



July 29, 2019

The Honorable James Mayberry
Mayor
City of Crossville
392 N Main Street
Crossville, Tennessee 38555

**Subject: Professional Design Services Proposal
Section II – Northwest Connector (S.R. 462)
Utility Relocation Design
Gresham Smith Project No. 19258.10**

Dear Mayor Mayberry:

Gresham Smith is hereby submitting our fee proposal for services for Section II of the Northwest Connector project. The roadway portion of the Northwest Connector Project (S.R. 462) is being design by Gresham through the Tennessee Department of Transportation.

At the request of the City of Crossville, we are providing this proposal for services related to utility adjustments along Section II between S.R. 24 (U.S. 70) and S.R. 28 (U.S. 127). Due to probably conflicts along the proposed roadway, TDOT will require this utility coordination and relocation.

1. **Preliminary Design & "Rainbow Drawings":** A preliminary level of design will be required by TDOT for all City owned utilities in the immediate project area. Along with preliminary design documents, "Rainbow Drawings" and an Estimate of Construction Cost will be prepared reflecting all utilities, any anticipated conflicts and any proposed adjustments needed. The drawings and Estimate will be submitted to TDOT for approval in order to proceed with final roadway project plans development. **FEE REQUIRED - \$25,000.00.**

2. **Final Design & Construction Documents:** We are also providing a proposed fee for the completion of design and final construction drawings for any relocated City utility. These completed drawings will be used as the bid documents for construction activities related to City utility relocations. Services also include easement preparation and record drawings. **FEE REQUIRED - \$78,500.00.**

Total Proposed Fee (Preliminary and Final Design): \$103,500.00

Genuine Ingenuity

2095 Lakeside Centre Way
Suite 120
Knoxville, TN 37922
865.521.6777
GreshamSmith.com



A detailed Scope of Services for each of the above phases is included as Exhibit A in the attached Agreement.

If these fees are acceptable to the City, please sign the attached Contract document where indicated.

We sincerely appreciate the opportunity to continue working with you and your staff. Please feel free to contact me with any questions. You may reach me by phone at 865-299-6126 or by email at jason.brady@greshamsmith.com. Additionally, you can contact Rick Yeager at 865-299-6141.

Sincerely,

Jason Brady, P.E.
Principal

YR

Copy Jason Brady - Gresham Smith
 Rick Yeager - Gresham Smith
 File

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS AGREEMENT is effective as of July 21, 2019 (Effective Date) between CITY OF CROSSVILLE (OWNER) and GRESHAM SMITH (ENGINEER). Owner's Project, of which ENGINEER's services under this Agreement are a part, is generally identified as follows: UTILITY RELOCATION SERVICES (Project) located at SECTION 2 – NORTHWEST CONNECTOR (Site). ENGINEER's services for this Project are described as follows: PRELIMINARY AND FINAL DESIGN SERVICES. OWNER and ENGINEER further agree as follows:

ARTICLE 1 – ENGINEER'S SERVICES

ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 Owner shall:

A. Provide ENGINEER with OWNER's requirements, criteria and information for the Project; furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable; and furnish any other available information pertinent to the Project including reports and data relative to previous designs or investigation at or adjacent to the site..

B. Furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following: (1) property descriptions; (2) zoning, deed, and other land use restrictions; (3) property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points; (4) explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof; (5) environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas; (6) data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto; (7) all surveys will be provided in hard copy in addition to digital format.

C. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes

aware of any Constituent of Concern or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

D. Authorize ENGINEER to provide Additional Services as set forth in Exhibit A of the Agreement as required.

E. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

F. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by ENGINEER and render in writing timely decisions pertaining thereto.

G. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

H. Provide all legal, insurance and accounting services, including auditing services, which may be reasonably necessary at any time for the Project to meet the OWNER's needs and interests.

I. Advise ENGINEER of the identity and scope of services of independent consultants employed by OWNER and coordinate the services of such consultants with those services provided by ENGINEER.

J. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may assist OWNER in collating the various cost categories which comprise Total Project Costs.

K. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

L. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER,

designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an Exhibit hereto that is to be mutually agreed upon and made a part of this Agreement before such services begin.

M. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

N. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

O. Provide ENGINEER with the findings and reports generated by the entities providing services to OWNER pursuant to this paragraph.

P. Inform ENGINEER in writing of any specific requirements of safety or security programs that are applicable to ENGINEER, as a visitor to the Site.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 General

A. ENGINEER shall complete its obligations within a reasonable time. If specific periods of time for rendering services or specific dates by which services are to be completed are set forth in Exhibit A. In providing such periods of time, it is recognized that Engineer has no control over the meeting/review times or schedules of the Owner or authorities having jurisdiction over the Project. The project duration is based on Engineer's reasonable professional judgment and experience and does not in any way whatsoever constitute a warranty, express or implied, that the provided periods of time will not vary from the Owner's expected schedule or from any additional project schedules prepared by Engineer or others as the project progresses. Any construction activity timing or scheduling provided by Engineer is provided only for planning information and will be superseded by a detailed construction schedule(s) provided by the Contractor at a later date.

B. If, through no fault of ENGINEER, such periods of time or dates are changed, or the orderly and continuous progress of ENGINEER's services is impaired, or ENGINEER's services are delayed or suspended, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of ENGINEER's services,

and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably.

3.02 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 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 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 4 – ENGINEER'S COMPENSATION

4.01 Methods of Payment for Services and Reimbursable Expenses - OWNER shall pay ENGINEER for Basic Services as set forth in Exhibit A.

4.02 Other Provisions Regarding Compensation

A. Preparation of Invoices. Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit A.

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 therefore, the amounts due ENGINEER will be increased at the rate of 1.5% 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. In the event of:

1. any termination, ENGINEER will be entitled to invoice and be paid by OWNER in accordance with Exhibit A for all services performed and all Reimbursable Expenses incurred through the effective date of termination.

2. by OWNER for convenience or by ENGINEER for cause, ENGINEER shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit A.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Construction Cost - ENGINEER's opinions of probable construction cost 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 construction industry. However, because ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' 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 requires greater assurance as to probable construction cost, Owner must employ an independent cost estimator.

5.02 *Intentionally omitted*

5.03 Opinions of Total Project Costs - ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. Standard of Care. 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 the subject profession practicing under similar circumstances, time and location. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. Technical Accuracy. OWNER shall not be responsible for discovering deficiencies in the technical accuracy of ENGINEER's services. ENGINEER shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in OWNER-furnished information.

C. Consultants. ENGINEER may employ such consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by OWNER.

D. Right to rely. 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 documentation in performing or furnishing services under this Agreement.

E. Reliance on Others. Subject to the standard of care set forth herein, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

F. Compliance with Laws and Regulations. ENGINEER and OWNER shall comply with applicable laws or regulations. ENGINEER shall comply with OWNER-mandated standards, subject to the standard of care set forth herein and to the extent compliance is not inconsistent with professional practice requirements. 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.

G. Certifications. ENGINEER shall not be required to sign any documents 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. General Conditions. The general conditions for any construction contract documents prepared hereunder are to be the current edition "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee unless both parties mutually agree to use other general conditions.

I. Contractor's Means and Methods. ENGINEER shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall ENGINEER have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

J. Contractor's Performance and Actions. 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. ENGINEER shall not be responsible for the acts or omissions of any

Contractor, subcontractor, or supplier, or of any of their employees or of any other persons (except ENGINEER's own agents, employees, and consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by ENGINEER.

K. Site Safety. While at the Site, ENGINEER's employees and representatives shall comply with the specific applicable requirements of Contractor's and OWNER's safety programs of which ENGINEER has been informed in writing.

6.02 Authorized Project Representatives – ENGINEER and OWNER shall designate specific individuals to act as 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 so as to not delay ENGINEER's services.

6.03 Design Without Construction Phase Services - ENGINEER shall be responsible only for those construction phase services expressly required of ENGINEER in Exhibit A. With the exception of such expressly required services, ENGINEER shall have no design, shop drawing review, or other obligations during construction and OWNER waives all claims against the ENGINEER that may be connected in any way to construction phase engineering or professional services except for those services that are expressly required in Exhibit A

6.04 Use of Documents

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

B. 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 or its consultants. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER are only for convenience. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in an Electronic Data Protocol Exhibit attached hereto

C. The party receiving electronic files agrees that it will perform acceptance tests or procedures within 3 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal

errors detected within the 3-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. If OWNER and ENGINEER intend to transmit the Materials or any other information or documentation in digital form during the design and/or construction phases of the Project, OWNER and ENGINEER agree to use ENGINEER's digital document management software system (Newforma-Infoexchange) to which ENGINEER shall provide OWNER and the contractor access. Should OWNER not agree to use ENGINEER's document management software or, at the request of the contractor, OWNER directs ENGINEER to use a different such software for transmission and management of construction phase documentation, ENGINEER's fees and time schedules shall be equitably adjusted. The protocols governing such transmissions, shall be as set forth in OE 300, Electronic Data Protocol Exhibit. Provided that Materials or other documentation is transmitted in digital form during the project design and construction phases, then ENGINEER will provide access to Newforma document management software. ENGINEER's fee is based on the use of the Newforma software.

F. ENGINEER grants OWNER a non-exclusive license to use the Documents on the Project and to make and retain copies of Documents for reference in connection with extensions of the Project, and for related uses of the OWNER, subject to receipt by ENGINEER of full and prompt payment for all services relating to preparation of the Documents. OWNER acknowledges that: (1) such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, 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 its officers, directors, members, partners, employees, and consultants, and OWNER specifically indemnifies and holds ENGINEER harmless for such use, reuse or modification; and (3) such limited license to OWNER shall not create any rights in third parties.

G. 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.

6.05 Insurance

A. ENGINEER shall maintain insurance coverage as follows:

1. WORKERS' COMPENSATION insurance in amounts required by state law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident/each disease/policy limit on disease.
2. COMMERCIAL GENERAL LIABILITY insurance with \$1,000,000 per occurrence, \$2,000,000 aggregate.
3. COMMERCIAL AUTOMOBILE LIABILITY insurance with \$1,000,000 combined single limit each accident.
4. PROFESSIONAL LIABILITY insurance with \$1,000,000 each claim and \$1,000,000 annual aggregate.

B. ENGINEER shall cause OWNER to be listed as an additional insured on ENGINEER's Commercial General and Automobile Liability Insurance. ENGINEER shall provide Certificates of Insurance evidencing coverage and additional insureds designation as applicable prior to commencement of services.

C. OWNER shall cause ENGINEER and its Consultants to be listed as additional insureds on the general liability policies and as loss payees on the property insurance policies carried by OWNER which are applicable to the Project and shall deliver Certificates of Insurance evidencing coverage and additional insureds designation to ENGINEER.

D. OWNER shall require Contractor to purchase and maintain general liability insurance and other insurance as specified in the Contract Documents and to cause ENGINEER and its consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

E. All policies of property insurance relating to the Project shall contain provisions to the effect that ENGINEER's and its 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 ENGINEER or its consultants, or any insureds, additional insureds, or loss payees thereunder.

6.06 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 OWNER demands that ENGINEER 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 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial 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, by OWNER effective upon ENGINEER's receipt of notice from OWNER.

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.

6.07 Lien Rights - Within 15 days after receipt of a written request from the Engineer, the Owner shall furnish any requested information as necessary and relevant for the Engineer to evaluate, give notice of, or enforce lien rights. Evaluation, notice and enforcement of lien rights shall be determined at the Engineer's discretion.

6.08 Controlling Law - This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.09 Claims and Dispute Resolution

A. For all conflicts arising out of this Agreement or the Project, OWNER and ENGINEER agree to negotiate disputes between them in good faith for a period of 30 days after notice.

B. OWNER and ENGINEER agree that any disputes not settled between them shall be submitted to non-binding mediation, unless the parties mutually agree

otherwise. The mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and shall include a list of no less than three nor more than six names, addresses and qualifications of industry-experienced mediators which the filing party will accept to conduct the mediation. Mediation shall proceed in advance of legal or equitable proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

C. If such mediation is unsuccessful in resolving a dispute, then either party may seek to have the dispute resolved by a court of competent jurisdiction. In the event of litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover in accordance with State law.

D. Owner and Engineer shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law in effect at the time this Agreement was executed, but, in any case, not more than 10 years after the date of Substantial Completion of the Work. Owner and Engineer waive all claims and causes of action not commenced in accordance with this Paragraph 6.09 D.

6.10 Environmental Condition of Site

A. OWNER has disclosed to ENGINEER in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location and represents to ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing exist at the Site.

B. If ENGINEER encounters or learns of an undisclosed Constituent of Concern at the Site, then ENGINEER shall notify (1) OWNER and (2) appropriate governmental officials if ENGINEER reasonably concludes that doing so is required by applicable laws or regulations.

D. Both parties acknowledge that ENGINEER's scope of services does not include any services related to Constituents of Concern. If an undisclosed Constituent of Concern is encountered, or if investigative, remedial action or other professional services are necessary with respect to disclosed or undisclosed Constituents of Concern, then 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable laws and regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause.

F. Owner acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in CERCLA, as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Allocation of Risks

A. Indemnification.

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

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and consultants from and against any and all costs, losses, and damages (including but not limited to reasonable fees and charges of all professionals, and all court costs) to the extent caused by the OWNER or OWNER's officers, directors, partners, employees, consultants or contractors with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent contributor, shall not exceed the percentage share that the party's negligence bears to the total negligence of all negligent contributors.

4. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and consultants from and against all claims, costs, losses, and damages, including but not limited to reasonable fees and charges of all professionals, and all court costs, (collectively Claim) caused by, arising out of or resulting from a Constituent of Concern, provided that (1) any such Claim is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) nothing in this paragraph 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.

B. Mutual Waiver. To the fullest extent permitted by law, OWNER and ENGINEER waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. Both the OWNER and ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

C. Limitation of Liability. In recognition of the relative risk of benefits of the project to both OWNER and ENGINEER, the risks have been allocated such that OWNER agrees, to the fullest extent permitted by law, to limit the liability of ENGINEER and its consultants to the OWNER and to all construction contractors and subcontractors on the project for any and all claims expenses from any cause or causes, so that the total aggregate liability of ENGINEER and its consultants to all those named shall not exceed ENGINEER's total compensation for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

D. Premium Cost. If, after the construction has begun, an error or omission is discovered and the item can still be provided in the planned sequence of construction without a premium cost to the OWNER; then the OWNER will pay for this entire item just as if it had been included in the original Contract Documents. If this error or omission is discovered out of sequence with the planned construction schedule resulting in a premium cost, then the ENGINEER will pay the premium cost to have this item corrected or included, while the OWNER will pay the value of the item as if it had been included in the original Contract Documents. If such premium cost falls within two percent (2%) of the defined construction cost, then such cost shall be the responsibility of the OWNER.

6.12 Successors, Assigns and Beneficiaries

A. The OWNER and ENGINEER, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement.

B. Neither the OWNER nor ENGINEER shall assign this Agreement without the written consent of the other.

C. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or ENGINEER.

6.13 Miscellaneous Provisions

A. Notices. Notices 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.

B. Survival and Severability: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason. Should any provisions of this Agreement be determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed void and all remaining provisions shall continue in force. Further, such provision so determined shall be amended by the parties hereto so as to make it valid, legal and enforceable, but keeping it close to the original meaning as possible.

C. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

D. Accrual of Claims: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

E. Photographic or Artistic Representations: Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials. Engineer shall be given reasonable access to the completed Project to make such representations. However, Engineer's material shall not include Owner's confidential or proprietary information if Owner has previously advised engineer in writing of the specific information considered by Owner to be confidential or proprietary. Owner shall provide professional credit for Engineer in Owner's promotional materials for the Project.

6.14 Definitions

A. Constituent of Concern. Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a)

the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (CERCLA); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (RCRA); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

B. Contract Documents. Those items so designated in the construction contract, including the drawings, specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the construction contract are Contract Documents. Approved shop drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

C. Contractor – The entity or individual with which Owner has entered into a construction contract.

D. Documents. Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

E. Substantial Completion. The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is

intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

F. Total Project Costs. The sum of the construction cost, allowances for contingencies, and the total costs of services of Engineer and all design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

G. Work. The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 7 – SCOPE OF THIS AGREEMENT

7.01 Total Agreement - This Agreement and the Exhibits thereto represents the entire and integrated agreement between OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

7.02 The Exhibits to this Agreement include:

Exhibit A – Engineer’s Scope, Schedule and Compensation of Services (Basic and Additional Services)

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY
BLANK**

IN WITNESS WHEREOF, OWNER and ENGINEER have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date written herein.

OWNER: CITY OF CROSSVILLE

Designated Representative (6.02)

By: _____

Name: _____

Name/Title: _____

Title: _____

Date: _____

Phone: _____

Email: _____

Address for Giving Notices:

ENGINEER: GRESHAM SMITH

Designated Representative (6.02)

By:  _____

Name: RICK YEAGER

Name/Title: JASON L. BRADY, P.E. / PRINCIPAL

Title: SENIOR ASSOCIATE

Date: 7/29/2019

Phone: 865.299.6141

Email: rick.yeager@greshamsmith.com

Address for Giving Notices:

222 Second Avenue South, Suite 1400
Nashville, TN 37201-2308

EXHIBIT A

SCOPE OF SERVICES

CITY OF CROSSVILLE

**NORTHWEST CONNECTOR, FROM S.R. 24 (U.S. 70) TO S.R. 28 (U.S. 127)
PROJ NO.: STP-462(8)**

City of Crossville (Owner) and Gresham Smith, in consideration of their mutual covenants herein, agree as follows:

SECTION 1

BASIC SERVICES

General

- A. Gresham Smith will provide professional services in all phases of the Project to which this Agreement applies as hereinafter provided.

Preliminary Design

- A. After written authorization to proceed Gresham Smith will prepare Rainbow Drawings as required by TDOT for all City owned utilities. In order to accurately prepare these drawings, Gresham Smith will:
 - 1. In consultation with Owner prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, written description of the Project and opinion of probable Construction Cost.
 - 2. Attend all Preliminary roadway project meetings held by TDOT.
 - 3. Conduct field inventory, if necessary, of all affected water and sewer facilities.
 - 4. Evaluate route alternatives and design for relocating and/or replacing various existing water and sewer facilities along the right-of-way of SR-462 from S.R. 24 to S.R. 28.
 - 5. Review preliminary engineering evaluation and recommendations with Owner and Tennessee Department of Transportation (TDOT).
 - 6. Revise preliminary engineering based on comments from Owner and TDOT and furnish to TDOT all necessary drawings and forms needed to satisfy the "A" Date requirements for relocation to be included in the Roadway Contract.

Final Design

- A. After written authorization to proceed with the Final Design Phase, Gresham, Smith and Partners will:
 - 1. On the basis of the accepted Preliminary Design documents and the opinion of probable Construction Cost prepare for incorporation in the Contract Documents

final drawings (hereinafter called "Drawings") to show the general scope, extent and character of the work to be furnished and performed by Contractor and construction specifications specific to the work required by the Contractor (hereinafter called "Specifications"). Gresham Smith will not be responsible for errors or omissions on plans that have been developed and supplied by TDOT or City of Crossville.

2. Prepare 90% complete Construction Drawings based on the approved Preliminary Engineering.
 - a. Plan and Profile drawings of relocated water and sewer facilities
 - b. Construction Detail Sheets
 - c. Additional sheets as required by TDOT
3. Review 90% complete Construction Drawings and Specifications with Owner and TDOT.
4. Revise 90% Construction Drawings and Specifications based on comments from Owner and TDOT.
5. Prepare 100% Final Construction Documents and furnish to TDOT all necessary drawings, specifications and forms needed to satisfy the "B" Date requirements for relocation to be included in the Roadway Contract.

Construction Phase Services (To be added later)

ADDITIONAL SERVICES

Services Requiring Authorization in Advance

- A. If authorized in writing by Owner, Gresham Smith will furnish or obtain from others Additional Services of the following types which are not included as part of the Basic Services and will be paid for by Owner as indicated in Section 2 of this Exhibit.
 1. Preparation or review of environmental assessments and impact statements.
 2. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, construction schedule, character of construction or method of financing.
 3. Property surveys or related engineering services needed for design purposes and to enable Contractor to proceed with his work.
 4. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other legal or administrative proceeding involving the Project.
 5. Services in connection with work directive changes and change orders to reflect changes requested by Owner if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

6. Time spent by Gresham Smith in performing its contractual responsibilities after the stated completion date of the construction contract.

Associated Compensation

- A. Owner will pay Gresham Smith for Additional Services rendered by Gresham Smith's principals and employees engaged directly on the Assignment as agreed at the time Additional Services are requested.
- B. Owner will pay Gresham Smith for services and Reimbursable Expenses of independent professional associates and consultants employed by Gresham Smith to render Additional Services, the amount billed to Gresham Smith therefore times a factor of 1.05.

RESPONSIBILITIES OF THE OWNER

The following will be done by the Owner, at the Owner's expense under this Exhibit:

- A. Provide criteria and information as to Owner's requirements, including design objectives, space, capacity and performance requirements, expandability, and any budgetary limitations.
- B. Furnish copies of design and construction standards which Owner will require to be included in the Drawings and Specifications.
- C. Furnish all required governmental approvals and permits for the Project, including any easements that will be required.

SECTION 2

COMPENSATION FOR SERVICES

Basic Services

- A. For all Preliminary Design services under this Exhibit as listed in Section 1, Owner will pay Gresham Smith a Lump Sum fee of **\$25,000.00**.
- B. For all Final Design services under this Exhibit as listed in Section 1, Owner will pay Gresham Smith a Lump Sum fee of **\$78,500.00**.
- D. The amount of the fee billed for Professional Services will be based on Gresham Smith's estimate of the proportion of the overall services actually completed during the billing period to the total contract.
- E. The fee includes compensation for Gresham Smith's services and services of Gresham Smith's consultants, if any. Appropriate amounts have been incorporated in the fee to account for labor overhead, profit, and Reimbursable Expenses.

SECTION 3

PERIODS OF SERVICE

The provisions of this Work Authorization and the various rates of compensation for Gresham Smith's services provided have been agreed to in anticipation of the orderly and continuous progress of the Project.

- A. Upon written authorization from Owner, Gresham Smith will proceed with the Preliminary Design Phase services and will submit preliminary design documents and TDOT required paperwork within the time allotted to meet the TDOT "A" Date deadline.
- B. After Owner acceptance of the Preliminary Design Phase Services, including the opinion of probable Construction Cost, and written authorization from Owner, Gresham Smith will proceed with the Final Design Phase, and will prepare Contract Documents and a revised opinion of probable Construction Cost for work on the project within the time allotted to meet the TDOT "B" Date deadline.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. FORM

1. Background Data: Click or tap here to enter text.

Effective Date of Owner-Engineer Agreement: Click or tap here to enter text.

Owner: Click or tap here to enter text.

Engineer: Click or tap here to enter text.

Project: Click or tap here to enter text.

2. Description of Modifications: *(Check only those that are applicable. Refer to paragraph numbers used in the Agreement or previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.)*

a. Engineer shall perform or furnish the following Additional Services: Click or tap here to enter text.

b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows: Click or tap here to enter text.

c. The responsibilities of Owner are modified as follows: Click or tap here to enter text.

d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: Click or tap here to enter text.

e. The schedule for rendering services is modified as follows: Click or tap here to enter text.

f. Other portions of the Agreement (including previous amendments, if any) are modified as follows: Click or tap here to enter text.

3. Agreement Summary (Reference only)

a. Original Agreement amount: \$Click or tap here to enter text.

b. Net change for prior amendments: \$Click or tap here to enter text.

c. This amendment amount: \$Click or tap here to enter text.

d. Adjusted Agreement amount: \$Click or tap here to enter text.

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is Click or tap here to enter text..

OWNER: City of Maryville

ENGINEER: GRESHAM SMITH

By: _____

By: _____

Name & Title: _____

Name & Title: Click or tap here to enter text.

Date: _____

Date: Click or tap here to enter text.