional insured and waiver of subrogation language where applicable:

(A) "Cuyahoga County and its employees are additional insureds for purposes of commercial general liability and automobile liability"; and/or

(B) "Waiver of subrogation in favor of the County."

2. The insurance required for this Contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A-VII or above.
3. The terms of this Contract shall be controlling and shall not be limited by any insurance policy provision.
4. **High-risk activities** may require higher insurance limits.
5. These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.
6. The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
7. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
8. If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.
9. Where coverages are made on a claims-made basis the claims-made retroactive date on the policy shall be prior to the commencement of professional activity related to this Contract.
10. The Contractor shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.
11. Provide 30 days prior notice of cancellation, non-renewal, or material change.

Section 5 – Indemnification:

- A). The CONSULTANT hereby indemnifies, defends and holds harmless the COUNTY and its respective officers, officials, directors, board members, employees, and agents,

from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including reasonable attorney's fees and other costs of defense), of any nature, kind or description, but only to the extent caused by (a) the negligent errors or omissions in any drawings or specifications, other documents, or the CONSULTANT's negligent performance under this Agreement, or from the negligent performance, errors and omissions of its officers, owners, principals, subconsultants, employees, and agents, or (b) breach or default by the CONSULTANT under any terms or provisions of this Agreement. CONSULTANT's indemnification and defense obligations shall be limited to the percentage of fault apportioned to CONSULTANT by a court of law, arbitrator or by mutual agreement between the parties to this Agreement. CONSULTANT shall be entitled to reimbursement of any defense costs paid above CONSULTANT's percentage of liability for the underlying claim to the extent determined by a court of law, arbitrator or by mutual agreement between the parties to this Agreement.

- B). The CONSULTANT acknowledges that, as a political subdivision of the State of Ohio, the COUNTY does not indemnify any person or entity. The CONSULTANT agrees that no provision of this Agreement or any other contract or agreement between the CONSULTANT and the COUNTY may be interpreted to obligate the COUNTY to indemnify or defend the CONSULTANT or any other party.
- C). Section 4 (Insurance) and Section 5 (Indemnification) of this Article shall survive the completion of the Services to be performed hereunder and the termination of this Agreement.

Section 6 — Standard of Care:

Services performed by the CONSULTANT under this Agreement shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. The COUNTY recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by the CONSULTANT and that the data, interpretations and recommendations of the CONSULTANT are based solely on the information available to the CONSULTANT. The CONSULTANT shall be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

Section 7 – Miscellaneous Engineering Items:

- A.) The COUNTY reserves the right to inspect any and all equipment, materials and technical data used or developed for the scope of this Agreement.
- B.) The COUNTY reserves the right to inspect the CONSULTANT's and/or their sub-consultant's facilities and to conduct interviews of personnel previously and/or currently assigned to the project to assure the quality and progress of all authorized work.

- C.) For the purpose of this Agreement, the agent for the COUNTY and liaison officer on the matter contained herein shall be the Director of Public Works and/or such members of his staff as designated.
- D.) The COUNTY reserves the right to use all or any part of the reports, plans, specifications, files, data, and other documents contemplated by this Agreement in conjunction with, supplemental to, or otherwise as the COUNTY sees fit, in connection with any studies, reports, plans and undertakings of a professional engineering character which the COUNTY now or later may undertake of its own volition or through others in connection with any or all of the improvements hereinbefore described, provided, however, that any use except for the specific purpose intended herein, will be at the sole risk of the COUNTY and without liability or legal exposure to the CONSULTANT.
- E.) The CONSULTANT hereby agrees that there will be no charge to the COUNTY for any patent rights which it controls, and which may be involved in the work under this Agreement unless such charges have been specified and included in the fees enumerated in Article Three of this Agreement. The CONSULTANT shall advise the COUNTY of any process or patent rights which are not held or controlled by the CONSULTANT, but which in the CONSULTANT's opinion may be involved in the work contemplated herein.
- F.) All plans, reports, specifications, and any other records developed by the CONSULTANT solely in the performance of this Agreement shall remain the sole property of the COUNTY. The CONSULTANT shall not copy or use such records except to develop contracted work associated with this Agreement. In addition, the CONSULTANT shall not transfer any such records to any other party not involved with this Agreement except for subcontractors working under this Agreement. All of the above shall be delivered to the COUNTY upon completion of this Agreement. Notwithstanding the above, CONSULTANT may retain a copy of any documents upon which it relied for its records.
- G.) During the performance of this Agreement, the CONSULTANT agrees for itself, its assignees, sub-consultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of the COUNTY, relative to equal employment, affirmative action and Small Business Enterprise requirements which are herein incorporated by reference and made a part of this Agreement. Failure to comply with any of the aforementioned laws, resolutions, regulations and/or policies may result in the termination of this Agreement.
- H.) The CONSULTANT warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, firm or person, other than a bonafide employee working for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or in its discretion to deduct from the

contract price or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, brokerage fee, or contingent fee.

ARTICLE THREE - FEES, PROGRESS REPORTS, FEE PAYMENTS AND SCOPE CHANGES

Section 1 - Fees:

In consideration of the terms and obligations of this Agreement, the COUNTY agrees to pay and the CONSULTANT agrees to accept a negotiated fee for each authorized Task Order as full compensation for services, labor, material, and equipment necessary to do the work specified in the Notice to Proceed for the Task Order, including overhead, profit and expenses of every kind incurred in connection with the undertaking and performing of said work, except those items specifically exempted herein and furnished by the COUNTY, as part of this Agreement.

The total maximum fee for all Task Orders authorized under this Agreement shall not exceed **SIXTY THOUSAND DOLLARS AND NO CENTS (\$60,000.00)**.

Section 2 - Progress Reports and Fee Payment:

The fees for the work to be performed under this Agreement, as set forth in Section 1 of this Article, shall be paid as follows:

- A.) For each authorized Task Order, partial payments of fees shall be made as the work progresses. However, the maximum compensation paid by the COUNTY shall not exceed the percentages of the total compensation outlined in the Notice to Proceed for the relevant Task Order. Invoices will be prepared and submitted to the COUNTY for payment based on the work performed since the previous invoice or notice to proceed, all of which are subject to audit by the COUNTY or others and possible revision. Each invoice shall include a written progress report that minimally contains a narrative describing what work has been completed since the last invoice and the percentage completion of the major tasks.
- B.) The CONSULTANT shall be required to submit invoices in a format that is recommended and acceptable to the COUNTY. Sample copies of this invoicing format shall be provided to the CONSULTANT by the COUNTY.
- C.) Invoices for any portion of the work authorized under this Agreement shall not be submitted more frequently than monthly and will be paid by the COUNTY within forty-five (45) days from receipt thereof.
- D.) If the CONSULTANT has not processed an invoice to the COUNTY for three consecutive months, the CONSULTANT must submit a written progress report updating the COUNTY accordingly.

Section 3 - Scope Changes:

It is understood and agreed by and between the parties hereto that only those situations, as documented by the CONSULTANT, and agreed to by the COUNTY shall constitute a scope change. Fee and schedule adjustments for documented scope changes shall be appraised and adjusted by mutual agreement.

Until the COUNTY has agreed that a scope change is in effect, the CONSULTANT shall continue to proceed with the work necessary to complete the authorized aspects of this Agreement as hereinbefore outlined. That is, a scope change request shall not constitute a reason for the CONSULTANT to delay or suspend work on any authorized tasks unless they have been so directed by the Director of Public Works, provided, however, nothing herein shall require CONSULTANT to commence any scope change until the parties have reached mutual written agreement on change. A change in Scope of Services is defined as any of the following:

- A.) The addition, deletion or substantial alteration of items of work for each authorized Task Order that was not included in the Scope of Services documents, scope meeting minutes or addenda to the scope meeting minutes which amended the original scope or the Task Order, and/or Notice to Proceed. Such substantial changes are beyond the reasonable control of the CONSULTANT.
- B.) A substantial revision to any reports, sheet layouts, plans, specifications, cost estimates, etc. which have been previously approved by the COUNTY or are a result of a radical change in policy.

ARTICLE FOUR – MISCELLANEOUS CONTRACT ITEMS

- A). Assignment. Neither the County nor the CONSULTANT shall delegate, assign, sublet or transfer its duties or interest in this Agreement without the written consent of the other party.
- B). Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts. The CONSULTANT hereby agrees not to challenge any provision in this Agreement, including this Governing Law and Jurisdiction section, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.
- C). Notices. Any notice to be given under this Agreement by either party to the other may be affected either by personal delivery in writing or by certified mail, postage-prepaid, return receipt requested. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below:

To the County: Director of Department of Public Works
 2079 E. 9th Street
 Cleveland, Ohio 44115

With a copy to: Attn: Cuyahoga County Director of Law
Cuyahoga County Department of Law
2079 E. 9th Street
Cleveland, Ohio 44115

To Consultant: Attn: **Mark A. Yeager, P.S.**
KS Associates, Inc.
600 Superior Avenue East, Suite 1300
Cleveland, Ohio 44114

- D). Entire Agreement. This Agreement constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Agreement shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.
- E). No Apparent Authority/Proper Approvals. The CONSULTANT recognizes and agrees that no public official or employee of the COUNTY may be deemed to have apparent authority to bind the COUNTY to any contractual obligations not properly authorized pursuant to the County Code.
- F). Applicable County Ordinances. All COUNTY contracts/agreements, including this Agreement, are subject to the Cuyahoga County Code including, but not limited to, Title 4 pertaining to Cuyahoga County Ethics and the Inspector General, and Title 5 pertaining to Cuyahoga County Contracting and Purchasing Procedures. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us/>.
- G). Parties Bound and Benefited. This Agreement shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- H). Non-Waiver. The COUNTY's failure to require performance of any provision of this Agreement, or if it requires performance and does not follow through, shall not affect the COUNTY's right to require performance at any time thereafter. Additionally, the COUNTY's waiver of any breach or default of this Agreement shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.
- I). Contract Interpretation and Construction. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Agreement.
- J). Counterparts and Facsimile/Electronic Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement (and each amendment,

modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.

- K). Severability. If any provision of this Agreement is invalid or unenforceable for any reason, this Agreement shall be divisible as to such provision and the remainder of this Agreement shall be and remain valid and binding as though such provision was not included.
- L). Public Records. All parties hereto acknowledge that COUNTY is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the COUNTY and any and all documents in any format or media.
- M). Force Majeure. Neither Party shall be responsible for a delay or disruption in, or inability to provide its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by events or contingencies, existing or future, beyond the reasonable control of the claiming Party, including “acts of God,” abnormal weather conditions or other natural catastrophes, war (weather declared or not), terrorism, sabotage, computer viruses, civil unrest, strikes, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, virus(e.g., SARS Cov-2), disease (e.g., COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, discovery of hazardous materials, differing or unforeseeable site conditions, acts of governmental agencies or authorities (weather or not such acts are made in response to other Force Majeure Events), or any other events or circumstances not within the reasonable control of the party affected, whether or not of a similar kind or nature to any of the foregoing (a “Force Majeure Event”). The Party seeking application of this provision shall notify the other Party in writing promptly upon learning of the impact of the Force Majeure Event upon the notifying Party’s performance of its obligations under this Agreement. Upon the occurrence of a Force Majeure Event, CONSULTANT shall be entitled to an equitable adjustment to the project schedule sufficient to compensate CONSULTANT for any increase in the time necessary to perform the Services under this Agreement. Should a Force Majeure Event substantially prevent or be reasonably likely to substantially prevent CONSULTANT’s performance of the Services for more than thirty (30)days, then CONSULTANT shall be entitled to terminate this Agreement without breach. In case of such termination, CONSULTANT shall be entitled to compensation for those Services performed as of the date of termination.

BY ENTERING INTO THIS AGREEMENT CONSULTANT AGREES ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYERS, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY

THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. I ALSO AGREE ON BEHALF OF THE AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above mentioned.

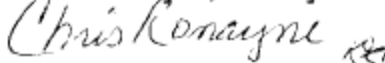
KS ASSOCIATES, INC.

By: 

Title: Lynn S. Miggins, P.E., President

COUNTY OF CUYAHOGA, OHIO

Chris Ronayne, County Executive



By: 2024-01-03 08:51:34

Chris Ronayne, County Executive
or designee pursuant to Executive Orders
No. EO2023-0003, dated July 6, 2023

Nathaniel Hall, Assistant Law Director


2024-01-04 16:20:14

The legal form and correctness
of this Contract is hereby approved:
Law Department, County of Cuyahoga, Ohio
Nathaniel Hall, Assistant Law Director
Richard D. Manoloff, Director of Law

Exhibit A



Cuyahoga County
Together We Thrive

REQUEST FOR QUALIFICATIONS **for Public Works**

RFQ#: 7864

RFQ Title: Survey Services for the Cuyahoga County Corrections Center Project

RFQ ISSUE DATE: Monday, December 6th, 2021

RFQ DUE DATE & TIME: Wednesday, January 12th, 2022 at 11:00 AM

ISSUING DEPARTMENT: Department of Purchasing
Cuyahoga County Administrative Headquarters
2079 East 9th Street, 2nd Floor, Room 2-200
Cleveland, Ohio 44115

Proposals MUST be delivered to the ISSUING DEPARTMENT by the date and time listed. Any proposal received after this date and time will be returned and/or unopened.

REQUESTING DEPARTMENT: Department of Public Works
2079 East 9th Street, 5th Floor
Cleveland Ohio 44115

PART FOUR: COUNTY SPECIFICATIONS

A. PROJECT DESCRIPTION

Cuyahoga County now seeks the services of a professional consultant to provide the Survey and provide a Boundary and Topography Survey services for the Cuyahoga County Justice Center Project. The site selection and final layout of the new building is not finalized. It is assumed to be a multistory building on a parcel to be determined (approximately 20 – 30 acres in total).

The purpose of the Project is to design and construct a corrections facility on a new campus to replace the County's jail facilities currently located at the Cuyahoga County Justice Center Complex. For the past two years, Cuyahoga County and other justice system stakeholders have engaged in a planning process involving multiple meetings of a Justice Center Executive Steering Committee (the "Steering Committee") working in conjunction with a Programming Consultant (DLR, an Ohio corporation, dba DLR Group | Westlake Reed Leskosky) and Project Manager (Project Management Consultants LLC in association with Kitchell CEM). That effort has resulted in agreement upon a series of "Determinations" with respect to the development of a new jail complex and creation of a preliminary program for that complex. The deliberations of the Steering Committee are a matter of public record, and records of those meetings, presentations and determinations of that Committee can be reviewed on the Cuyahoga County Public Works Website at <http://publicworks.cuyahogacounty.us/en-US/Justice-Center-Committee-Meetings.aspx>.

As a result of the planning process described above, a Preliminary Program was developed by the Programming team and approved by the Steering Committee, as discussed in greater detail in Part 4.B. of this RFQ.

B. Scope of Services

Boundary Survey Services:

Prepared in compliance with Chapter 4733-37 of the Ohio Administrative Code "Minimum Standards for Boundary Surveys in the State of Ohio". Said survey should include at a minimum:

- Research of available record information for subject and adjacent parcels.
- Field investigation of the subject parcels to search for physical monuments, analyze evidence of occupation, and locate any significant features or the land.
- Boundary monuments will be set where not found. Reference monuments shall be placed where the parcel corner is unoccupiable.
- Boundary survey shall be prepared indicating all pertinent information as identified in said Chapter 4733-37. Information shall include boundary corners, evidence or occupation, lengths bearing and area for subject parcel, pertinent record data, adjacent landowner information, and surveyor's certification.

Topography Survey Services:

Topography survey shall include mapping of all existing natural or constructed features within the limits of the subject parcel (to be determined). Said topographic survey shall include at a minimum:

- Location(s) of structures, pavements, walks and all other permanent improvements.
- Location and description of fences and walls.
- Site data complete enough to produce Contours at one (1) foot intervals. All elevations shall be accurate to .01' on improved surfaces and 0.1' on unimproved surfaces.
- Existing onsite utilities as observed in the field or staked by utility owners.
- Data shall be gathered within the site (to be determined), and an area 25' outside the perimeter of the site.

Existing Conditions Plan:

Based on boundary and topographic survey services the existing conditions plan shall include at a minimum:

- North Arrow, Scale Bar, Legend, General Site Vicinity Map, and Benchmark Data.
- Detailed map showing topography area, with contours and elevations listed as needed.
- Structure locations and descriptions with inverts labeled per field location if available and record information as needed to supplement.
- Underground utility connections as shown on record drawings / field staked by others (OUPS).
- Overhead utility lines.
- Current zoning information for parcel (to be determined) & adjacent parcels along with setback requirements.
- Ownership of adjacent parcels.
- FEMA Base Flood Elevation shall be shown per current Flood Insurance Rate Maps.
- Base mapping shall be produced on 24" x 36" paper at an appropriate scale to show all data; additional pages as needed to show greater detail.
- Digital files of base mapping and Existing Conditions Plan(s) shall be provided in Civil 3D 2019 or greater. Existing sanitary, storm or combined gravity sewer shall be modeled in pipe networks. Existing surface shall be provided in .dwg files and an export .xml file as well.

C. Evaluation

Only Statements of Qualifications submitted by consultants who meet the requirements detailed herein will be evaluated and ranked. The top-ranked consulting firms will be selected.

PART FIVE: STATEMENT OF QUALIFICATIONS CRITERIA

The Statement of Qualifications ("qualification") should be organized as set forth below and be limited to those items which will be used for the evaluation. Extraneous materials will not serve to enhance the qualification, but will make the rating more difficult.

A. Section I – Minimum Qualifications (5-page limit)



Cuyahoga County

Department of Public Works
2079 East 9th Street
2nd Floor, Room 2-200
Cleveland, Ohio 44115

STATEMENT OF QUALIFICATIONS FOR:

SURVEY SERVICES FOR THE CUYAHOGA COUNTY CORRECTIONS CENTER PROJECT

RFQ#: 7864

January 12, 2022



KS Associates, Inc.
Engineers + Surveyors

600 Superior Avenue East
Suite 1300
Cleveland, Ohio 44114
(216) 479 6807

www.ksassociates.com

KS SOQ #21264



January 12, 2022

Mr. Ernest Zadell
Cuyahoga County Department of Public Works
2079 East 9th Street, 2nd Floor, Room 2-200
Cleveland, OH 44115

**RE: Statement of Qualifications for Survey Services for the Cuyahoga County
Corrections Center Project | RFQ #7864**

Dear Mr. Zadell and the Selection Committee:

The Cuyahoga County Office of Public Works is seeking a professional consultant to provide quality and reliable boundary and topographic surveying services. Surveying is needed for the design of a Cuyahoga County Corrections Facility on a new campus outside of Cleveland's downtown urban core.

For 34 years, KS Associates, Inc. has been performing boundary and topographic surveying services for projects similar in size and scope to the new jail. We operate technically skilled Survey Group that has delivered survey data, maps, and plans for all types of projects, including new government buildings. Our team understands the importance of delivering a quality Existing Conditions Plan that will be relied upon for design decisions going forward. The following attributes make us an ideal choice for this opportunity:

Exceptional Project Management – Serving as Project Manager will be Mark Yeager, P.S., a Professional Surveyor Licensed in Ohio with more than 40 years of surveying experience. Mark has directed complex, fast-tracked, and multi-year assignments for public agencies and private clients. Mark will direct the work of subconsultants including Chagrin Valley Engineering, LTD (CVE/SBE) to perform the topographic survey, and National Engineering & Architectural Services, Inc. (NEAS/MBE) for subsurface utility location and addition surveying resources. Mark is currently working with Don Sheehy, P.E., P.S. of CVE on two surveying assignments for Cuyahoga County, and has worked extensively with Chuck Price, P.S. of NEAS. This cohesive team has a solid understanding of what it takes to deliver a quality project to the County. ***Note that with this team, the Diversity Participation for this project will be 100%.***

Our Team's Existing Knowledge of the Corrections Facility Project can Advance the Survey – KS is a subconsultant to Osborn Engineering on the Criteria Architect Team for the Corrections Center project. KS surveyors will collaborate with the KS civil engineers on this team, providing project site data long before the final Existing Conditions Plan is delivered. A "head start" can result in faster service delivery, fewer surprises, and robust insight to make well-informed design decisions.

Extensive Surveying Experience in Cuyahoga County – More than 95% of KS's surveying experience is in Cuyahoga County, working in a subconsultant and with diverse project delivery methods, including Design-Build. A team with knowledge of Cuyahoga County geography and how to operate under a Design-Build contract will contribute to the speed and efficiency of the deliverable.

The Cleveland-based KS Team is ready to get started on this important project for Cuyahoga County. We hope to move forward in the selection process to further demonstrate why we are a reliable, efficient team for the Cuyahoga County Corrections Center project.

Sincerely,

KS ASSOCIATES, INC.



Mark Skellenger, P.E.
Vice President, Principal-in-Charge



Mark A. Yeager, P.S.
Project Manager



Civil Engineers + Surveyors

600 Superior Avenue East
Suite 1300
Cleveland, Ohio 44114
P 216 479 6807
ksassociates.com

Section IV: Project/Contract Methodology

Understanding of the Purpose and Scope:



The Cuyahoga County Office of Public Works (Cuyahoga County) is seeking the services of a professional consultant to provide quality and reliable boundary and topographic surveying services. Surveying is needed for the design of a new Cuyahoga County Corrections Facility, the final location of which is to be determined. The new corrections facility will likely be a multistory building on an approximate 30- to 40-acre parcel, on a new campus outside of Cleveland's downtown urban core. The facility will replace the current Cuyahoga County two-jail facility located on W. 3rd Street in downtown Cleveland.

KS Associates, Inc. (KS) and all members of our team understand that the boundary and topographic survey will be relied upon by the Design-Build team's design engineers to prepare a site layout of the new Corrections Facility building and associated facilities. This will likely include parking lots, roadways, service connections to existing utilities, and other site amenities. This survey and the provided information will be critical to the foundation of a successful design and construction project.

Civil engineers at KS are part of the Criteria Architect Team for the Cuyahoga County Correction Center project, as a subconsultant to Osborn Engineering providing site/civil design services. We have a close working relationship with Osborn's staff from this and numerous past and current projects. With KS and Osborn understanding our respective firms' means and methods, we can advance aspects of the Cuyahoga County Corrections Center survey for design, rather than waiting for the survey to be fully completed. An example of the benefit of this collaborative environment is as follows: determining the site drainage outlet may be a key factor to determining where stormwater management facilities need to be placed. We can obtain the information during the initial stages of the survey to advance site layout constraints.

Approach to Fulfilling the Scope:

KS is the Prime Consultant and will lead the survey effort. The services are separated into three components: 1) Boundary Survey, 2) Topographic Survey, and 3) Existing Conditions Plan. We will kick off the project by reviewing the survey needs and details with the County Project Manager and Criteria Architect staff. This collaboration will define the project limits and key items to determine the survey cost estimates and develop a schedule.

Boundary Survey - Chagrin Valley Engineering (CVE) will perform the boundary survey to meet the requirements of Chapter 4733-37 of the Ohio Administrative Code "Minimum Standards for Boundary Surveys in the State of Ohio." Services will be performed according to the scope of services outlined in the Cuyahoga County RFP.

CVE will perform the necessary research to obtain pertinent record documents, such as deeds, plats, and other available survey records for the Justice Center site. CVE survey crews will search for and locate existing property corner markers, Right-of-Way markers, street centerline monuments, and other physical evidence such as fences and signs of property owner occupation. They will perform a boundary analysis combining the record information and field survey data to determine the property boundary lines. New property corner markers will be placed where corners were not found. Existing property corner markers will be marked with witness stakes.

KS and CVE survey crews will work together to establish project survey control points for the boundary and topographic survey. The control points will be established with permanent markers — for use in the survey, and also for contractor use at commencement of construction.

Topographic Survey - KS will perform the topographic surveying for the project according to the scope of services outlined in the RFQ. The survey will be based on field surveying methods with surveyors utilizing Global Positioning System (GPS) survey-grade receivers and robotic total stations. This technology allows for one-person survey crews, which will save time and costs. The surveyors will locate all visible site features including but not limited to buildings, pavement, signs, fences, curbs, sidewalks, poles, and utilities including overhead lines/wires and storm and sanitary sewers. Elevations will be taken at 50-foot intervals and closer as necessary to accurately define grade breaks and high/low points. Accuracy of elevations will be 0.01' on hard surfaces and 0.1' on ground and unimproved surfaces. Existing sewer structures will be opened to obtain pipe invert elevations, sizes, and flow directions from the ground surface. The next upstream or downstream structures outside the project limits will also be surveyed.

National Engineering and Architectural Services (NEAS) will provide an ASCE Level C Subsurface Utility Engineering (SUE) investigation and survey. This will include contacting Ohio Utility Protection Service (OUPS) and other agencies to obtain plans and request markings to identify subsurface utilities. NEAS surveyors will locate utility markings following the initial OUPS request.

Existing Conditions Plan – KS will process the topographic survey data obtained from the field survey to generate the Existing Conditions Plan in AutoCAD Civil 3D 2019. The ground surface will be processed and 1-foot contours developed. The boundary survey data from CVE and the utility information from NEAS will be merged into the Existing Conditions Plan. The utilities will be noted on the drawing if they were located in the field or mapped from record drawing information.

The Existing Conditions Plan will include, at a minimum, the following, according to the scope of services outlined in the RFQ:

- North Arrow, Scale Bar, Legend, General Site Vicinity Map, and Benchmark Data.
- Detailed map showing topography area, with contours and elevations listed as needed.
- Structure locations and descriptions with inverts labeled per field location if available and record information as needed to supplement.
- Underground utility connections as shown on record drawings / field staked by others (OUPS).
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- Digital files of base mapping and Existing Conditions Plan(s) shall be provided in Civil 3D 2019 or greater. Existing sanitary, storm, or combined gravity sewer shall be modeled in pipe networks. Existing surface shall be provided in .dwg files and an export .xml file as well.

Value-Added Services:

Title Report – We suggest that part of the boundary surveying services include obtaining a Title Report to identify easements and Rights-of-Way that may impact the development. This Title Report can be provided to KS by the County at the time of the survey.

Utilities – Obtaining responses to requests for surveying information from utilities can be challenging — particularly with utilities located outside of public Right-of-Way. This is where NEAS will be an advantage. NEAS can provide advanced utility location services, such as a Level A (Non-Destructive potholing) or Level B (Utility Designating) SUE services. This may be necessary in the event that the location of a utility or utilities is critical to the site. Accurate utility locations is a critical factor to the success of the project.

Parcel Consolidation – Should the site be comprised of multiple parcels, it may be in the best interest of Cuyahoga County to consolidate the parcels into one parcel with one ownership. This would eliminate interior parcel lines that could impact building restriction lines and building setbacks. The parcel consolidation would require preparation of a Parcel Consolidation Plat. The KS Team is experienced with this process and can help guide the Plat through the City and County agencies for approval and recordation.

Quality Control:

One of the reasons we receive repeat business from clients is our ability to provide a quality survey deliverable. We have developed quality standards and procedures to guide us through the survey processes. This process begins with an understanding of our client's needs, and relaying those needs to the survey staff involved in the project.

Surveyors make check measurements of their survey control points at the beginning and ending of each survey instrument setup. The technology they use allows them to see this information in real time to determine if there is an issue with the surveyed points. Technicians that process and map the survey data follow checklists to note that key items are addressed on the survey map. The surveyors who performed the survey will be the surveyors who review the completed map to ensure it accurately portrays what they witnessed on the site. Finally, a Professional Surveyor reviews the mapping and the quality checklists in detail. The P.S. then follows up with the mapping technician to address needed edits to complete the survey before signing and sealing the drawing.

Pricing Structure / Cost Control:

Because the site selection is unknown, we cannot provide a cost estimate for the survey. Many factors will determine the cost of surveying services, such as location, site size, terrain, existing features, and design needs. We will provide a cost for the survey when the site location is established and when the survey needs are determined. The cost can be provided based on a fixed fee or time-and-materials basis.



Survey Services for the Cuyahoga County Corrections Center Project – RFQ# 7864
Cuyahoga County Department of Public Works

SECTION V:
Geographic Location

Section V: Geographic Location

Cleveland/Cuyahoga County Office – KS's office in the City of Cleveland, Cuyahoga County, was established to better serve our Cleveland and Cuyahoga County clients. Our presence in Cleveland demonstrates KS's commitment to Cuyahoga County.

Ohio-Based Firm – KS is a trusted, local resource for engineering and surveying services. We have been headquartered in Ohio since our existence, serving Cuyahoga County, the City of Cleveland, Northern Ohio communities, ODOT, Ohio Turnpike, GCRTA, NEORS, the Port of Cleveland, and a variety of clients.

Close Proximity to Cuyahoga County's Headquarters – Our Cleveland office is within walking distance to your administration building. CVE and NEAS are also located in Cuyahoga County. These locations offer flexibility in responding to needs that your project manager may have.



| KS Associates, Inc. | Subconsultants |
|--|---|
| <p>KS Associates, Inc. Cleveland Office 600 Superior Avenue, East Cleveland, Ohio 44114</p> <p>Elyria Office 260 Burns Road, Suite 100 Elyria, Ohio 44035</p> | <p>Chagrin Valley Engineering 22999 Forbes Road, Suite B, Cleveland, Ohio, 44146</p> <p>NEAS, Inc. 2271 Scranton Road, Suite 120, Cleveland, Ohio 44113</p> |