



Environmental & Civil Engineering Services

Engineering ♦ Geotechnical ♦ Environmental

Monday, July 29, 2019

Mr. Tim Begley
Director of Engineering
City of Crossville
392 North Main Street
Crossville, Tennessee 38555

RE: Consulting Agreement Amendment No. 1
Brookhaven and Highland Lane Water line Project
Brookhaven and Highland Lane
Crossville, Tennessee 38555
Proposal No. 19P072

Dear Mr. Begley,

On behalf of Environmental & Civil Engineering Services, we appreciate the opportunity to be of service to the City of Crossville and submit this contract amendment for your consideration on the Brookhaven and Highland Lane Water Line Project for rebid services.

We look forward to working with you on this project and others in the future. If you have any questions, please feel free to call me. You may reach me at (931) 484-9321 and by email, chuck.burgess@ece-engineering.com.

Sincerely,

Environmental & Civil Engineering Services
Crossville | Mount Juliet

Chuck F. Burgess, P.E. | Consulting Engineer

Consulting Engineer | Tennessee License No. 104467

Qualified Hydrologic Professional | Tennessee Certification No. 1138-TN15

FHWA-NHI Subsurface Investigation Qualification | SSI-132079

702 Old Jamestown Highway

Crossville, Tennessee 38555

(931) 484-9321

chuck.burgess@ece-engineering.com

website: ece-engineering.com



Enclosures (1) – Consulting Agreement

CFB/cfb

CC: 2019 Project File

Consulting Agreement Amendment No. 1 to Original Agreement dated 14 October 2014

THIS CONSULTING AGREEMENT (the “Agreement”) dated this 29th Day of July 2019 Between:

City of Crossville of 392 North Main Street, Crossville, 38555
(the “Client”)

-AND-

Environmental & Civil Engineering Services of 702 Old Jamestown Highway, Crossville, Tennessee
38555
(the “Consultant”)

BACKGROUND:

- A. This is an amendment to an original agreement between Owner and Engineer dated 14 October 2014.
- B. The Client is of the opinion that the Consultant has the necessary qualifications, experience, and abilities to provide consulting services to the Client.
- C. The Consultant is agreeable to providing such consulting services to the Client on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Consultant (individually the “Party” and collectively the “Parties” to this Agreement) agree as follows:

Services Provided

1. The Client hereby agrees to engage the Consultant to provide the Client with the following consulting services (the “Services”):
 - a. Preparation of a rebid package for the Crossville Waterline Improvement Project for the Brookhaven and Highland Lane Service Areas known as the Project.
 - b. Make necessary modification to the bid plan set as requested by the Owner which may include adjustment of the construction contract time and additional clarification of items identified during the original bid process.
 - c. Update construction plan general notes and plan pages to reflect items above.
 - d. Meeting with Owner to discuss the proposed changes.
 - e. Update contract documents and technical specifications, accordingly.
 - f. Develop a bid advertisement and distribute to plan rooms and potential contractors.
 - g. Address bid phase questions and issue addendum as required for answering bid questions.
 - h. Conduct a mandatory prebid meeting to discuss the project with potential bidders.
 - i. Conduct bid opening.
 - j. Review received bids for accuracy and preparation of bid tabulation.
 - k. Provide services outlined in 1a. to 1j. for a lump sum fee of \$17,355.
 - l. Construction Phase services excluding RPR personnel for additional contract time will be provided for \$4175 per additional month.
2. The Services will also include any other consulting tasks which the Parties may agree to conduct. The Consultant hereby agrees to provide such Services to the Client.

Term of Agreement

3. The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended with the written consent of the Parties.
4. In the event that either Party breaches a material provisions under this Agreement, the non-defaulting Party may terminate this Agreement immediately and require the defaulting Party to indemnify the non-defaulting Party against all reasonable damages.
5. In the event that either Party wishes to terminate this Agreement prior to the completion of the Services, that Party will be required to provide 30 days' written notice to the other Party.

Performance

6. The Parties agree to do everything necessary to ensure that the terms of the Agreement take effect.

Currency

7. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

Compensation

8. The Consultant will charge the Client for the Services at a unit price rate as presented above.
9. The Client will be invoiced when the Services are Complete.
10. Invoices submitted by the Consultant to the Client are due upon receipt.
11. Services outside the scope as defined in the services provided section will be invoiced based on our standard hourly rates in effect.
12. If this Agreement is terminated by the Client before the completion of the Services, but where Services have been partially performed, the Consultant will be entitled to pro rata payment of the Compensation to the date of the termination.

Reimbursement of Expenses

13. The Consultant will be reimbursed from time to time for reasonable and necessary expenses incurred by the Consultant in connection with providing the Services.
14. No reimbursable expenses are anticipated, but would be approved by the Client prior to performance.

Penalties for Late Payment

15. Any late payment will trigger a fee of 0.75% per month on the amount still owing.

Confidentiality

16. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
17. The Consultant agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Consultant has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the term of this Agreement and will end on the termination of this Agreement except in the case of any Confidential Information which is a trade secret in which case those obligations will last indefinitely.

18. All written and oral information and material disclosed by the Client to the Consultant under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Consultant.

Ownership of Intellectual Property

19. All intellectual property and related material (the "Intellectual Property") that are developed or provided under this Agreement, will be the property of the Consultant. The Client is granted a non-exclusive limited-use of this Intellectual Property.
20. Title, copyright, intellectual property rights and distribution rights of the Intellectual Property remain exclusively with the Consultant.

Return of Property

21. Upon the expiry or termination of this Agreement, the Consultant will return to the Client and property, documentation, records, or Confidential Information which is the property of the Client.

Capacity / Independent Contractor

22. In providing the Services under this Agreement it is expressly agreed that the Consultant is acting as an independent contractor and not as an employee. The Consultant and the Client acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service. The Client is not required to pay or make any contributions to, any social security, local, state, or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Consultant during the Term. The Consultant is responsible for paying and complying with reporting requirements for, all local, state, and federal taxes related to payments made to the Consultant under this Agreement.

Notice

23. All notices, requests, demands, or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

- a. **City of Crossville**

- 392 North Main Street, Crossville, Tennessee 38555

- b. **Environmental & Civil Engineering Services**

- 702 Old Jamestown Highway, Crossville, Tennessee 38555

or to such other address as either Party may from time to time notify the other, and will be deemed to be properly delivered (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

Indemnification

24. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable, legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors, and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of the Agreement.

Additional Clause

25. No additional clauses presented.

Modification of Agreement

26. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Assignment

27. The Consultant will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

Entire Agreement

28. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Enurement

29. This Agreement will enure to the benefit of and be binding upon the Parties, and their respective heirs, executors, administrators and permitted successors and assign.

Title/Headings

30. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

31. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

32. This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee.

Severability

33. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

Waiver

34. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this 29th day of July 2019.

City of Crossville

Per: _____

Environmental & Civil Engineering Services

Per: 

Managing Partner