



**City of Crossville
Downtown Improvement Project**

Agreement

between

City of Crossville, Tennessee

and

CT Consultants, Inc.

for

**FY 2018 Transportation Alternatives Project
(Downtown Improvements Phase II Pin No. 126662.00)**

Whereas, the City of Crossville, Tennessee issued a Request for Qualifications to prepare documents required for the 2018 Transportation Alternative Project - Downtown Improvements Phase II Pin No. 126662.00 and CT Consultants, Inc. was selected by the City Council at the January 8, 2019 City Council Meeting;

Now therefore, this Agreement is made on the _____ day of _____, 2019 by and between the City of Crossville, Tennessee, 392 North Main Street, Crossville, Tennessee 38555, hereinafter referred to as the "Client" and CT Consultants, Inc., with its principal place of business being 8150 Sterling Court, Mentor, Ohio 44060, hereinafter referred to as the "Consultant". The Client and Consultant agree as follows:

Section 1: Project Area

The project area is defined as Main Street (U.S. 127) from approximately 140 LF north of Neecham Street to Lantana Road.

Section 2: Scope of Services

To provide construction documents for the installation of new sidewalks and pedestrian traffic signals as reflected in the Project Budget that was included in the FY2018 Transportation Alternatives Application to TDOT. A copy of this estimate is attached for reference.

The Consultant shall provide the following services.



Preliminary Engineering

1. Prepare Preliminary Engineering plans, based on the previously designed downtown project which was further refined to only include sidewalks and lighting. The design will include:
 - a. new ADA accessible sidewalks
 - b. curbing
 - c. pedestrian traffic signals at two (signalized intersections)
 - d. coordination with proposed light pole locations that will be installed as a separately by the City
2. Review preliminary engineering plans with the City and revise plans, if needed, based on review comments.
3. Provide coordination with utilities
4. Send preliminary engineering plans to utilities and TDOT, as may be required, for review and coordination.
5. Update the opinion of probable construction cost CT prepared for the TDOT Transportation Alternatives Project grant application.
6. Conduct a public meeting (if needed) especially for property owners, tenants, Mayor and Commissioners to present and review the preliminary engineering documents; revise if needed based on review comments.

Project Design

1. Prepare final drawings in AutoCAD format, including plans and details necessary to publicly bid and construct the project as defined in the preliminary engineering plans. Plans will be prepared to utilize TDOT unit items and standard specifications. Plan set to include:
 - a. Title Sheet
 - b. Estimated Roadway Quantities
 - c. Property Map and Acquisition Table
 - d. Typical Sections and Paving Schedule
 - e. General Notes
 - f. Details Sheets
 - g. Present Layouts / Demolition Plans
 - h. Proposed Layouts
 - i. Existing Grading Plans
 - j. Proposed Grading Plans
 - k. Erosion Prevention and Sediment Control Plans
 - l. Traffic Control Plans
 - m. Signing and Pavement Marking Plans
 - n. Traffic Signal Plans
2. Prepare final specifications and contract documents:
3. Check and coordinate drawings and specifications individually between disciplines.



4. Prepare updated opinion of probable construction cost; material list shall include items for unit price bidding, by TDOT unit items.
5. Review final plans and specifications/contract documents with City.
6. Send final plans and specifications/contract documents to TDOT, utility companies, and jurisdictional agencies for review; revise plans as needed based on review comments.
7. Assist City in the bidding of the project, including advertisement, distribution of plan/documents, pre-bid conference, answering questions during bidding, addenda preparation and issuance, bid opening, tabulation and analyzing of bids, review of bidder qualifications, award recommendation, and preparation of award documents.

Right-of-Way

CT will assist the City in contacting the TDOT Right-of-Way (ROW) Coordinator as early as possible after receiving the Notice to Proceed with the Design Phase in order to coordinate design considerations and to avoid possible delays. Additionally, CT will assist the City navigating through TDOT's Excess Land Office if a license agreement is required for non-roadway appurtenances proposed to be located on State-owned property.

However, for this particular project, we recognize that easements and right-of-way have previously been secured and it is our understanding that the temporary easements, permanent easements and right-of-way are still valid. Further acknowledging that these acquisitions were properly secured in accordance with TDOT requirements, no additional acquisitions are anticipated for this project. If there are unanticipated impacts on private property, we will review the design to determine if these situations can be minimized and/ or eliminated. At that time, we will make recommendations as to whether additional easements or right-of-way takes are more appropriate and will follow TDOT procedures to secure the needed areas. This will include the preparation of exhibits and/or legal descriptions for each area which CT will prepare. Once these documents are prepared, TDOT pre-qualified consultants can be utilized for the appraisals and negotiations with property owners.

Construction Inspection

Provide Consultant Engineering and Inspection (CEI) services and coordinate with the TDOT Local Programs office in accordance with their guidelines. These services include the monitoring of the project and completion of all the necessary inspection and documentation required. The following is a summarized list of these anticipated services.

1. Erosion Control and Preconstruction Conferences
2. Attend Weekly meetings
3. Project Administration
4. Provide Construction Inspection (with Required Certifications)
5. Conduct Field Surveys



6. Supplemental Agreements/Construction Change, Force Account, VECP
7. Shop Drawings
8. Quality Assurance, Testing for Acceptance and Training
9. Progress Payments
10. Revisions to Contract Plans
11. Distribution of Correspondence
12. Inspection Work

Section 3: Supplemental and/or Additional Services

Supplemental and/or Additional Services are not anticipated. Supplemental and/or Additional Services as are caused by many factors, usually at the discretion of the Client and/or his construction contractors. They may also be caused by reviewing agency or Client variance/deviation from present policies and standards of reviewing governmental agencies. Some examples include:

1. Work revisions on any Scope of Services items that are required as a result of a change requested by Client after previous approval by it or any approving agencies.
2. Meetings in addition to those specifically identified in the Scope of Services
3. Re-work or revisions of work due to changes in policies or regulations during the progress of the work.

Section 4: Fee Schedule

The following fees reflect the Estimate Project Costs included in the FY2018 Transportation Alternatives Application Project Budget.

Preliminary Engineering	Hourly (Not to Exceed)	\$35,000.00
Project Design	Hourly (Not to Exceed)	\$35,000.00
Right-of-Way	Hourly (Not to Exceed)	\$10,000.00
Construction Inspection	Hourly (Budget)	\$106,786.64

Section 5: Method of Payment

Payment of the professional fee shall be made on a monthly basis.



The Consultant shall submit a monthly statement for services rendered. The Client shall make monthly payments in response to Consultant's billings. Payment is due and payable within thirty (30) days of receipt of invoice.

Section 6: Time of Completion

The following time goals are established for the preparation and submittal of documents. Reviews and Approvals by the local governing authorities are in addition to the following time goals:

Begin Design Phase	February 2019
Submit Preliminary Engineering Plans to TDOT for review	April 2019
Submit ROW, Utility Easement to TDOT	May 2019
Submit Construction Plans to TDOT for review	June 2019
Submit Bid Book to TDOT for review	July 2019
Advertise Project / Award Project / Construction	TBD

Section 7: Standard Terms and Conditions

Per attached.

Section 8: Work Commencement and Authorization

The execution of this agreement by both parties shall serve as authorization for the Consultant to commence work under this Agreement.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written. The Client and Consultant have hereunder affixed their signatures to duplicate copies of this Agreement, each of which shall be deemed an original.

WITNESS

City of Crossville, Tennessee
392 North Main Street
Crossville, Tennessee 38555

_____ By: _____
Mayor, City of Crossville, Tennessee

CT Consultants, Inc.
8150 Sterling Court
Mentor, Ohio 44060

_____ By: _____
Regional Manager, CT Consultants, Inc.

SECTION 3: PROJECT BUDGET

Estimated Project Costs

Line items can be added or deleted as needed for any stage; however this is the format in which the budget must be submitted.

INSTRUCTIONS: List all items necessary to develop and construct the project. The applicant is responsible for verifying all costs for accuracy. Construction cost overruns will be solely the responsibility of the Local Government.

LOCAL PROJECTS: Please note that the Stage I and II Costs shown below are to be funded by the Local Government and are not eligible for Federal Reimbursement.

ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	0% FED. FUNDS	100% LOCAL EXPENSE (Non-Reimbursable)
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Stage I – Preliminary Engineering/Design (PE)

All costs associated with preliminary engineering/design are not eligible for reimbursement including application preparation fee and design public involvement costs.

Preliminary Design Plans (up to 80%)	LS	1		\$35,000.00		\$35,000.00
Local, State, & Federal Permits	LS	1				\$-
Plans, Specs, & Estimates (PS&E) Document Completion	LS	1		\$35,000.00		\$35,000.00
SUBTOTAL of non-reimbursable PE expenses				\$70,000.00		\$70,000.00

Stage II – Right-of-Way/Utilities

All costs associated with right-of-way are not eligible for reimbursement

ROW Design Plans	LS	1		\$10,000.00		\$10,000.00
ROW Acquisition	LS	1				\$-
License Agreements, Easements, Recording Fees	LS	1				\$-
Utility Relocation and Certifications (Only if not affected as a direct result of the TA project)	LS	1				\$-
SUBTOTAL of non-reimbursable ROW expenses				\$10,000.00		\$10,000.00

All costs associated with preliminary engineering/design and right-of-way are not eligible for reimbursement nor applicable toward the 20% local construction match.

TDOT LINE ITEM #	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	80% FED. FUNDS	20% LOCAL MATCH
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Stage III – Construction (CNST.) All projects must be competitively bid and awarded to the lowest responsive bidder

Site Preparation & Demolition:							
202-03	Removal of Sidewalk	SY	3185	\$15.80	\$50,323.00	\$40,258.40	\$10,064.60
202-03.01S	Removal of Pavement (Driveway)	SY	262	\$15.80	\$4,139.60	\$3,311.68	\$827.92
202-03.02S	Removal of Pavement (Roadway)	CY	1997	\$31.50	\$62,905.50	\$50,324.40	\$12,581.10
202-04.01S	Removal of Structures (Poles)	EA	31	\$525.00	\$16,275.00	\$13,020.00	\$3,255.00
202-08.10	Removal of Curb	LF	3965	\$7.90	\$31,323.50	\$25,058.80	\$6,264.70
202-04.03S	Miscellaneous Site Items Removal	LS	1	\$10,500.00	\$10,500.00	\$8,400.00	\$2,100.00
202-04.04S	Removal of Tree	EA	2	\$420.00	\$840.00	\$672.00	\$168.00
209-08.03	Temporary Silt Fence (Without Backing)	LF	500	\$5.30	\$2,650.00	\$2,120.00	\$530.00
209-09.41	Curb Inlet Protection (Type 2)	EA	18	\$262.50	\$4,725.00	\$3,780.00	\$945.00
801-01.07S	Temporary Seeding (With Mulch)	SY	100	\$5.30	\$530.00	\$424.00	\$106.00
Construction Items:							
203-05S	Undercutting	CY	200	\$73.50	\$14,700.00	\$11,760.00	\$2,940.00
603-05.20	Containment and Disposal of Waste	CY	500	\$210.00	\$105,000.00	\$84,000.00	\$21,000.00
303-01.09	Mineral Aggregate, Type A Base, Grading D Limestone	TON	343	\$26.80	\$9,192.40	\$7,353.92	\$1,838.48
306-01.01	Portland Cement Concrete Base (Plain) 6"	SY	616	\$84.00	\$51,744.00	\$41,395.20	\$10,348.80
403-01	Bituminous Material for Tack Coat (TC) @ 0.07 GAL./S.Y.	TON	0.152	\$1,155.00	\$175.56	\$140.45	\$35.11
403-02	Asphalt Cement for Tack Coat (TC) @ 0.05 GAL./S.Y.	TON	0.108	\$1,155.00	\$124.74	\$99.79	\$24.95
411-02.10	ACS MIX (PG70-22) Grading D	TON	40	\$168.00	\$6,720.00	\$5,376.00	\$1,344.00
701-01.01S	Concrete Sidewalk (4")	SF	21162	\$11.60	\$245,479.20	\$196,383.36	\$49,095.84
701-02.02S	Concrete Sidewalk (6")	SF	8311	\$12.60	\$104,718.60	\$83,774.88	\$20,943.72
701-02.03S	Concrete Curb Ramp	SF	2850	\$15.80	\$45,030.00	\$36,024.00	\$9,006.00
702-01.02S	Concrete Curb (Type 'A')	LF	200	\$21.00	\$4,200.00	\$3,360.00	\$840.00
702-01.03S	Planter Curb	LF	1132	\$24.20	\$27,394.40	\$21,915.52	\$5,478.88
702-03S	Concrete Combined Curb & Gutter Type 6-30	LF	4324	\$26.30	\$113,721.20	\$90,976.96	\$22,744.24
604-10.05S	Concrete Integral Step	CY	3	\$2,100.00	\$6,300.00	\$5,040.00	\$1,260.00
604-10.06S	Concrete Steps	CY	3	\$2,100.00	\$6,300.00	\$5,040.00	\$1,260.00
604-10.07S	Integral Concrete Ramp and Steps	CY	13	\$1,575.00	\$20,475.00	\$16,380.00	\$4,095.00
930-05S	Ornamental Handrail	LF	74	\$236.30	\$17,486.20	\$13,988.96	\$3,497.24
930-16S	Retaining Wall with Stone Veneer On One Side	SF	120	\$157.50	\$18,900.00	\$15,120.00	\$3,780.00
930-17S	Retaining Wall with Stone Veneer on Both Sides	SF	44	\$168.00	\$7,392.00	\$5,913.60	\$1,478.40
930-18S	Canopy Column footing	EA	4	\$2,100.00	\$8,400.00	\$6,720.00	\$1,680.00
716-05.03	Painted Pavement Marking (Cross-Walk)	LF	3110	\$1.60	\$4,976.00	\$3,980.80	\$995.20
716-05.05	Painted Pavement Marking (Stop Line)	LF	215	\$5.30	\$1,139.50	\$911.60	\$227.90
716-08.01	Removal of Pavement Marking (Line)	LF	3110	\$1.60	\$4,976.00	\$3,980.80	\$995.20
790-42.10S	4 IN DIA PVC Pipe	LF	30	\$10.50	\$315.00	\$252.00	\$63.00
611-01.20	Adjustment of Existing Manhole	EA	1	\$1,050.00	\$1,050.00	\$840.00	\$210.00
611-05.01S	Trench Drains	LF	66	\$262.50	\$17,325.00	\$13,860.00	\$3,465.00
611-09.01	Adjustment of Existing Catchbasin	EA	6	\$1,050.00	\$6,300.00	\$5,040.00	\$1,260.00
730-03.21	Install Pull Box (Type B)	EA	4	\$400.00	\$1,600.00	\$1,280.00	\$320.00
730-08.02	Signal Cable - 5 Conductor	LF	600	\$2.00	\$1,200.00	\$960.00	\$240.00

730-08.03	Signal Cable - 7 Conductor	LF	600	\$2.00	\$1,200.00	\$960.00	\$240.00
730-12.02	Conduit 2" Diameter (Pvc)	LF	420	\$6.00	\$2,520.00	\$2,016.00	\$504.00
730-23.30	Pedestal Pole	EA	4	\$1,300.00	\$5,200.00	\$4,160.00	\$1,040.00
730-26.05	Countdown Pedestrian Signal	EA	16	\$1,100.00	\$17,600.00	\$14,080.00	\$3,520.00
730-26.09	Pedestrian Pushbutton With 15 Inch Sign	EA	16	\$300.00	\$4,800.00	\$3,840.00	\$960.00
701-02.02S	Concrete Sidewalk (6")	SF	8311	\$12.60	\$104,718.60	\$83,774.88	\$20,943.72
701-02.03S	Concrete Curb Ramp	SF	2850	\$15.80	\$45,030.00	\$36,024.00	\$9,006.00
702-01.02S	Concrete Curb (Type 'A')	LF	200	\$21.00	\$4,200.00	\$3,360.00	\$840.00
702-01.03S	Planter Curb	LF	1132	\$24.20	\$27,394.40	\$21,915.52	\$5,478.88
	**Landscaping						
	Pedestrian Amenities						
	SUBTOTAL of Itemized Quantities above				\$1,067,866.40	\$854,293.12	\$213,573.28
	Mobilization and Administration Costs						
105-01	Line & Grade Survey	LS	1	\$18,000.00	\$18,000.00	\$14,400.00	\$3,600.00
717-01S	Mobilization	LS	1	\$75,000.00	\$75,000.00	\$60,000.00	\$15,000.00
712-01S	Traffic Control	LS	1	\$66,478.75	\$66,478.75	\$53,183.00	\$13,295.75
712-02.02	Interconnected Portable Barrier Rail	LF	300	\$42.00	\$12,600.00	\$10,080.00	\$2,520.00
712-04.01	Flexible Drums (Channelizing)	EA	60	\$47.30	\$2,838.00	\$2,270.40	\$567.60
712-06	Signs (Construction)	SF	138	\$12.60	\$1,738.80	\$1,391.04	\$347.76
712-07.03	Temporary Barricades (Type III)	LF	50	\$31.50	\$1,575.00	\$1,260.00	\$315.00
714-26.05	Temporary Roadway Lighting	LS	1	\$10,500.00	\$10,500.00	\$8,400.00	\$2,100.00
722-01.01	Field Office (Type I)	LS	1	\$26,250.00	\$26,250.00	\$21,000.00	\$5,250.00
	Construction Contingency	10%		of construction	\$106,786.64	\$85,429.31	\$21,357.33
	TDOT Engineering Services	5%		of construction	\$53,393.32	\$42,714.66	\$10,678.66
	Construction Engineering Inspection (CEI)	17%		of construction	\$181,537.29	\$145,229.83	\$36,307.46
	TOTAL of reimbursable construction expenses				\$1,624,564.20	\$1,299,651.36	\$324,912.84

* Undergrounding utilities must be a direct component of an eligible on-road or off-road trail facility for pedestrians, bicyclists and other non-motorized forms of transportation only, and is limited to 33% of eligible and reimbursable construction costs.

**Landscaping activities must be a direct component of an eligible on-road or off-road trail facility for pedestrians, bicyclists and other non-motorized forms of transportation only, and is limited to 25% of eligible and reimbursable construction costs.

*** The 20% CEI Estimate can be increased or decreased by the local agency at their discretion depending on the scope and complexity of the project.



**CT CONSULTANTS, INC.
2019 HOURLY FEE SCHEDULE**

Principal	\$ 208.00
Senior Project Engineer/Architect	\$ 160.00
Project Engineer/Architect	\$ 132.50
Engineer 2/Architect 2	\$ 111.00
Engineer 1/Architect 1	\$ 96.50
Designer 3	\$ 102.00
Designer 2	\$ 84.00
Engineer Intern	\$ 53.50
Construction Rep 3	\$ 84.00
Word Processing & Office Support	\$ 53.50
Survey Crew	\$ 146.00

Expenses at Cost plus 10%

Effective January 1, 2019 through December 31, 2019

CT CONSULTANTS
STANDARD TERMS & CONDITIONS

The following conditions and provisions define the basic terms relating to the services and compensation agreed to and as outlined on the attached Letter Agreement and/or Work Authorization.

OWNER: City of Crossville, Tennessee

ENGINEER: CT CONSULTANTS, INC.

AGREEMENT DATE: _____

INITIAL: _____

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide all Services set forth herein and upon this Agreement becoming effective, ENGINEER is authorized to begin unless otherwise stipulated to by the OWNER.

ARTICLE 2 - TIMES FOR RENDERING SERVICES

2.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

2.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if

ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 3 - PAYMENTS TO ENGINEER

3.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted monthly to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in the Agreement including additional services and reimbursable costs, if any.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination, ENGINEER will be entitled to invoice OWNER and will be paid for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in paragraph 3.01, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using normal methods and rates.

ARTICLE 4 - OPINIONS OF COST

4.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

ARTICLE 5 - GENERAL CONSIDERATIONS

5.01 Standards of Performance

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

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

H. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

5.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

5.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be

responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5.04 Insurance

A. The ENGINEER shall maintain the following insurance:

1. Workmen's Compensation
2. Employer's Liability Insurance
3. General Liability Insurance
4. Automobile Liability Insurance

B. OWNER shall maintain similar insurance and shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER, which are applicable to the Project.

C. If requested, OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverage's indicated. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

D. All policies of property insurance shall contain provisions to the effect that ENGINEER's and

ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

E. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and the agreed to fee shall be supplemented to incorporate these requirements.

5.05 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter

continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.06 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

5.07 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.07.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph shall appear in any Contract Documents.

5.08 Dispute Resolution

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their right to arbitrate, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

5.9 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

5.10 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals and in no case shall this liability exceed the maximum fee amount.

4. In addition to the indemnity provided under paragraph 5.10.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all

fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 5.10.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

5.11 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

5.12 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

5.13 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.14 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.