



Kenton County School District | *It's about ALL kids.*

# Issue Paper

**DATE:**

07/19/2024

**AGENDA ITEM (ACTION ITEM):**

**Consider / Approve** a service agreement with Bayer & Becker, Inc. for civil engineer consulting services for construction project strategy development and budgeting for the 2024-25 fiscal year.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board; 04.31 Authority to Encumber and Expend Funds; 702 KAR 4:160

**HISTORY/BACKGROUND:**

To assist the Operations team with civil engineer planning and budgeting of construction projects identified on the current district facility plan, and to utilize the expertise and knowledge the Bayer Becker team has with District facilities and projects, the Operations team requests to enter into a service agreement with Bayer & Becker, Inc. for the 2024-25 school year.

**FISCAL/BUDGETARY IMPACT:**

Hourly rates depending on Bayer Becker’s individual staff member billing rates while providing consulting services.

**RECOMMENDATION:**

**Approve** the service agreement with Bayer & Becker, Inc. for civil engineer consulting services for construction project strategy development and budgeting for the 2024-25 fiscal year.

**CONTACT PERSON:**

Matt Rigg, Chief Operations Officer

\_\_\_\_\_  
*Principal/Administrator*

  
\_\_\_\_\_  
*District Administrator*

  
\_\_\_\_\_  
*Superintendent*

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda  
Principal – Complete, print, sign and send to your Director. Director – if approved, sign and put in the Superintendent’s mailbox*

## AGREEMENT BETWEEN CLIENT AND DESIGN CONSULTANT FOR PROFESSIONAL SERVICES

### MASTER SERVICES AGREEMENT

This Master Services Agreement (MSA) is a part of the Agreement between Kenton County School District (Client) and Bayer & Becker, Inc. (BB).

From time-to-time CLIENT may request that BB provide professional services which may include but are not limited to land planning, civil and transportation engineering, land surveying, landscape architecture and geovisualization design consulting services for Specific Projects. Each engagement will be documented by an approved Purchase Order. This MSA sets forth the general terms and conditions that apply to all duly executed Purchase Orders.

CLIENT and BB further agree as follows:

#### Preamble:

This MSA is a term agreement for design services relating to Kenton County School Properties. The Client will determine in its sole discretion whether to award any projects to BB under this MSA, and the Client shall have no obligation to award BB any project during the term of this MSA. Any project that the Client chooses to award to BB shall be entered into pursuant to a Purchase Order executed by the Client (a "Purchase Order"). Throughout this MSA, the term "Project" shall apply to each Project awarded pursuant to an executed Purchase Order supplementing this MSA. The Client reserves the right to terminate this MSA for convenience.

#### CLIENT:

##### BILLING CONTACT COMPANY DBA (INVOICING):

Kenton County School District

##### ADDRESS:

1055 Eaton Drive, Fort Wright, Kentucky 41017

##### BILLING CONTACT REPRESENTATIVE:

Matthew Rigg

##### BILLING CONTACT REPRESENTATIVE'S Email:

matthew.rigg@kenton.kyschools.us

#### SCOPE OF SERVICES TO BE PROVIDED BY BB:

BB's services will be detailed in an executed Purchase Order for each Specific Project, or for a portion of a Specific Project. The MSA is not a commitment by Client to issue any Purchase Orders. BB will not be obligated to perform any prospective Purchase Order unless and until the Client and BB agree to the particulars of the assignment, including the scope of BB's services, time for performance, BB's compensation, and all other appropriate matters, and include such particulars in the executed Purchase Order.

Each executed Purchase Order will be subject to the terms and conditions of (a) this MSA; (b) the MSA's exhibits; (c) any executed written amendments of the MSA; (d) the specific Purchase Order itself; (e) the specific Purchase Order's exhibits; and (f) any amendments or modifications of the specific Purchase Order.

#### TASK ORDER PROCEDURE:

Each specific Purchase Order will indicate: Project Description of services to be performed by BB ("Scope"), Purchase Order Schedule; and BB's Compensation for Purchase Order. With respect to BB's scope of services under a specific Purchase Order, BB will provide to the Client a scope of services and associated fee as a basis for use in preparing the Purchase Order.

**TERM AND TIMES FOR RENDERING SERVICES:**

This MSA will be effective and applicable to Purchase Orders issued hereunder for 2 years from the Effective Date of the MSA. The parties may extend or renew this MSA, with or without changes, by written instrument establishing a new term.

Commencement: BB is authorized to begin rendering services under a Purchase Order as of the Effective Date of the Purchase Order.

Time for Completion: The Effective Date of the Purchase Order and the times for completing services or providing deliverables will be stated in each Purchase Order.

**COMPENSATION TO BE PAID TO BB FOR PROFESSIONAL SERVICES:**

The total compensation payable to BB for services rendered under this agreement, including fees, and reimbursable expenses, shall be in accordance with the Contract Price indicated under the Purchase Order.

**TERMS AND CONDITIONS:**

**Invoicing and Payment**

CLIENT shall be invoiced monthly in proportion to services performed.

Payment shall be made by **electronic funds transfer payment via Automated Clearing House network (ACH)**. Payment is due within 30 calendar days of the date of invoice. Unpaid balances more than thirty (30) days past due shall accrue interest at the rate of 1.5% per month or part thereof until paid. The CLIENT shall pay any expenses incurred by BB for the collection of fees. If CLIENT objects to all or any portion of any invoice, CLIENT shall notify BB in writing within fourteen (14) calendar days of the invoice date, identifying the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion of the invoice. In the absence of the written notification described above, the balance as stated on the invoice shall be paid in full. Payment for services rendered shall not be contingent upon the sale, lease, or financing of the property upon which this agreement or work product are based.

**Standard of Care**

The standard of care for all professional services performed or furnished by BB under this Agreement will be the care and skill used by members of BB's profession practicing under similar circumstances at the same time and in the same locality. BB makes no additional warranties, express or implied, under this Agreement or otherwise, in connection with BB's services.

**Liability and Insurance**

BB shall maintain, at its expense, the following types of insurance, issued by companies acceptable to the CLIENT covering the services:

**A. Worker's Compensation** Insurance, including occupational diseases, providing for the payment of benefits required by the laws of the state in which the project is located, covering the persons employed by BB on the services, and Employer's Liability Insurance with a minimum limit of \$1,000,000.

**B. Commercial General Liability** Insurance, including contractual liability, completed operations, products liability, personal injury liability, and broad form property damage providing coverage with limits of at least:

|   |   |
|---|---|
| Bodily Injury and Property Damage<br>Combined | \$1,000,000 per occurrence<br>and \$2,000,000 aggregate |
|---|---|

|                 |                       |
|-----------------|-----------------------|
| Personal Injury | \$1,000,000 aggregate |
|-----------------|-----------------------|

**C. Business Automobile Liability** Insurance providing coverage with limits of at least:

Bodily Injury and Property Damage  
Combined \$1,000,000 per accident

**D. Aviation Unmanned Aircraft Systems Liability** insurance coverage with limits of:

Single Limit Bodily Injury and  
Property Damage Including Passengers \$3,000,000 each occurrence

Aircraft Physical Damage Insured Value

**E. Umbrella Form Excess Liability** Insurance providing coverage with limits of at least:

Bodily Injury and Property Damage  
Combined \$5,000,000 per occurrence  
and \$5,000,000 aggregate

**F. Professional Liability** Insurance coverage with limits of \$3,000,000 per claim and \$5,000,000 aggregate, which includes a \$50,000 deductible provision per claim.

Insurance Revisions - If the CLIENT requests revisions in the types and limits of insurance at any time during the period of the contract, BB will endeavor to comply and CLIENT will reimburse BB for any net additional premium expense incurred.

Certificate of Insurance - A Certificate of Insurance will be provided to the CLIENT or other party, as requested by the CLIENT, before proceeding with the services. Thirty days' cancellation notice will be given in writing to the CLIENT.

**Indemnification**

BB agrees to indemnify and save the CLIENT harmless from and against any loss, cost, damage, expense, and liability by reason of property damage, personal injury, or both, and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the BB, in connection with the performance of the professional services by BB working within its scope, its employees, its agents, or its subcontractors; provided that if BB provides and maintains in force adequate insurance in accordance with the terms of this agreement, then BB's obligation to indemnify and save the CLIENT harmless shall be limited to the amounts recoverable from said insurance. BB agrees to advocate for a fair recovery from its insurance company for CLIENT in the event of any such loss damage.

**Consequential Damages**

To the fullest extent permitted by law, BB and CLIENT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in anyway related to the PROJECT.

**Dispute Resolution**

In the event of any claim or dispute arising out of the Services or this Agreement, BB and CLIENT agree to work in good faith to resolve the claim or dispute. Such good faith shall include providing prompt notice and response to any claim or dispute. Subsequently, all remaining disputes shall be submitted to non-binding mediation as a condition precedent to litigation. If any dispute submitted to mediation is not successfully resolved, the matter may be resolved through litigation in any local court of competent jurisdiction.

The CLIENT shall pay all recording and submittal fees.

**Note: This Master Services Agreement becomes void if not signed within 30 days from the above date.**

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This Agreement may be executed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same agreement. Signatures to this Agreement transmitted by electronic means will be valid and effective to bind the party so signing. This Agreement will not be valid until approved and signed by an authorized representative of each party hereto.

I understand that by Electronically signing this document, it is covered by the Uniform Electronic Transactions Act (UETA), eSign Act, and State eSign laws. These laws define that a document or signature cannot be denied legal effect or enforceability because it is in electronic form.

Electronically signed and dated by:

**APPROVED:**

**DESIGN CONSULTANT: Bayer & Becker, Inc.**

**CLIENT: Kenton County School District**

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**Date:**

**Date:**

**Name: Jay F Bayer**

**Name:**

**Title: Principal**

**Title:**