



# Environmental & Civil Engineering Services

Engineering ♦ Geotechnical ♦ Testing

Thursday, May 16, 2013

Ms. Sally Oglesby  
Crossville City Clerk  
392 N. Main Street  
Crossville, TN 38555

**RE: FastTrack Infrastructure Development Program (FIDP)  
CoLinx Site Development  
Proposal #12P101**

Dear Ms. Oglesby:

We are pleased to offer our Professional Engineering Services for the Tennessee Economic & Community Development FastTrack Infrastructure Development Program (FIDP) project for the proposed Colinx building expansion. The site work will consist of a stormwater diversion pipe for the rerouting of an on-site stream, a fire access road required to allow sufficient access to the building in the event of a fire, mitigation of 0.6 acres of wetland, mitigation of 593 feet of stream and related work. Our services under the proposed project would be to provide customary consulting engineering services for permitting, design, and construction administration.

Our scope of services and fee will be as defined below.

- A. Construction Administration & Inspection - \$40,000, lump sum rate
  1. Perform a pre-construction conference for the FIDP project.
  2. Issue a notice to proceed for construction to the contractor.
  3. Attend monthly project meetings for the FIDP project for term of the original construction contract.
  4. Provide resident project representative services based on the requirements of Tennessee Economic & Community Development for the term of the original construction contract.
  5. Provide administrative field engineering services based on the requirements of Tennessee Economic & Community Development for the term of the original construction contract.
  6. Perform project submittal review and approval for the FIDP project.
  7. Perform project partial payment request review, approval, and submission to owner for the FIDP project for the term of the original construction contract.
  8. Perform construction closeout services to include final inspection.
  9. Perform final project payment request review, approval, and submission to owner for the FIDP project for the term of the original construction contract.
- B. Engineering Design - \$75,000, lump sum rate
  1. Program phase
    - Provide assistance with development of the proposed FIDP project.
    - Perform an alternative analysis of potential solutions.
    - Develop a project schedule for the FIDP project.
    - Conduct pre-design meetings to refine and complete the scope of the FIDP project.
    - Perform project verification with owners and stakeholders.

2. Schematic design phase
  - Coordination of all necessary field investigations required for the FIDP project.
  - Perform an analysis of the project site
  - Provide conceptual diagrams, visual studies, and schematic drawings of the chosen design concept.
  - Perform estimate of probable project construction cost and non-construction cost.
3. Design development phase
  - Perform an early design stage meeting / presentation with preliminary concept drawings, project scope summary, and supporting analysis.
  - Provide a site plan with topographic contours and applicable cross-sections.
  - Provide a proposed site plan.
  - Provide construction quantity table, construction general notes, and necessary construction details to define the work required to complete the FIDP project.
  - Provide a set of contract documents with supplemental conditions as required for FIDP.
  - Provide a set of technical specifications for the necessary construction items of the project.
4. Construction document phase
  -
5. Bidding phase
  - Prepare bid advertisement notice.
  - Process bidder request for plans.
  - Provide a FTP site with free digital plans for any approved contractor, owner, and stakeholder.
  - Submit advertisement to owner, local contractors of record, and plan rooms.
  - Assist contractors with questions during the bid phase.
  - Conduct a pre-bid conference for interested contractors.
  - Issue any required addendums to clarify questions or items during the bid process.
  - Conduct a formal meeting to receive and open submitted bids.
  - Review and check accuracy of all bids.
  - Compile a certified
- C. Other Engineering Services - \$101,000, lump sum rate
  1. Preliminary Engineering Report (PER)
  2. Assist with preparation of FastTrack application
  3. Geotechnical site investigation and drilling operation
  4. Geotechnical engineering report and foundation recommendations
  5. Topographic site survey of stormwater diversion pipe
  6. Public hearings / meetings as required
  7. Confirm status of reviews by regulatory authorities.
  8. Stormwater pollution prevention plan preparation
  9. Stormwater pollution prevention plan review
  10. Environmental review
  11. Aquatic resources alteration permit (ARAP) preparation and submittal
  12. ARAP review fees.
- D. Acquisition - \$35,000, standard unit rates
  1. Assist with conservation easement preparation
  2. Open space management plan preparation
  3. Confirm status of reviews by regulatory authorities for conservation easement
  4. Property survey for conservation easement



5. Wetland Delineation

We assume that submission of the FastTrack applications and the Preliminary Engineering Report will be the responsibility of CoLinX working in cooperation with the City of Crossville (the Applicant).

Upon approval of grant funding, the application process will be considered complete. At this time, the Engineer will submit a Statement for Services in an amount equal to 10% of the total engineering fees due, plus any reimbursable expenses due, in accordance with the FastTrack program guidelines for payment of engineering fees.

Further, upon approval of grant funding and official Notice to Proceed, a contract/agreement for services will be executed between Applicant and Engineer, and the Engineer will proceed with Basic Engineering Services in accordance with FastTrack program guidelines.

Upon your review and acceptance of the attached proposal, please sign and return one complete original copy to my office, prior to the start of our work on the Project.

We are certainly grateful to work with you on this project and others in the future. If you have any questions regarding this proposal and Agreement, please do not hesitate to contact me.

Sincerely,  
Environmental & Civil Engineering Services



Chuck F. Burgess, P.E., M.NSPE, M.ASCE  
Partner

CFB/cfb



## GENERAL TERMS AND CONDITIONS

### 1. STANDARD OF CARE

Services performed by ENGINEER & HIS CONSULTANTS (ECE Services) under this AGREEMENT are expected by CLIENT to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the engineering profession practicing contemporaneously under similar conditions in the locality of the project. Under no circumstance is any warranty, expressed or implied, made in connection with the providing of engineering services.

For subsurface exploration work, CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by ENGINEER & HIS CONSULTANTS (ECE Services) will be based solely on information available to ECE Services. ECE Services is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

### 2. SITE ACCESS AND SITE CONDITIONS

CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for ECE Services to perform work set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted ECE Services free access to the site. ECE Services will take reasonable precautions to minimize damage to the site, but it is understood by the CLIENT that, in the normal course of work, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.

CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities including contacting and complying with Tennessee One Call requirements. ECE Services will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against ECE Services, and agrees to defend, indemnify, and hold ECE Services harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, CLIENT agrees to compensate ECE Services' based on prevailing fee schedule and expense reimbursement policy.

### 3. SAMPLE DISPOSAL

ECE Services will dispose of all remaining soil and rock samples thirty (30) days after submission of the report covering those samples. Further storage or transfer of samples can be made at CLIENT's expense upon CLIENT's prior written request.

### 4. MONITORING

If ECE Services is retained by CLIENT to provide a site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the PROPOSAL, then this phrase applies. For the specified assignment,

ECE Services will report observations and professional opinions to CLIENT. No action of ECE Services or ECE Services' site representative can be construed as altering any AGREEMENT between CLIENT and others. ECE Services will report to CLIENT any observed geotechnically related work which, in ECE Services' professional opinion, does not conform with plans and specifications. ECE Services has no right to reject or stop work of any agent of the CLIENT. Such rights are reserved solely for the CLIENT. Furthermore, ECE Services presence on site does not in any way guarantee the completion or quality of the performance of the work of any party retained by CLIENT to provide field or construction related services.

ECE Services will not be responsible for and will not have control or charge of specific means, techniques, sequences or procedures of construction or other field activities selected by any agent or agreement of CLIENT, or safety precautions and programs incident thereto. The CLIENT understands that ECE Services is not responsible in any way for the means, methods, techniques, sequences, procedures, or scheduling of construction, or for job-site safety, and will not be responsible for any losses or injuries that occur at the Project site.

### 5. BILLING AND PAYMENT

CLIENT will pay ECE Services in accordance with the procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by ECE Services, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will notify ECE Services in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.

Invoices are delinquent if payment has not been received within thirty (30) days from the date of invoice. CLIENT will agree to pay an additional charge of one-and-one half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of the CLIENT. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including attorney's fees), in connection with collection of any delinquent amount will be paid by the CLIENT to ECE Services per ECE Services' current fee schedules. In the event CLIENT fails to pay ECE Services within sixty (60) days after invoices are rendered, CLIENT agrees that ECE Services will have the right to consider the failure to pay the ECE Services' invoice as a breach of this AGREEMENT.

Reimbursable expenses include actual expenditures made by the Consultant, his employees, or his sub-consultants on behalf of the Project. Reimbursable expenses include, but are not necessarily limited to, the following: (a) expenses of transportation and living when traveling in connection with the Project, long distance calls, overnight mail, telecopies, and fees paid for testing and/or for



securing approval of authorities having jurisdiction over the Project; (b) expenses of printing, reproduction, postage, and handling of drawings and specifications, including duplicate sets at the completion of each phase of the Project for the Client's review and approval; (c) expenses related to sub-consultants and specialists when authorized by the Client. Reimbursable expenses shall be billed as a multiple of 1.15 times the cost incurred by the Consultant.

**6. INSURANCE**

The Consultant shall secure and endeavor to maintain such insurance as will protect the Client from claims of negligence, bodily injury, death, or property damage that may arise out of the performance of the Consultant's services under this Agreement. However, ECE Services will not be liable to CLIENT for property damages as referenced in paragraph SITE ACCESS AND SITE CONDITIONS.

**7. TERMINATION**

This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. In the event of termination, ECE Services will be paid plus reasonable termination expenses, including, but not limited to the cost of completing analysis, records, and reports necessary to document job status at the time of termination.

**8. RISK ALLOCATION**

Many risks potentially affect ECE Services by the virtue of entering into this AGREEMENT to perform professional services on behalf of CLIENT. The principal risk is the potential for human error by ECE Services. For CLIENT to obtain the benefit of the fee, which includes a nominal allowance for dealing with ECE Services' liability, CLIENT agrees to limit ECE Services' liability to CLIENT and to all parties for claims arising out of ECE Services' performance of services described in this AGREEMENT. The aggregate liability of ECE Services shall not exceed \$25,000 or ECE Services' total fee for the project, whichever is greater, for negligent professional acts, errors, or omissions, and CLIENT agrees to indemnify and hold harmless ECE Services from and against all liabilities in excess of the monetary limit established above.

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join ECE Services as a third party defendant. Parties means CLIENT and ECE Services and their officers, employees, agents, affiliates, and subcontractors.

Both CLIENT and ECE Services agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this AGREEMENT.

**9. INDEMNIFICATION**

Should the Consultant become involved in third-party litigation as a result of its performance of work for the Client under this Agreement, the client agrees to defend and hold harmless and pay

all attorneys' fees for the Consultant for such litigation. If any claim is brought against either the Client or the Consultant by any third party, relating in whole or in part to the negligence of the Client or the Consultant, each party shall indemnify the other against any loss or judgment, including attorneys' fees and costs, to the extent that such loss or expense is caused by the party's negligence. The Client will reimburse the Consultant for expenses related to claims, including attorneys' fees and costs, if the Consultant is proven not to be negligent. In addition, the Client agrees to defend, indemnify, and hold harmless the Consultant, its officers, directors, employees, agents and representatives from and against all liabilities, claims, demands, losses, costs, damages, actions, suits, or other proceedings by whomsoever made arising out of or in connection with the Consultant's performance of work hereunder made or brought against the Consultant (other than any employee, officer, director, agent, or other representative of the Consultant) for any environmental pollution or contamination, including without limitation any actual or threatened release of toxins, irritants, or pollutants, or waste gasses, liquids, or solid materials, provided that the Consultant performs hereunder without neglect and does not negligently create, cause, contribute to, or aggravate any such position or contamination inexistence at the Project site.

**10. DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS**

CLIENT represents that CLIENT has made a reasonable effort to evaluate if hazardous materials are on or near the project site, and that CLIENT has informed ECE Services of CLIENT's findings relative to the possible presence of such materials.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ECE Services and CLIENT agree that discovery of unanticipated hazardous materials constitute a changed condition mandating a renegotiation of the scope of work or termination of services. ECE Services and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for ECE Services to take immediate measures to protect health and safety. CLIENT agrees to compensate ECE Services for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

ECE Services agrees to notify CLIENT when unanticipated hazardous materials are encountered. CLIENT agrees to make any disclosure required by law to the appropriate governing agencies. CLIENT also agrees to hold ECE Services harmless for any and all consequences of disclosures made by ECE Services, which are required by governing law. In the event the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

Notwithstanding any other provision of the AGREEMENT, CLIENT waives any claim against ECE Services and, to the maximum extent permitted by law, agrees to defend, indemnify, and save ECE Services harmless from any claim, liability, and/or defense costs for injury or loss arising from ECE Services' discovery of unanticipated hazardous materials, including, but not limited to, any costs created by delay of the project and any cost associated with possible reduction of the property's value.

CLIENT will be responsible for ultimate disposal of any samples secured by ECE Services, which are found to be contaminated.

**11. DISPUTES RESOLUTION**

All claims, disputes, and other matters in controversy between ECE Services and CLIENT arising out of or in any way related to this



AGREEMENT will be submitted to "alternative dispute resolution" (ADR) before and as a condition precedent to other remedies provided by law. If and to the extent CLIENT and ECE Services have agreed on methods for resolving such disputes, then such methods will be set forth in the "Alternative Dispute Resolution Agreement" which, if attached, is incorporated into and made a part of this AGREEMENT. If no such ADR procedure is set forth in this AGREEMENT, then it shall be understood that the parties shall submit disputes to mediation as a condition precedent to litigation.

If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation instead of ADR as provided above, then:

- 1) the claim will be brought and tried in judicial jurisdiction of the court of the county where ECE Services' principal place of business is located and CLIENT waives the right to remove the action to any other county or judicial jurisdiction, and
- 2) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees, and other claim related expenses.

#### 12. OWNERSHIP OF DOCUMENTS

It is understood by and between the parties to this Agreement that all drawings, specifications, and other work products of the Consultant for this Project shall remain the property of the Consultant and are instruments of the service for this Project only, and shall apply only to this particular Project; and any reuse of any of the instruments of service of the Consultant by the Client for any extensions of the Project or any other Project without the written permission of the Consultant by the Consultant shall be the Client's sole risk, and the Client agrees to defend, indemnify, and hold harmless the Consultant from all claims, damages, and expenses, including attorneys' fees, arising out of any unauthorized reuse of the Consultant's instruments of service by the Client or by others acting through or on behalf of the Client. Any reuse or adaptation of the Consultant's instruments of service in other projects shall entitle the Consultant to additional compensation in an amount agreed upon by the Client and the Consultant.

#### 13. CLIENT'S RESPONSIBILITIES

The Client shall designate a person to act with authority on his behalf in respect to all aspects of the Project, shall examine and respond promptly to Consultant's submissions, and shall give prompt written notice to the Consultant whenever he observes or otherwise becomes aware of any defect in or problem with the Project.

The Client shall also provide to the Consultant all criteria and full information as to his requirements for the Project, and shall

- Guarantee access to and make all provisions for the Consultant to enter upon public and private properties as necessary to accomplish the work;
- Furnish approvals and permits from all governmental authorities and/or agencies having jurisdiction over the Project;
- Provide the Consultant with escorts and means of access to all areas of the Project; this being necessary for the orderly progress of the work, the Consultant shall be entitled to rely upon the efficiency and completeness thereof; and

- Compensate the Consultant for services rendered under this Agreement and pay all costs incidental to Client furnished items.

#### 14. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Client and The Consultant.

Any opinion of construction cost prepared by the Consultant represents his judgment as a design professional and is supplied for the general guidance of the Client. Since the Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, the Consultant does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost of the Client.

#### 15. CHANGES IN THE SCOPE OF SERVICES

The Client may request changes in the Scope of Services of this Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the Client and the Consultant shall be incorporated into this Agreement by written amendment. Any changes made to the construction documents by the Client, or by the Client's representatives are strictly prohibited without the knowledge and written consent of the Consultant. The Consultant shall be released from any liability resulting from damages, injuries, and or death resulting from the authorized alteration of construction documents.

#### 16. EXISTING AND/OR HIDDEN CONDITIONS

A condition is hidden if it is concealed by existing finishes or features or if it cannot be investigated by reasonable visual observation. If the Consultant has reason to believe that such a condition may exist, the Consultant will notify the Client who then shall authorize and pay for all costs associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the Client fails to authorize such investigation or correction after due notification, or (2) the Consultant has no reason to believe that such a condition exists, the Client shall be responsible for all risks associated with this condition, and the Consultant shall not be responsible for the existing condition or any resulting damages to persons or property. Further, the Consultant shall not be required to execute any document that would result in certifying, guaranteeing, or warranting the existence of conditions whose existence the Consultant cannot reasonably ascertain.

#### 17. DESIGN/REPORT WITHOUT CONSTRUCTION PHASE SERVICES

It is understood and agreed that the Consultant's Basic Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services may be provided by ECE Services, by the Client, or by another party selected at the sole discretion of the Client. Further, should ECE Services not be engaged to provide construction phase services, the Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and/or supervision and waives any claims against the Consultant that may be in any way connected thereto.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any loss,



claim or cost, including reasonable attorney's fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the Consultant.

If the Client requests in writing that the Consultant provide any specific construction phase services and if the Consultant agrees in writing to provide such services, then the Consultant shall be compensated for Additional Services as provided in this Agreement.

**18. GOVERNING LAW AND SURVIVAL**

The law of the State of Tennessee will govern the validity of these TERMS, their interpretation and performance.

If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this AGREEMENT for any cause.







# Environmental & Civil Engineering Services

Engineering ♦ Geotechnical ♦ Testing

## PROPOSAL ACCEPTANCE SHEET

Description of Services: CoLinX FIDP Engineering Services

Project Name: CoLinX FIDP

Project Location: \_\_\_\_\_

Date: Monday, June 17, 2013

### FOR APPROVAL AND PAYMENT OF CHARGES

Invoices will be charged and mailed to the account of:

Firm \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Attention \_\_\_\_\_ Telephone \_\_\_\_\_

This AGREEMENT is subject to the following special provisions/payment schedule:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This AGREEMENT is accepted by:

\_\_\_\_\_  
Client

\_\_\_\_\_  
By (Signature)

\_\_\_\_\_  
By (Type/Print)

\_\_\_\_\_  
Title

Accepted \_\_\_\_\_, 2013

Acknowledging the Terms and Conditions

Environmental & Civil Engineering Services

\_\_\_\_\_  
By (Signature)

Chuck F. Burgess, P.E.

\_\_\_\_\_  
By (Type/Print)

Partner

\_\_\_\_\_  
Title

Accepted June 17, 2013

Acknowledging the Terms and Conditions

