

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7190

Contract No. _____

**Agreement
for Architectural and Engineering Services**

ATC GROUP
SERVICES, INC.

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and ~~ATC Associates, Inc.~~ a Corporation organized under the laws of the State of DE, the address of which is 1121 Canal Rd, ("Consultant").
Cincinnati, OH 45241

Recitals:

- A. The City's Department of Transportation & Engineering ("**DOTE**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: *Milton Dohoney, Jr.*
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

ATC GROUPSERVICES, INC.

[insert Consultant's name]

~~*ATC Associates Inc.*~~
By: *Keith D. Arend*

Printed Name: *Keith D. Arend*

Title: *Branch Manager*

Date: *January 23*, 2012

Recommended by:

Don Gindling
Don Gindling, P.E.
City Engineer

Michael R. Moore
Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

A. [Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zerbo, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
GEOTECHNICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Geotechnical Engineering Services may include any of the following:

Geotechnical inspections & investigations	Subsurface exploration
Geotechnical studies	Preliminary Engineering
Planning & feasibility studies	Geotechnical analysis and design
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Borings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See Attached Payment Schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 118.39 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

GEOTECHNICAL ENGINEERING SERVICES

Supervision, Evaluation, Analysis and Preparation of Soil Engineering Report of Recommendations.		
Principal Geotechnical Engineer		140.00/HR
Senior Geotechnical Engineer		120.00/HR
Project Geotechnical Engineer		100.00/HR
Staff Geotechnical Engineer		80.00/HR
Engineering Aide(s)		75.00/HR
Registered Roof Observer (RRO)		\$75.00/HR
Registered Roof Consultant		\$120.00/HR
Secretarial Services		40.00/HR
Draftsman / CAD		55.00/HR
Principal Environmental Engineer		\$125.00/HR
Senior Geologist		\$95.00/HR
Geologist		\$80.00/HR
Senior Environmental Scientist		\$80.00/HR
Environmental Scientist		\$70.00/HR
Construction Safety Specialist		\$95.00/HR
Certified Safety Professional		\$115.00/HR
SUPPORT SERVICES		
Survey of Test Boring Locations by Instrument Field Engineer Engineer Aide		90.00/HR 75.00/HR
Camera Use for Photo Documentation		20.00/Day
Video Camera Use (excluding operator)		40.00/Day
Outside Reproduction		Cost + 5%
Engineering Fee Minimum		None
Mileage Rate: By Car By Truck		0.70/Mile 0.80/Mile
RESEARCH, RETRIEVAL, REPRODUCTION (>8 copies initially or additional copies later):		
Off Site Archive File Retrieval		\$150.00/LS
Report Reproduction (Minimum Charge \$10.00)		0.20/Page
Drawings		3.00/Sheet
Express Delivery		30.00/EA

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

GEOTECHNICAL FIELD EXPLORATION AND SAMPLING - FOOTAGE BASIS

MOBILIZATION		
Mobilization of Drill Rig		275.00/EA
Support Truck Mobilization/Use		75.00/Day
ATV Equipment (Additional Charge)		275.00/Day
SOIL OVERBURDEN DRILLING:		
Split Spoon Test Borings		13.00/LF
Auger Borings - with Sampling		10.00/LF
Auger Soundings – no sampling		9.00/LF
Deep Drilling - Add to Footage Rate		
in range of 50 to 100 feet		4.00/LF
in range of 100 to 150 feet		6.00/LF
Advance Boring Through Concrete		15.00/inch
ROCK CORING		
Rock Core Set Up		125.00/Per Hole
Rock Coring – (NX Size)		30.00/LF
SPECIAL SAMPLING:		
Shelby Tube Samples		60.00/EA
Bulk (Bag) Samples		40.00/EA
Piezometer/Monitor Wells/Inclinometer Installation (Includes Materials)		32.00/FT
Piston Tube Samples		100.00/EA
Additional Split Spoon Samples		20.00/EA

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

GEOTECHNICAL FIELD EXPLORATION AND SAMPLING - FOOTAGE BASIS

MISCELLANEOUS SUPPORT SERVICES		
Laboratory Visual Classification – Soil Samples		11.00/EA
Laboratory Visual Classification – Rock Core		4.50/LF
Boring Layout – Approximate by Taping		65.00/EA
Test Boring Backfill in with Bentonite/Grout		7.25/FT
Pavement Boring Restoration – Concrete Plug		40.00/EA
Pavement Boring Restoration – Square Cut and Patch		COST + 5%
Minimum Charge for Drilling Services		1,400.00 Minimum
Clear Site for Underground Utilities / Obtain Clearance or Permits		80.00/HR
Drill Department Technician for field Duties		50.00/HR
Drill Department Aide/Geologist		75.00/HR
Drill Department Consultant/Manager		75.00/HR
Traffic Control Personnel		45.00/HR
Traffic Control Equipment Required for Safety		Cost + 5%
Police Officer and Cruiser (traffic control)		Cost + 5%
Excess Moving or Set-up time, waiting on client, etc. (in excess of 1/2 hour per boring location)		135.00/HR
Drill Crew Time for Boring Backfill, Water Level Measurement, etc.		135.00/HR
Tractor or Bulldozer Assistance (as may be required due to rough terrain or soft ground conditions), or other special equipment/materials needed		Cost + 5%
Mileage rate for personnel services: By Car		0.70/Mile
By Truck		0.80/Mile

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

GEOTECHNICAL FIELD EXPLORATION AND SAMPLING - DAILY RATE BASIS

DRILLING (2-Man Crew and Equipment):		
Mobilization of Drill Rig		275.00/EA
Support Truck Mobilization/Use		75.00/Day
Skid Rig		1700.00/Day
Small Truck Rig, (B-40, B-50, B-53)		1400.00/Day
Large Truck Rig, (B61 and CME)		1500.00/Day
ATV Equipment		1700.00/Day
Portable Equipment		900.00/Day
SPECIAL SAMPLING		
Shelby Tube Samples - Day Rate, plus		25.00/Each
Bulk (Bag) Samples - Day Rate, plus		40.00/Each
Rock Coring – Day Rate , plus		5.00/LF
Additional Split Spoon Samples – Day Rate		No Charge
Piezometer Installation - Day Rate, plus material		Cost + 5%
Advance boring Through Concrete – Day Rate, plus		5.00/INCH
Piston Tube Samples - Day Rate, plus		40.00/EA
FIELD EXPLORATION AND SAMPLING – WATER		
All Water Exploration Quoted on a Per Project Basis		

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

GEOTECHNICAL LABORATORY SCHEDULE

CLASSIFICATION:		
Description (Visual Manual Procedure)	ASTM D-248	11.00/Each
USCS/AASHTO Classification	ASTM D-248	5.00/Each
Laboratory Visual Classification		6.50/Each
INDEX PROPERTIES:		
Moisture Content	ASTM D-2116	7.50/Each
Dry Unit Weight		40.00/Each
Soil Corrosivity	AWWA	\$160.00/EA
Specific Gravity	ASTM D-854	45.00/Each
GRADATION:		
Sieve Analysis (includes 200 sieve wash)	ASTM D-422	80.00/Each
Hydrometer Analysis (24 Hour)	ASTM D-422	70.00/Each
Washed Sieve Analysis (-200 Sieve Decantation)	AASHTO T-11	40.00/Each
Hydrometer (1 hour)	ODOT	35.00/Each
ATTERBERG LIMITS:		
Liquid Limit	ASTM D-423	35.00/Each
Liquid Limit (1-ph)	AASHTO T-89	30.00/Each
Plastic Limit	ASTM D-424	30.00/Each
Shrinkage Limit	ASTM D-427	100.00/Each
Field Moisture Equivalent	AASHTO T-93	32.00/Each
Structural Properties:		
Unconfined Compression	ASTM D-2166 and D-2938	65.00/Each
Unconfined Compression (remolded sample)	ASTM D-2166	125.00/Each
Unconfined Compression (RIMACS)		10.00/Each
Torvane Shear Test		4.00/Each
Pocket Penetrometer Test		3.50/Each
Slake Durabiity	KDH	100.00/Each

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

GEOTECHNICAL LABORATORY SCHEDULE

TRIAXIAL COMPRESSION:		
QuUU	ASTM D-2850	110.00/PT
R CU		200.00/PT
R with Pore Pressure Measurement		290.00/PT
Direct Shear	ASTM D-3080	175.00/PT
Vane Shear		70.00/PT
QU CU (For M of E Data)		170.00/PT
Multi-Stage Consolidated Undrained with Pore Pressure		400.00/PT
MISCELLANEOUS TESTS:		
pH Determination		22.00/Each
Sulphate Content		46.00/Each
Sulfides Content (Pyrite Indicator)		32.00/Each
Loss on Ignition		20.00/Each
Electrical Resistivity		35.00/Each
CONSOLIDATION:		
Shelby Tube Extrusion and sample Preparation		17.00/Each
Standard Consolidation Test - 7 load increments	ASTM D-2435	360.00/Each
Additional load increments		28.00/Each
With Pore Pressure Measurements		550.00/Each
Time Curves		40.00/Each
Permeability		160.00/Each
Preparation of Disturbed Sample for Permeability		55.00/Each
TESTS OF COMPACTED SAMPLES:		
Standard Proctor	ASTM D-698	145.00/Each
Modified Proctor	ASTM D-1557	155.00/Each
Standard Proctor - Fly Ash	ASTM D-698	180.00/Each
Modified Proctor - Fly Ash	ASTM D-1557	200.00/Each
Moisture Density - Harvard miniature	AMR	72.00/Each
Relative Density of Non-Cohesive Soil	ASTM D-2049	185.00/Each
California Bearing Ratio (single specimen not including Proctor)	ASTM D-1883	230.00/Each
Volume Change	AASHTO T116	165.00/Each
SPECIAL TESTING NOT INCLUDED IN ABOVE SCHEDULE:		
Laboratory Technical Services (plus needed materials)		47.00/Hour

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

FIELD TESTING AND SAMPLING – ALL CATEGORIES

FIELD PERSONNEL		
Engineering Technician		38.00/HR
Senior Engineering Technician		50.00/HR
Field Personnel Overtime rate		1.5 x Hourly Rate
Vehicle Charge		\$30.00/Trip
SUPPORT TO FIELD SERVICES		
Project Manager		70.00/HR
Field Engineer		70.00/HR
Secretarial Services		40.00/HR
Other Support Services – See Geotechnical Engineering Services		
Vehicle Charge		\$30.00/Trip
COMPACTION TESTING		
Density Tests with Nuclear Meter	ASTM D-2922	8.60/HR
Standard Proctor	ASTM D-698	145.00/EA
Modified Proctor	ASTM D-1557	155.00/EA
FOUNDATION INSPECTION		
Senior Geotechnician Minimum – 3 hours per trip		50.00 Hour

GEOTECHNICAL FIELD TESTS

PLATE LOAD BEARING TESTS: ASTM D-1994, 1995 AND 1996		
Senior Geotechnician		50.00/HR
PILE LOAD TESTS: ASTM D-1143		
Senior Geotechnician		50.00/HR
Hydraulic Jack Calibration		220.00/EA
Inclinometer Equipment		138.00/DA
Percolation Tests: (Local) HCR I-59, FHAR 1103-10		600.00/EA
CALIFORNIA BEARING RATIO TESTS: ASTM D-1883, SOM		
Senior Geotechnician		50.00/HR

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

PORTLAND CEMENT CONCRETE/ASPHALT
AGGREGATES

TESTING:		
Abrasion - Los Angeles, Coarse Aggregate	ASTM C-131	180.00/EA
Absorption	ASTM C-127 And C-128	30.00/EA
Alkali Reactivity	ASTM C-289 and C-227	205.00/EA
Clay Lumps	ASTM C-142	18.00/EA
Comparative Mortar, Compressive Strength	ASTM C-780	83.00/EA
Deleterious Materials (Coarse Aggregate)	ASTM C-142	100.00/EA
Deleterious Materials (Fine Aggregate)	ASTM C-40	85.00/EA
Light Weight Particles	ASTM-C-123	35.00/EA
Loss on Ignition	ASTM C-114	20.00/EA
Material finer than #200 Sieve (or Decantation)	ASTM C-117; AASHTO T-11	40.00/EA
Organic Impurities (or Colorimetric)	ASTM C-40	22.00/EA
Percent Crushed Material	ODOT SS 1021	32.00/EA
Plasticity Index	ASTM D-424	65.00/EA
Sand Equivalent	ASTM D-2419	52.00/EA
Sieve Analysis, Dry	ASTM C-136	40.00/EA
Soundness, Magnesium Sulphate (5 cycles)	ASTM C-88	270.00/EA
Soundness, Sodium Sulphate (5 cycles)	ASTM C-88	280.00/EA
Specific Gravity	ASTM C-127 and C-128	45.00/EA
Staining	ASTM C-641	45.00/EA
Washed Sieve Analysis	AASHTO T-11 and T-27	40.00/EA
Weight per Cubic Foot	ASTM C-29	32.00/EA
Base Course Materials -- Gradation	ASTM C-136	42.00/EA
Base Course Materials - Sodium Sulfate Soundness	ASTM C-88	280.00/EA

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

BITUMINOUS MATERIALS

TESTING:		
Asphalt Cement		130.00/EA
Penetration Test Only	AASHTO M20	Cost + 5%
Asphalt Emulsions	AASHTO M140 and M208	Cost + 5%
Asphalt Liquids	AASHTO M226	Cost + 5%
Tars	ASTM D-490	Cost + 5%
Filler Material (Performed Expansion Joint)	ASTM D-242	Cost + 5%

BITUMINOUS MIXTURES

DESIGN MIXES:		
Standard	AISS #2	80.00/HR
Marshall	ASTM D-1559	80.00/HR
TESTING:		
Extraction and Gradation	ASTM D-2171 & ASHTO T184	105.00/EA
Specific Gravity	ASTM D-2041	85.00/EA
Density of Core Samples		22.00/EA

**PORTLAND CEMENT CONCRETE
CEMENT**

TESTING:		
Complete Physical and Chemical Analysis (sample basis)	ASTM C-150 and C-114	Cost + 5%
Complete Physical and Chemical Analysis of Expansive Cement	ASTM C-845	Cost + 5%
Restrained Expansion Test of Expansive Cement	ASTM C-806	Cost + 5%
Alkali Content	ASTM C-114	Cost + 5%
False Set	ASTM C-451	Cost + 5%
Cement Content of Hardened Concrete	ASTM C-85	Cost + 5%
Chloride Content of Hardened Concrete		Cost + 5%

LIME – FLY ASH

TESTING:		
Chemical Analysis of Lime	ASTM C-25	Cost + 5%
Chemical Analysis of Fly Ash (Silicon Dioxide, Ferric Oxide, Aluminum Oxide, and loss on ignition)	ASTM C618	Cost + 5%
Physical Requirements of Fly Ash	ASTM C-618	Cost + 5%

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

PORTLAND CEMENT CONCRETE
DESIGN MIXTURES

TESTING:		
First Point Mixes - including Specific gravity, gradation, and absorption testing of each size aggregate (2)		Cost + 5%
Subsequent Mixes - (using same source and size of aggregates)		Cost + 5%
Calculated Mix		Cost + 5%
Proof Beams	ASTM C-192	Cost + 5%
Proof Cylinders	ASTM C-192	Cost + 5%

PORTLAND CEMENT CONCRETE
BEAMS

SAMPLING AND TESTING:		ASTM C-31 ASTM C-78 and ASTM C-172
Fabricated concrete cylinders, picked up and tested by ATC Associates Inc.		42.00/BK
Fabricated by others, picked up with concrete cylinders and tested by ATC Associates, Inc.		38.50/BK
Fabricated and submitted to the laboratory by others, FOB		34.00/BK
Fabricated, picked up and tested by ATC Associates, Inc. - special trip Concrete Technician		42.00/BK
Testing		34.00/BK

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

PORTLAND CEMENT CONCRETE
CYLINDERS

SAMPLING AND TESTING:		ASTM C-31 C-39, C-142 and C-172
Services rendered within 20 mile radius of Fountain Square: fabricated, picked up and tested by ATC personnel including one hour on-site, one air test, slump tests, curing and molds, travel time and mileage		
2 cylinders per set		87.00/BK
3 cylinders per set		62.00/BK
4 cylinders per set		49.00/BK
5 cylinders per set		42.00/BK
6 cylinders per set		36.00/BK
Fabricated by others, picked up and tested by ATC personnel		
2 cylinders per set		49.00/BK
3 cylinders per set		36.00/BK
4 cylinders per set		30.00/BK
5 cylinders per set		26.00/BK
6 cylinders per set		24.00/BK
On site technician field time in excess of one hour during cylinder testing for causes other than by ATC will be billed at technician field rate.		\$38.00/HR
Concrete Cylinders for sites beyond 20 miles from Fountain Square will be fabricated and tested at technician rates for inspection services plus per cylinder test rate OR		13.00/EA
Fabricated and delivered by others to ATC Laboratory (FOB)- Standard cylinder (Also: Perlite, maximent and two-inch and four-inch cylinders)		13.00/EA
Testing of two-inch cube		13.00/EA
Air Content Tests (Extra)	ASTM C-231	13.00/EA
Cylinder Molds will be shipped from the laboratory to the job site upon request. The cost of shipping molds will be back charged		

PROPOSED ATC FEE SCHEDULE -- 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

PORTLAND CEMENT CONCRETE
CONCRETE CORES

SAMPLING:		
General Coring Equipment		250.00/DAY
Lead Coring Technician		50.00/HR
Vehicle Charge		30.00/Trip
Bit Charge (per inch diameter per inch length)		0.75/IN/IN
Minimum charge for 4 hours or less(excluding bit charge)		220.00/MN
Coring Assistant		38.00/HR
Backfill Materials		Cost + 5%
Extract core from submitted specimen		100.00/EA
TESTINGS CORE SAMPLES:		
Compression Strength Test	ASTM C-42 and C-39	35.00/EA
Unit Weight of Core		22.00/EA
Measurement of Core	ASTM C-174	9.00/EA

NONDESTRUCTIVE TESTING

REBOUND HAMMER TESTING:		
Senior Technician (Minimum Charge - 2 hours per trip)		50.00/HR
WINDSOR PROBE TESTING:		
Senior Technician (Minimum Charge - 2 hours per trip)		50.00/HR
Probe Charge (three probes per test)		40.00/TE

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

ROOFING

Continuous Inspection of Roofs During Construction; Preventative Maintenance Inspection of Existing Roofs		
INSPECTION:		
Registered Roof Observer (Minimum 4 hours/day)		65.00/HR
Assistant Technician (Roof Cuts)* (Minimum 4 hours/day)		50.00/HR
Vehicle Charge		30.00/Trip
CONSULTATION:		
Roof Moisture Survey		Price upon request
TESTING:		
Steep Asphalt	ASTM D-312	Cost + 5%
Pitch	ASTM D-450	Cost + 5%
Roof Cuts*	ASTM D-2829	
Asphaltic Built Up Roofing		200.00/EA
Coal Tar Pitch Built Up Roofing		275.00/EA
Plastic cement		Cost + 5%
Saturated Felt	ASTM D-227	Cost + 5%
Thermosetting Roof Fill	ASTM C-209	Cost + 5%
Gradation of Wearing Surface Aggregate	ASTM D-451 And D-1863	50.00/EA
Asbestos Determination		95.00/EA
<p>*NOTE: During construction, roof cuts will be obtained by the Roofing Contractors. During preventative maintenance inspection, they will be obtained by ATC personnel. In either case, patching is to be accomplished by a qualified Roofing Contractor or by others at the owners expense.</p>		

PROPOSED ATC FEE SCHEDULE – 2012, 2013 AND 2014 CONTRACT
CONSULTING ENGINEERING/MATERIAL TESTING AND INSPECTION SERVICES

STEEL INSPECTION SERVICES

Certified Welding Inspector (CWI)		65.00/HR
Certified Welding Inspector (CWI), OT		97.50/HR
Bolting Inspection		65.00/HR
Bolting Inspection, OT		67.50/HR
Fluorescent Penetrant Inspection		65.00/HR
Fluorescent Penetrant Inspection, OT		90.00/HR
Magnetic Partical Inspection		80.00/HR
Magnetic Partical Inspection, OT		90.00/HR
Ultrasonic Inspection		80.00/HR
Ultrasonic Inspection, OT		120.00/HR
Ultrasonic Inspection Equipment		70.00/DAY
Magnetic Partical Equipment		40.00/DAY
Hazardous Work Premium		8.00/HR
Liquid Penetrant Materials		40.00/DAY
Torque Wrench Rental		30.00/DAY
Radiographic Inspection (2 Technicians)		Cost + 5%
Radiographic Inspection (2 Technicians), OT		Cost + 5%
Radiographic Film Charge (14x17)		Cost + 5%
Radiographic Film Charge (4.5x10)		Cost + 5%
Radiographic Film Charge (4.5x17)		Cost + 5%

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Yang, Andrea
Sent: Wednesday, February 22, 2012 12:48 PM
To: 'cindy.taylor@atcassociates.com'; McVay, Melissa
Cc: Brazina, John; Henderson, Andrea
Subject: RE: ATC Foreign Entity Registration - Ohio
Attachments: rwservlet.pdf; http___www2.sos.state.oh.pdf

Hi Cindy,

In a search on the Ohio SOS website for ATC Environmental, Inc. the attached document showing cancellation of the fictitious name comes up. I also did find the that ATC Group Services Inc. (DE) has a valid foreign corporation registration in Ohio and that the old name was ATC Environmental, Inc.

Please confirm if it would be acceptable to change the contracting entity to ATC Group Services, Inc. , a Delaware Corporation.

Thanks

Andrea

From: Cindy Taylor [<mailto:cindy.taylor@atcassociates.com>]
Sent: Wednesday, February 22, 2012 10:16 AM
To: McVay, Melissa
Cc: Yang, Andrea; Brazina, John; Henderson, Andrea
Subject: ATC Foreign Entity Registration - Ohio

ATC is a Delaware Company and has held a valid Foreign Entity Registration with the Ohio Secretary of State since 8-26-1993, Charter #852181. We are registered as ATC Environmental and/or ATC Group Services d/b/a ATC Associates Inc. Please see attached document for proof of registration. If you have any questions, please call or e-mail me directly.

Thank You,

Cindy

Cindy Taylor | Business Development | **ATC Associates Inc.**
Cincinnati
513-842-3929 direct | 513-383-0553 mobile

11121 Canal Road | Cincinnati, Ohio 45241
513-771-2112 tel | 513-782-6908 | Fax
www.atcassociates.com

[Print this report](#)

Corporation Details

Corporation Details		
Entity Number	852181	
Business Name	ATC GROUP SERVICES INC.	
Filing Type	FOREIGN CORPORATION	
Status	Active	
Original Filing Date	08/26/1993	
Expiry Date		
Location:	County:	State: DELAWARE
Agent / Registrant Information		
CSC-LAWYERS INCORPORATING SERVICE (CORPORATION SERVICE COMPANY) 50 W. BROAD ST., STE 1800 COLUMBUS, OH 43215 Effective Date: 04/28/2005 Contact Status: Active		
Filings		
Filing Type	Date of Filing	Document Number/Image
FOREIGN LICENSE/FOR-PROFIT	08/26/1993	H669 1532
MISCELLANEOUS FILING	08/27/1998	5605 0693
FORM 7 NO FEE ASSESSED	09/04/1996	5953 0884
FOREIGN/AMENDMENT	10/25/1996	5693 0091
FORM 7 FEE ASSESSED	12/09/1996	5953 0880
FORM 7 NO FEE ASSESSED	12/09/1996	5953 0880
MISCELLANEOUS FILING	12/24/1996	5730 1267
MISCELLANEOUS FILING	12/24/1996	5730 1263
MISCELLANEOUS FILING	12/24/1996	5730 1258
FORM 7 NO FEE ASSESSED	04/03/1997	6156 0673
FOREIGN/DESIGNATED APPOINTMENT OF AGENT	06/26/1997	5960 0930
DOMESTIC AGENT SUBSEQUENT APPOINTMENT	10/15/2002	200228802888
FOREIGN/DESIGNATED APPOINTMENT OF AGENT	04/28/2005	200512402500
Old Names		
Effective Date	Old Name	
10/25/1996	ATC ENVIRONMENTAL INC.	

DATE	TRANSACTION DESCRIPTION
1. 12/24/2001	Canceled by Operation of Law (XOL)

Mail To:
 ATC GROUP SERVICES INC
 11121 CANAL RD
 CINCINNATI, OH 45241

-----cut along dotted line-----



The State of Ohio

Certificate

Secretary of State - J. Kenneth Blackwell

FN76247

It is hereby certified that the Secretary of State of Ohio has custody of the business records for ATC ENVIRONMENTAL INC. and that said business records show the recording of:

**CANCELLATION
 FAILURE TO FILE RENEWAL OF FICTITIOUS NAME**

United States of America
 State of Ohio
 Office of the Secretary of State

Witness my hand and the seal of the Secretary
 of State at Columbus, Ohio, This 24th day of
 December, A.D. 2001



J. Kenneth Blackwell
 J. Kenneth Blackwell
 Secretary of State

Yang, Andrea

From: Yang, Andrea
Sent: Wednesday, February 22, 2012 2:03 PM
To: 'cindy.taylor@atcassociates.com'; McVay, Melissa
Cc: Brazina, John; Henderson, Andrea
Subject: RE: ATC Foreign Entity Registration - Ohio

Thanks Cindy.

From: Cindy Taylor [<mailto:cindy.taylor@atcassociates.com>]
Sent: Wednesday, February 22, 2012 1:55 PM
To: Yang, Andrea; McVay, Melissa
Cc: Brazina, John; Henderson, Andrea
Subject: RE: ATC Foreign Entity Registration - Ohio

Yes – ATC Group Services, a Delaware Company is our holding/parent company. Sorry for the confusion. I must have downloaded the old one from the State Website.

Cindy

Cindy Taylor | Business Development | **ATC Associates Inc.**
Cincinnati
513-842-3929 direct | 513-383-0553 mobile

11121 Canal Road | Cincinnati, Ohio 45241
513-771-2112 tel | 513-782-6908 | Fax
www.atcassociates.com

Check out the new ATC Video

From: Yang, Andrea [<mailto:Andrea.Yang@cincinnati-oh.gov>]
Sent: Wednesday, February 22, 2012 12:48 PM
To: cindy.taylor@atcassociates.com; McVay, Melissa
Cc: Brazina, John; Henderson, Andrea
Subject: RE: ATC Foreign Entity Registration - Ohio

Hi Cindy,

In a search on the Ohio SOS website for ATC Environmental, Inc. the attached document showing cancellation of the fictitious name comes up. I also did find the that ATC Group Services Inc. (DE) has a valid foreign corporation registration in Ohio and that the old name was ATC Environmental, Inc.

Please confirm if it would be acceptable to change the contracting entity to ATC Group Services, Inc. , a Delaware Corporation.

Thanks

Andrea

From: Cindy Taylor [<mailto:cindy.taylor@atcassociates.com>]
Sent: Wednesday, February 22, 2012 10:16 AM
To: McVay, Melissa
Cc: Yang, Andrea; Brazina, John; Henderson, Andrea
Subject: ATC Foreign Entity Registration - Ohio

ATC is a Delaware Company and has held a valid Foreign Entity Registration with the Ohio Secretary of State since 8-26-1993, Charter #852181. We are registered as ATC Environmental and/or ATC Group Services d/b/a ATC Associates Inc. Please see attached document for proof of registration. If you have any questions, please call or e-mail me directly.

Thank You,
Cindy

Cindy Taylor | Business Development | **ATC Associates Inc.**
Cincinnati
513-842-3929 direct | 513-383-0553 mobile

11121 Canal Road | Cincinnati, Ohio 45241
513-771-2112 tel | 513-782-6908 | Fax
www.atcassociates.com

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7237

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Vivian Lambi & Associates, Inc. a Corporation organized under the laws of the State of Ohio, the address of which is 2312 Park Avenue Cincinnati, Ohio 45206-2712 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) Term. The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) Early Termination. Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

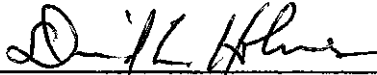
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

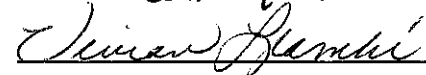
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Vivian Llambi and Associates, Inc.
[Insert Consultant's name]
a Kentucky Corporation

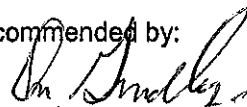
By: 

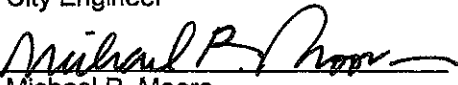
Printed Name: Vivian Llambi

Title: President

Date: 1/11/, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Andrew
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: R. Zero
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attachments A and B.

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 160 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202



HOURLY RATE SCHEDULE

ATTACHMENT A

(Effective Through December 31, 2015)

Principal	\$150.
Project Manager	\$115 - \$130.
Senior Landscape Architect	\$105 - \$115.
Landscape Architect	\$85 - \$90.
CADD	\$55 - \$90.
Graphics	\$ 90 - \$115.
Civil Engineer	\$120.
Clerical	\$60.



ITEMIZATION OF COSTS INCLUDED IN OVERHEAD

ATTACHMENT B

Vivian Llambi and Associates, Inc.

Overhead calculations are based on non-employee and non-project costs and expenses, including but not limited to the following:

- Advertising and Marketing
- Office and Computer Supplies
- Professional Services, i.e. Accounting, Legal (excluding project sub-consultants)
- Postage and Delivery
- Rent
- Utilities, including telephone
- Continuing Education
- Professional Dues, Publications and Licenses
- Repairs and Maintenance
- Insurance, General and Professional Liability (excluding employee benefits)
- Depreciation
- Property Taxes

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Vivian Llambi [Vivian.Llambi@vla.net]
Sent: Tuesday, February 21, 2012 4:38 PM
To: McVay@mailgate.rcc.org; McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Henderson, Robin
Subject: Re: Vivian Llambi & Associates, Inc. Contingency Contract

Categories: Red Category

Dear Ms. Mc Vay,

I am fine with the change. Vivian Llambi & Associates, Inc. was originally incorporated in Kentucky and is a foreign corporation in Ohio.

My Liability insurance carrier has quoted me \$900 to increase the aggregate from \$1,000, 000 to \$2,000,000. Although this may appear to be a small amount, it is a hardship on my small business. Would you please waive this requirement?

Thank you,

At 01:44 PM 2/21/2012, you wrote:

From: **McVay, Melissa** <Melissa.McVay@cincinnati-oh.gov>
Date: Tue, Feb 21, 2012 at 11:38 AM
Subject: Vivian Llambi & Associates, Inc. Contingency Contract
To: vivian.llambi@vla.net
Cc: "Brazina, John" <John.Brazina@cincinnati-oh.gov>, "Yang, Andrea" <Andrea.Yang@cincinnati-oh.gov>, "Henderson, Robin" <Robin.Henderson@cincinnati-oh.gov>

Ms. Llambi,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

The corporation is organized under the laws of the State of Kentucky (not Ohio)

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that these amendments are acceptable to you.

Also, please let us know if you have the necessary information concerning your certificate of liability insurance.

Thank you,

Mel McVay

Melissa McVay

City Planner

Department of Transportation & Engineering

City Hall, Room 450

801 Plum Street

Cincinnati, Ohio 45202

513.352.5269 office

513.352.5336 fax

--

This message was sent from my Google phone. If you need to reply please include a copy to my office address Vivian.Llambi@vla.net

--- This Message Was Sent By ---

Vivian Llambi
President

Vivian Llambi & Associates, Inc.
2312 Park Avenue
Cincinnati, Ohio 45206-2712

Phone: (513) 559-9444
Fax: (513) 559-0164

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. If you are NOT the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7236

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and **URS Corporation**, a Corporation organized under the laws of the State of Nevada the address of which is **36 East Seventh Street** ("Consultant").

**Suite 2300
Cincinnati, OH 45202**

Recitals:

A. The City's Department of Transportation & Engineering ("**DOTE**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least ~~thirty (30)~~ ^{ten (10)} days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement. GUA

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, excluding the professional liability policy, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver. GUA

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the negligent or willful acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage. GUA

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "Work Product"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

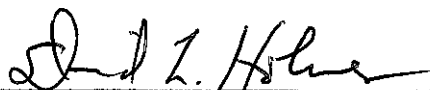
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

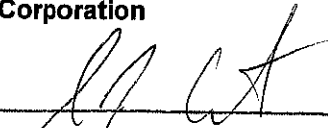
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

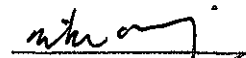
URS Corporation

By: 
Printed Name: Glenn Armstrong

Title: Vice President


Date: March 8, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: **MAR 08 2012**
Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HISTORIC ARCHITECTURE/ARCHEOLOGICAL SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Historic Architecture/Archelological Services may include any of the following:

Inspections & investigations	Subsurface exploration
Historic/Archelological studies	Coordination with other agencies
Planning & feasibility studies	Analysis and testing
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Data recovery	Preparation of SHPO documents
Remediation of historic resources for public projects	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project the City agrees to pay the consultant for all services rendered under this agreement in accordance with the following salary schedule:

Overhead Rate: 128.73%
 Cost of Money: 0.267%

Profit: 15%

<u>Name/Category</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Principal	\$203	\$212	\$222
Senior Project Manager	\$159	\$166	\$173
Project Manager	\$141	\$147	\$154
Senior Engineer	\$122	\$127	\$133
Engineer	\$101	\$106	\$111
Senior Architectural Historian	\$106	\$111	\$116
Senior Archeologist	\$82	\$86	\$90
Archeologist	\$59	\$61	\$64
Senior Designer/Technician	\$96	\$100	\$105
Designer/Technician	\$62	\$65	\$67
Jnr. Designer/Technician	\$53	\$56	\$58
Archeological Field Technician	\$45	\$47	\$49
Jnr. Archeological Field Technician	\$35	\$37	\$39
Surveyor	\$61	\$63	\$66
Admin/Clerical	\$56	\$59	\$61

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 128.73% and a net fee (profit) of 15%. A detailed breakdown of costs included in the computation of the overhead rate is included with this contract submittal. Additional personnel positions may be added during the term of this agreement pending approval of the City's Directors of the Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are noted included in the overhead computation and are approved in writing by the City for each project as listed below:

- Outside Reproduction – at cost
- Out of Town Travel - at cost
- Equipment Rental - 5% markup
- Out of Pocket Expenses 5% markup
- Outside Consultants 5% markup

URS Domestic Operating Division - Cincinnati
STATEMENT OF DIRECT LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD (UNAUDITED)
YEAR END DECEMBER 31, 2010

	PER COMPANY STATEMENT	ADJUSTMENTS	ADJUSTED STATEMENT	%	Unallowable or unallocable costs per FAR Section
Direct Labor	\$ 3,533,287	\$ (2,725)	\$ 3,530,562	100.0000%	Premium OT
Fringe Benefits:					
Vacation	\$ 314,184	-	\$ 314,184	8.899%	
Illness and Other Leave	128,024	-	128,024	3.626%	
Holiday	161,763	-	161,763	4.582%	
Workers Compensation Insurance	16,528	-	16,528	0.468%	
Medical and Life Insurance	389,262	-	389,262	11.025%	
Employer Retirement Plan Costs	84,882	-	84,882	2.404%	
Employers Taxes	406,982	-	406,982	11.527%	
Employee Welfare and Other Incentives	29,966	(17,171)	12,795	0.362%	31.205-6 (f), -34, -43
Total Fringe Benefits	1,531,591	(17,171)	1,514,420	42.895%	
General Overhead:					
Indirect Labor	1,269,383	-	1,269,383	35.954%	
Premium Overtime	-	2,725	2,725	0.077%	Premium OT
Operating and Reproduction Supplies	71,169	(558)	70,611	2.000%	31.205-14
Administrative, Financial and Legal	(19,580)	(286)	(19,866)	-0.563%	31.205-33
Facility Costs	488,320	-	488,320	13.831%	
Other Rents/Leases	33,365	-	33,365	0.945%	
Repairs and Maintenance	66,479	-	66,479	1.883%	
Telephone and Utilities	118,759	-	118,759	3.364%	
Travel, Entertainment and Relocation	100,526	(5,098)	95,428	2.703%	31.205-14, -35, -46, -51
Advertising and Business Taxes	(531)	(4,142)	(4,673)	-0.132%	51
Professional Activities	13,894	(54)	13,840	0.392%	31.205-1
Insurance and Permits	87,176	-	87,176	2.469%	31.205-14
Postage, Freight and Other Expenses	16,127	(661)	15,466	0.438%	31.205-8, -14, -51
Corporate G&A Allocation	179,347	(65,764)	113,583	3.217%	Note 1
Depreciation and Amortization	111,168	-	111,168	3.149%	
Internal Services	611,739	(75,749)	535,990	15.181%	Note 1
Bad Debts	(270)	270	-	0.000%	31.205-3
Gains/Losses, Bank charges and Other	798	(73)	725	0.021%	31.205-3, -14
Interest Expense	5,067	(5,067)	-	0.000%	31.205-20
State and Local Taxes	32,098	-	32,098	0.909%	
Total General Overhead	3,185,034	(154,457)	3,030,577	85.838%	
Total Fringe Benefits and General Overhead	\$ 4,716,625	\$ (171,628)	\$ 4,544,997	128.733%	

The information presented above is based upon our audited National overhead rates in accordance with Federal Acquisition Regulations. The above rates have not been audited and are not held out by URS as audited rates. The information presented above is intended solely for the use of URS and the City of Cincinnati, Ohio (and its departments and agencies) and is not intended to be and should not be used by anyone other than those specified parties.

Facilities Capital Cost of Money (FCCM) Calculation
 Year Ended December 31, 2010

Net Fixed Assets at Beginning of Year	347,363
Net Fixed Assets End of Period	243,041
Average Net Fixed Assets	295,202
FY 2010 Average Treasury Rate	3.19%
Facilities Capital Cost of Money (FCCM)	9,410
Direct Labor	3,530,562
Percentage of FCCM to Direct Labor	0.267%

The information presented above is based upon our audited National overhead rates in accordance with Federal Acquisition Regulations. The above rates have not been audited and are not held out by URS as audited rates. The information presented above is intended solely for the use of URS and the City of Cincinnati, Ohio (and its departments and agencies) and is not intended to be and should not be used by anyone other than those specified parties.

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/28/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH RISK & INSURANCE SERVICES 345 CALIFORNIA STREET, SUITE 1300 CALIFORNIA LICENSE NO. 0437153 SAN FRANCISCO, CA 94104		CONTACT NAME: PHONE (A/C, No., Ext): E-MAIL ADDRESS: FAX (A/C, No):	
URSCOR-ALL-PROF-12-13 CINCY 25X723 NOC	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED URS Corporation 36 East 7th Street, Suite 2300 Cincinnati, OH 45202	INSURER A: National Union Fire Ins Co Pittsburgh PA		19445100
	INSURER B: Zurich American Insurance Company		16535100
	INSURER C: Illinois National Ins Co		23817001
	INSURER D: Insurance Company Of The State Of PA		19429100
	INSURER E: Lexington Insurance Company		19437000
	INSURER F: Lloyd's Of London & British Companies		15792004

COVERAGES **CERTIFICATE NUMBER:** SEA-002302117-02 **REVISION NUMBER:** 5

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU, BFPD <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X	X	GL4870829	05/01/2011	06/01/2012	EACH OCCURRENCE \$ 4,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 4,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		X	BAP938521502	05/01/2011	06/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB EXCESS LIAB OCCUR CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A D C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	SEE ATTACHED - ACORD 101	01/01/2012	01/01/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
E	Prof. Liab w/Lmtd Contractual			015438088	05/01/2011	06/01/2012	Each Claim \$ 2,000,000
F	Claims Made / Retro 11-17-1938			PE1105150/PE1105490	05/01/2011	06/01/2012	Aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: City of Cincinnati, On Call Architectural and Engineering Services Contract No. 25X7236

The City of Cincinnati is included as Additional Insured as respects the General Liability policy, where required by written contract.

Waiver of Subrogation applies in favor of the City of Cincinnati, its employees and agents as respects the General Liability, Automobile Liability and Workers Compensation policies, where required by written contract and as permitted by law.

CERTIFICATE HOLDER

CANCELLATION

City of Cincinnati
 Department of Transportation & Engineering
 801 Plum Street, Room 450
 Cincinnati, OH 45202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.



ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH RISK & INSURANCE SERVICES		NAMED INSURED URS Corporation 36 East 7th Street, Suite 2300 Cincinnati, OH 45202	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

The Workers' Compensation coverage shown does not apply in monopolistic states. In the States of ND, OH, WA and WY Workers' Compensation coverage is provided by the State Fund. In those States, the above-referenced policies provide Stop-Gap Employers' Liability only. Workers Compensation policies apply as indicated below:

Insurer A: National Union Fire Ins Co Pittsburgh, PA NAIC# 19445100
 WC 021417576 - CA
 WC 021417579 - TX

Insurer D: Insurance Company Of The State Of PA NAIC# 19429100
 WC 021417580 - MA, WI (Stop Gap)
 WC 021417581 - AK, AL, AR, AZ, CO, DE, GA, ID, KS, KY, MD, ME, MO, MS, MT, NC, NH, NM, NV, OK, OR, PA, RI, SC, SD, TN, UT, VA, VT, WV
 WC 021417585 - MN

Insurer C: Illinois National Ins Co NAIC# 23817001
 WC 021417577 - FL
 WC 021417578 - NY
 WC 021417582 - CT, DC, HI, IA, IL, IN, LA, MI, NE, NJ

INSURER CANCELLATION TERMS

NAMED INSURED: URS Corporation	POLICY NO: Various
--	------------------------------

HOLDER NAME: **City of Cincinnati**

CANCELLATION TERMS:

30 Days Notice of Cancellation will be provided by the carriers in accordance with the policy terms and conditions in the event the policies are cancelled or non-renewed, for any reason other than non-payment of premiums.

CANCELLATION TERMS APPLY TO THE FOLLOWING COVERAGES:

GL, AL, WC and Professional Liab.



Bureau of Workers' Compensation

30 W. Spring St.
Columbus, OH 43215

Certificate of Premium Payment

This certifies the employer listed below has paid into the Ohio State Insurance Fund as required by law. Therefore, the employer is entitled to the rights and benefits of the fund for the period specified. For more information, call 1-800-OHIOBWC.

This certificate must be conspicuously posted.

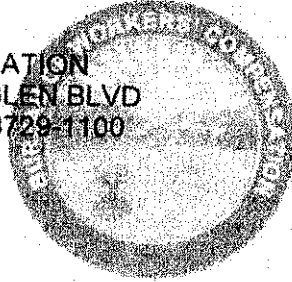
Policy No. and Employer

Period Specified Below

185939

07/01/2011 Thru 02/29/2012

URS CORPORATION
9400 AMBERGLEN BLVD
AUSTIN, TX 78729-1100



ohiobwc.com

Stephen Buchner
Administrator/CEO

You can reproduce this certificate as needed.

Ohio Bureau of Workers' Compensation

Required Posting

Effective Oct. 13, 2004, Section 4123.54 of the Ohio Revised Code requires notice of rebuttable presumption. Rebuttable presumption means an employee may dispute or prove untrue the presumption (or belief) that alcohol or a controlled substance not prescribed by the employee's physician is the proximate cause (main reason) of the work-related injury.

The burden of proof is on the employee to prove the presence of alcohol or a controlled substance was not the proximate cause of the work-related injury. An employee who tests positive or refuses to submit to chemical testing may be disqualified for compensation and benefits under the Workers' Compensation Act.



Bureau of Workers' Compensation

You must post this language with the certificate of premium payment.

P-29 BWC-1629 7/7/08

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and the **University of Cincinnati**, a state of Ohio educational institution organized under Section 3361 of the Ohio Revised Code on behalf of its College of Engineering and Applied Science, School of Electronics and Computing Systems, the address of which is University Hall, Suite 530, 51 Goodman Drive, P.O. Box 210222, Cincinnati, OH 45221-0222, ("**UC**").

Recitals:

A. The City's Department of Transportation & Engineering ("**DOTE**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. UC employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. UC has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. UC's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to UC under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving UC no less than thirty (30) days prior written notice thereof. Upon

the termination of this Agreement, UC shall promptly deliver to the City all finished and unfinished Work Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate UC for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that UC is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask UC to provide some, all, or none of the services described on Exhibit A. UC acknowledges and agrees that the City shall have no obligation to assign any work to UC under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to UC under this Agreement for specific projects (each, a "**Project**"), as follows: (i) the City shall send to UC a scope of work for the Project; (ii) UC shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and UC mutually approve the budget (as so approved, the "**Budget**"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing UC to proceed with the work.

(C) Standards. UC shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay UC in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, UC shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. UC shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that UC shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to UC under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to UC under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests UC to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if UC agrees to provide such services, the City shall pay for such services at UC's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that UC may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse UC for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by UC in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, UC shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, UC shall reference the specific line item in the Budget. UC shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate UC's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

UC shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. UC will be responsible for the acts and omissions of its employees and agents arising hereunder. UC maintains a comprehensive program of self-insurance and commercially purchased insurance, covering property, casualty and liability exposures to UC and its employees, agents and volunteers, while acting on the University's behalf. Proof of this coverage will be provided to City upon request and will remain in full force and effect for the duration of the clinical experience.

(C) General Indemnity. UC will be responsible for the acts and omissions of its employees and agents arising hereunder. UC maintains a comprehensive program of self-insurance and commercially purchased insurance, covering property, casualty and liability exposures to UC and its employees, agents and volunteers, while acting on the University's behalf.

6. DEFAULT.

If UC violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon UC shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to UC, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. If at the time of termination UC is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to UC. The City's waiver of any breach by UC of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of

this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If UC sends a notice to the City alleging that the City is in default under this Agreement, UC shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. UC shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to UC, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by UC to the City being referred to herein collectively as "**Records and Reports**"). UC shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, UC shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit UC's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by UC to the City, UC shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

UC certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term UC or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and UC shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

UC shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. UC shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and UC. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by UC for the City under this Agreement, including without limitation all computer software and applications developed by or for UC in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. UC shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, UC shall not seek any patents or trademarks with respect to any Work Product, nor shall UC assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. UC, its agents, and its employees will keep and retain any and all "Confidential" information and records generated under this Agreement, that are marked "Confidential" in the strictest confidence and

will shall not disclose or distribute it to third parties without the City's prior express written authorization. UC shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

(D) Publication of Results. Notwithstanding anything to the contrary herein, UC reserves the right to publish the results of its efforts performed hereunder. Before submitting results to a third party (or UC publisher) for consideration for publication, however, UC agrees to submit copies of any manuscript proposed for publication to the City at least thirty (30) days in advance of the presentation or publication date, and if City does not ask to defer publication within thirty (30) days after receipt of the manuscript so that the patent application may be filed, UC may proceed with publication. In the event City asks to defer publication, UC shall not publish or otherwise disclose to any third party any of the information contained in the manuscript until such time as a patent application has been filed or the expiration of sixty (60) days after the date of submission of the manuscript to City, whichever occurs first.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. UC shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. Any disputes arising out of or under this Agreement shall be litigated in the Ohio Court of Claims. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by UC of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and UC represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those

representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:


- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

University of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

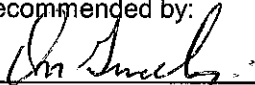
By: 

Date: 3/12/, 2012

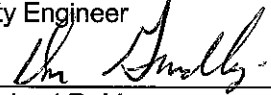
Printed Name: Mary Ucci
~~Director Grant Administration~~
~~Sponsored Research Services~~

Title: _____

Date: 2/6, 2012


Recommended by: 

Don Gindling, P.E.
City Engineer



Michael R. Moore
Director, Department of Transportation and Engineering

Approved by: 
Rochelle Thompson, Contract Compliance Officer

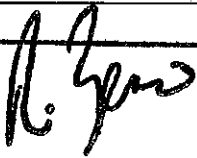
Approved as to Form: 
Assistant City Solicitor

MAR 01 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF FUNDS NOT REQUIRED**

Amount: _____



By: _____
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TECHNICAL TESTING/INSPECTION SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Technical Testing/Inspection Services may include any of the following:

Structural inspections & investigations	Subsurface exploration
Structural studies	Preliminary Engineering
Planning & feasibility studies	Structural analysis and testing
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Underwater inspection

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of _____% and a net fee (profit) of _____%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are not eligible for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Braxton, Patricia

From: Brazina, John
Sent: Wednesday, January 25, 2012 12:47 PM
To: 'Blust, Gerri (blustgl)'; Braxton, Patricia
Cc: Seta, Anthony (setaar); Ross, Carol (rossco); Sparks, Diane (sparksdn); Helmicki, Arthur (helmicaj); Banks, Ellen (banksen); Adams, Janice (adamjc); Israel, Loren (israeln); Pinski, Geoffrey (pinskig)
Subject: RE: CITY OF CINCINNATI/Architectural and Engineering Services Agreements # 25x7235/Dr. Helmicki/SIGNATURE by 1/27/12

Gerri,

I talked our lawyer. We are ok with requests in the email. We will revise the agreement and email it to you for your review.

Thanks,
John

From: Blust, Gerri (blustgl) [mailto:BLUSTGL@UCMAIL.UC.EDU]
Sent: Tuesday, January 24, 2012 7:59 AM
To: Brazina, John
Cc: Seta, Anthony (setaar); Ross, Carol (rossco); Sparks, Diane (sparksdn); Helmicki, Arthur (helmicaj); Banks, Ellen (banksen); Adams, Janice (adamjc); Israel, Loren (israeln); Pinski, Geoffrey (pinskig)
Subject: CITY OF CINCINNATI/Architectural and Engineering Services Agreements # 25x7235/Dr. Helmicki/SIGNATURE by 1/27/12
Importance: High

Good morning, John:

This is a follow-up email to our phone conversation of January 20th. I have attached the previous fully executed agreement with Dr. Helmicki (03-09-06_FEO_City of Cincinnati_Helmicki.pdf), a copy of the Exception Letter that was initiated in response to RFQ233Engineering2011 (9-1-11_Letter of Exceptions_Helmicki.doc) with requested changes, several Board Rules and a copy of our Insurance Verification Letter, as requested.

Some of the major areas of concern from our Office of General Counsel in regards to the Agreement for Architectural and Engineering Services are, as follows:

Sections of Concern:

Section 5. INSURANCE; INDEMNITY:

(A) Insurance:

The University maintains a comprehensive program of self-insurance and commercially purchased insurance and maintains worker's compensation insurance in such amounts as required by law. To be sure that the provisions match our insurance, the following language should be used instead:

"The University of Cincinnati will be responsible for the acts and omissions of its employees and agents arising hereunder. The University maintains a comprehensive program of self-insurance and commercially purchased insurance, covering property, casualty and liability exposures to the University and its employees, agents and volunteers, while acting on the University's behalf. Proof of this coverage will be provided to City upon request and will remain in full force and effect for the duration of the clinical experience.

(B) Waiver of Subrogation:

I have a call into our Office of Risk Management, but I anticipate that it will not be acceptable to that office or to our insurance company that we waive our right of recovery and subrogation for injury, loss or damages that might arise from the negligence of the City, its employees or its agents.

(C) General Indemnity:

As an instrumentality of the State of Ohio, the University of Cincinnati is not permitted to indemnify or hold harmless its contracting partners as explained in Ohio Attorney General Opinion 96-060 (available at 96-060). If required, updates of the opinion are available at 99-049 and 2005-007. We can, however, we can accept language that obligates us to take responsibility for our actions. To that end, we need to either omit section 5(c) in its entirety or replace that section with the following language: "The University of Cincinnati will be responsible for the acts and omissions of its employees and agents arising hereunder. The University maintains a comprehensive program of self-insurance and commercially purchased insurance, covering property, casualty and liability exposures to the University and its employees, agents and volunteers, while acting on the University's behalf."

Section 6. DEFAULT:

As an instrumentality of the State of Ohio, the University of Cincinnati does not enter agreements that would require it to encumber state fees to pay for the litigation fees of its contracting parties. Therefore, we need to delete the second sentence of section 6.

Section 12. GENERAL PROVISIONS:

(D) Governing Law. As an instrumentality of the State of Ohio, the university is protected by sovereign immunity and, therefore, as provided in Ohio Revised Code Section 2743.02 (A)(1), the Ohio Court of Claims is the only court with original jurisdiction to hear cases involving our University. We will need to amend the second sentence of Section 12(d) to read as follows: "Any disputes arising out of or under this Agreement shall be litigated in Ohio Court of Claims."

An area of concern from our Office of Entrepreneurial Affairs and Technology Commercialization in regards to the Agreement for Architectural and Engineering Services is the lack of a Publication clause. Please add the following clause:

"Notwithstanding anything to the contrary herein, Consultant reserves the reserves the right to publish the results of its efforts performed hereunder. Before publishing, however, Consultant agrees to submit copies of any manuscript proposed for publication to City at least thirty (30) days in advance of the presentation or publication date, and if City does not ask to defer publication within thirty (30) days after receipt of the manuscript so that patent applications may be filed, Consultant may proceed with publication. In the event City asks to defer publication, Consultant shall not publish or otherwise disclose to any third party any of the information contained in the manuscript until such time as a patent application has been filed or the expiration of sixty (60) days after the date of submission of the manuscript to City, whichever occurs first."

Please review the above and advise if acceptable.

NOTE: Please advise how you would like for the University to proceed, as the above Exceptions/Comments will require a response, before the University can process the Agreements for execution.

Thank you for your assistance.

Gerri

Gerri L. Blust
Sr. Grant Administrator/Contract Administrator
Sponsored Research Services

Contract Division
University of Cincinnati
University Hall, Suite 530
51 Goodman Drive
Cincinnati, OH 45221-0222

Phone: 513-556-4359

Fax: 513-556-4346

www.uc.edu/srs

gerri.blust@uc.edu

Please note my new hours:

Monday through Friday 6:30 a.m. - 3:00 p.m.



Sponsored Research Services

University of Cincinnati
PO Box 210222
Cincinnati, Ohio 45221-0222

University Hall, Suite 530
51 Goodman Drive
Cincinnati, OH 45221-0222
www.uc.edu/srs
(513) 556-2870 Phone
(513) 556-4346 Fax

EXCEPTIONS LETTER

September 1, 2011

City of Cincinnati
Division of Purchasing
Two Centennial Plaza, Suite 234
Cincinnati, OH 45202-1947

Electronic Mail

RE: **RFQ233ENGINEERING2011**
Due September 8, 2011 @ 12:00 Noon local time

To Whom It May Concern:

Per previous agreements with the City of Cincinnati the University has the following exceptions to Part III. Contract Terms and Conditions:

Part III. Contract Terms and Conditions:

Please change the word, "Consultant" to read, "UC" or "University", throughout the Contract, as the University, as a state of Ohio educational institution, cannot enter into "Consulting" agreements.

Hold Harmless – please delete, as per Section 3345.15 of the Ohio Revised Code the attorney general is the attorney of the state universities. Indemnification and hold harmless clauses have been held unenforceable by the Attorney General of Ohio under Opinion 96-060 dated November 21, 1996, Opinion 99-049 dated September 21, 1999 and Opinion 2005-007 dated March 1, 2005, unless certain conditions obtain, specifically (a) there has been an appropriation for that purpose by the State Legislature, and (b) the duration of the promise is limited to the biennium for which the appropriation was authorized. All three opinions found at: <http://www.ohioattorneygeneral.gov/Legal/Opinions> Indemnification is an obligation of future funds. The state of Ohio is funded on a biennium and cannot incur future debt that has not been appropriated by the Ohio General Assembly.

Consultant Insurance – please delete, as the University is self-insured – please see attached Insurance Verification Letter.

Confidentiality – please change the first sentence to read, “The University, its agents, and its employees, will keep and retain any and all “Confidential” information and records generated under this Agreement, that are marked “Confidential” in the strictest confidence and will neither use such information....”.

Law to Govern – please change, “Ohio courts” to read “Ohio Court of Claims”, and change, “Hamilton County, Ohio” to read, “Franklin County, Ohio”, as the University of Cincinnati is a state of Ohio educational institution.

Forum Selection – please change, “...acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio...”, to read, “...acknowledge and agree that the Court of Claims sitting in Franklin County, Ohio...”, as the University of Cincinnati is a state of Ohio educational institution.

Part IV. Forms/Non-Discrimination Policy:

The University of Cincinnati does not anticipate the need for our bid process based on the University of Cincinnati Board Rule Number: 20-23-02, which is enclosed for your convenience. Therefore Forms 2003, 2004, 2005, 2006, 2007, and 2007-a will not apply and we have annotated these forms accordingly.

University of Cincinnati is a state institution of higher education organized under Section 3361 of the Ohio Revised Code and as such the University of Cincinnati must follow the procurement policies and procedures set forth under the Ohio Revised Code.

The University of Cincinnati is looking forward to working with the City of Cincinnati.

Sincerely,

Gerri L. Blust, Sr. Grant Administrator/Contract Administrator
Sponsored Research Services
University Hall, Suite 530
51 Goodman Drive
University of Cincinnati
PO Box 210222
Cincinnati, Ohio 45221-0222

Phone: 513.556.4359
Fax: 513.556.4346
gerri.blust@uc.edu

Enc: Rules of the University
20-23-14 Contracts: Contract compliance
20-23-13 Business and Finance - EEO
20-23-02 Purchasing, Competitive bidding
Insurance Verification Letter

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7234
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and ~~TRAN SYSTEMS CORPORATION~~ TRAN SYSTEMS CORPORATION OF OHIO a ~~CORPORATION~~ organized under the laws of the State of OH, the address of which is 4555 LAKE FOREST DR SUITE 540 CINCINNATI, OH 45242 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

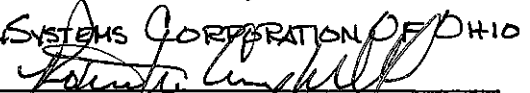
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name]

TRANSYSTEMS CORPORATION OF OHIO
By: 

Printed Name: Robert W. Campbell

Title: Sr. Vice President

Date: Jan 18th, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

A. [Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
FUNDS NOT REQUIRED

Amount: _____

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
FEDERALLY FUNDED PLANNING AND ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Planning or Engineering Design that have Federal Funds may include any of the following:

Preliminary engineering	Right-of-way plans
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TECHNICAL TESTING/INSPECTION SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Technical Testing/Inspection Services may include any of the following:

Structural inspections & investigations	Subsurface exploration
Structural studies	Preliminary Engineering
Planning & feasibility studies	Structural analysis and testing
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Underwater inspection

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150.00% and a net fee (profit) of 12.00%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

TranSystems Corporation of Ohio
 Fee Structure
 1/1/2012-1/1/2013
 Year 1

Overhead Rate: 150.28%
 Net Fee (Profit): 12.00%

Job Classification	Maximum Hourly Rate *	150.28%	12.00%	Loaded Hourly Rate
Administrative II (A2)	\$28.00	\$42.08	\$ 8.41	\$78.49
Administrative II (A2) (Overtime)	\$42.00	\$63.12	\$ 12.61	\$117.73
Administrative/Marketing III (AM3)	\$42.00	\$63.12	\$ 12.61	\$117.73
Engineer I (E1)	\$29.50	\$44.33	\$ 8.86	\$82.69
Engineer II (E2)	\$42.00	\$63.12	\$ 12.61	\$117.73
Engineer III (E3 or EM)	\$60.00	\$90.17	\$ 18.02	\$168.19
Engineer IV (E4)	\$64.50	\$96.93	\$ 19.37	\$180.80
Structural Engineer I (ES1)	\$30.00	\$45.08	\$ 9.01	\$84.09
Structural Engineer II (ES2)	\$46.00	\$69.13	\$ 13.82	\$128.94
Structural Engineer IV (ES4)	\$76.00	\$114.21	\$ 22.83	\$213.04
Structural Engineer V (ES5)	\$116.00	\$174.32	\$ 34.84	\$325.16
Planner I (P1)	\$25.50	\$38.32	\$ 7.66	\$71.48
Planner II (P2)	\$32.50	\$48.84	\$ 9.76	\$91.10
Planner III (P3)	\$60.00	\$90.17	\$ 18.02	\$168.19
Scientist I (SC1)	\$23.50	\$35.32	\$ 7.06	\$65.87
Scientist II (SC2)	\$30.50	\$45.84	\$ 9.16	\$85.50
Scientist I (SC3 or SCM)	\$43.00	\$64.62	\$ 12.91	\$120.53
Technician I (T1)	\$17.00	\$25.55	\$ 5.11	\$47.65
Technician I (T1) (Overtime)	\$25.50	\$38.32	\$ 7.66	\$71.48
Technician II (T2)	\$25.00	\$37.57	\$ 7.51	\$70.08
Technician II (T2) (Overtime)	\$37.50	\$56.36	\$ 11.26	\$105.12
Technician III (T3)	\$32.50	\$48.84	\$ 9.76	\$91.10
Technician III (T3) (Overtime)	\$48.75	\$73.26	\$ 14.64	\$136.65

* All hourly rate calculations are based upon current rates with additional inflation for yearly increases during length of contract. Rates will be billed as actual-not-to-exceed the maximum rates listed above.

TranSystems Corporation of Ohio
 Fee Structure
 1/1/2012-1/1/2013
 Year 2

Overhead Rate: 150.28%
 Net Fee (Profit): 12.00%

Job Classification	Maximum Hourly Rate *	150.28%	12.00%	Loaded Hourly Rate
Administrative II (A2)	\$29.00	\$43.58	\$ 8.71	\$81.29
Administrative II (A2) (Overtime)	\$43.50	\$65.37	\$ 13.06	\$121.94
Administrative/Marketing III (AM3)	\$43.50	\$65.37	\$ 13.06	\$121.94
Engineer I (E1)	\$31.00	\$46.59	\$ 9.31	\$86.90
Engineer II (E2)	\$43.50	\$65.37	\$ 13.06	\$121.94
Engineer III (E3 or EM)	\$62.50	\$93.93	\$ 18.77	\$175.20
Engineer IV (E4)	\$67.50	\$101.44	\$ 20.27	\$189.21
Structural Engineer I (ES1)	\$31.00	\$46.59	\$ 9.31	\$86.90
Structural Engineer II (ES2)	\$48.00	\$72.13	\$ 14.42	\$134.55
Structural Engineer IV (ES4)	\$80.00	\$120.22	\$ 24.03	\$224.25
Structural Engineer V (ES5)	\$121.00	\$181.84	\$ 36.34	\$339.18
Planner I (P1)	\$26.50	\$39.82	\$ 7.96	\$74.28
Planner II (P2)	\$34.00	\$51.10	\$ 10.21	\$95.31
Planner III (P3)	\$62.50	\$93.93	\$ 18.77	\$175.20
Scientist I (SC1)	\$24.00	\$36.07	\$ 7.21	\$67.28
Scientist II (SC2)	\$32.00	\$48.09	\$ 9.61	\$89.70
Scientist I (SC3 or SCM)	\$44.50	\$66.87	\$ 13.36	\$124.74
Technician I (T1)	\$17.50	\$26.30	\$ 5.26	\$49.05
Technician I (T1) (Overtime)	\$26.25	\$39.45	\$ 7.88	\$73.58
Technician II (T2)	\$26.00	\$39.07	\$ 7.81	\$72.88
Technician II (T2) (Overtime)	\$39.00	\$58.61	\$ 11.71	\$109.32
Technician III (T3)	\$34.00	\$51.10	\$ 10.21	\$95.31
Technician III (T3) (Overtime)	\$51.00	\$76.64	\$ 15.32	\$142.96

* All hourly rate calculations are based upon current rates with additional inflation for yearly increases during length of contract. Rates will be billed as actual-not-to-exceed the maximum rates listed above.

TranSystems Corporation of Ohio
 Fee Structure
 1/1/2012-1/1/2013
 Year 3

Overhead Rate: 150.28%
 Net Fee (Profit): 12.00%

Job Classification	Maximum Hourly Rate *	150.28%	12.00%	Loaded Hourly Rate
Administrative II (A2)	\$30.00	\$45.08	\$ 9.01	\$84.09
Administrative II (A2) (Overtime)	\$45.00	\$67.63	\$ 13.52	\$126.14
Administrative/Marketing III (AM3)	\$45.00	\$67.63	\$ 13.52	\$126.14
Engineer I (E1)	\$32.00	\$48.09	\$ 9.61	\$89.70
Engineer II (E2)	\$45.00	\$67.63	\$ 13.52	\$126.14
Engineer III (E3 or EM)	\$65.00	\$97.68	\$ 19.52	\$182.20
Engineer IV (E4)	\$70.00	\$105.20	\$ 21.02	\$196.22
Structural Engineer I (ES1)	\$32.00	\$48.09	\$ 9.61	\$89.70
Structural Engineer II (ES2)	\$50.00	\$75.14	\$ 15.02	\$140.16
Structural Engineer IV (ES4)	\$85.00	\$127.74	\$ 25.53	\$238.27
Structural Engineer V (ES5)	\$125.00	\$187.85	\$ 37.54	\$350.39
Planner I (P1)	\$28.00	\$42.08	\$ 8.41	\$78.49
Planner II (P2)	\$35.00	\$52.60	\$ 10.51	\$98.11
Planner III (P3)	\$65.00	\$97.68	\$ 19.52	\$182.20
Scientist I (SC1)	\$25.00	\$37.57	\$ 7.51	\$70.08
Scientist II (SC2)	\$33.00	\$49.59	\$ 9.91	\$92.50
Scientist I (SC3 or SCM)	\$46.00	\$69.13	\$ 13.82	\$128.94
Technician I (T1)	\$18.00	\$27.05	\$ 5.41	\$50.46
Technician I (T1) (Overtime)	\$27.00	\$40.58	\$ 8.11	\$75.68
Technician II (T2)	\$27.00	\$40.58	\$ 8.11	\$75.68
Technician II (T2) (Overtime)	\$40.50	\$60.86	\$ 12.16	\$113.53
Technician III (T3)	\$35.00	\$52.60	\$ 10.51	\$98.11
Technician III (T3) (Overtime)	\$52.50	\$78.90	\$ 15.77	\$147.16

* All hourly rate calculations are based upon current rates with additional inflation for yearly increases during length of contract. Rates will be billed as actual-not-to-exceed the maximum rates listed above.

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7233
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and THP LIMITED, INC., a Corp. organized under the laws of the State of Ohio, the address of which is 100 E 8th Street ("Consultant").

Suite 3,
Cincinnati, Ohio 45202-2133

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.


(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

THP Limited Inc.
[insert Consultant's name]

By: 
Milton Dohoney, Jr., City Manager

By: 

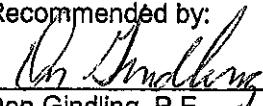
Date: 3/12/, 2012

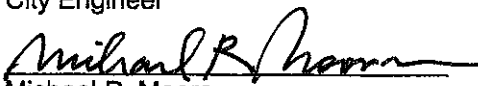
Printed Name: E. James Millar

Title: President

Date: Jan 26, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
BUILDING STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Building Structures Engineering Services may include any of the following:

Structural inspections	Structural investigations
Building studies	Preliminary Engineering
Planning & feasibility studies	Structural analysis and design of buildings
Condition studies and product evaluation	Cathodic protection design & maintenance
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Senior Principals	\$190.00/Hour
Principals	\$130.00 to \$180.00/Hour
Registered Professionals	\$90.00 to \$125.00/Hour
Engineers and Senior Technicians	\$65.00 to \$90.00/Hour
Technicians and Clerical	\$45.00 to \$65.00/Hour

The above salary schedule ^{Below 149} represents the direct salary costs ^{Below 15} to be paid for this work and includes an overhead rate of _____% and a net fee (profit) of _____%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

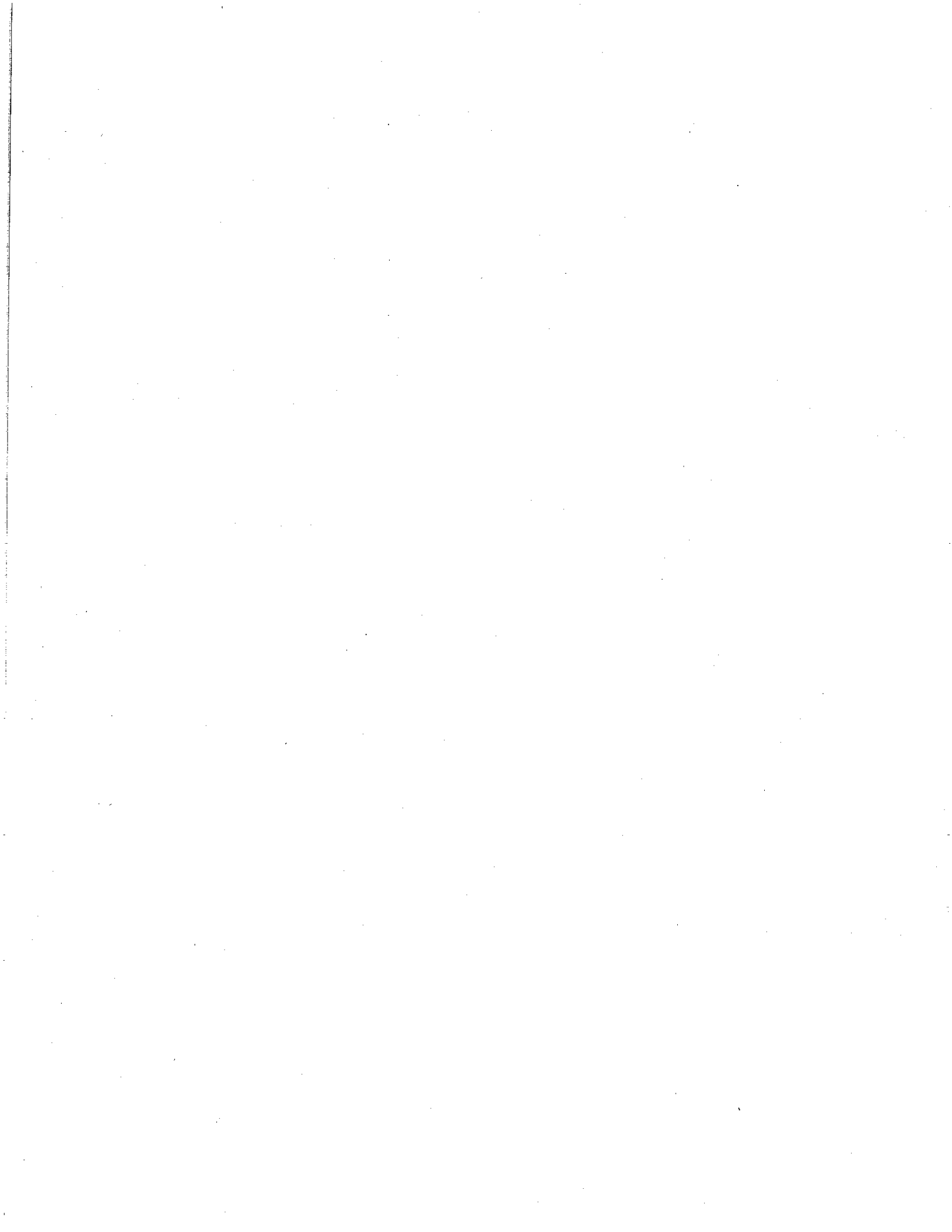
(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

THP LIMITED, INC. OVERHEAD
BASED ON ACTUAL / ACCRUED RESULTS THRU 12-31-10

O/H ON DIRECT LABOR	DIRECT EXPENSES	INDIRECT EXPENSES
WAGES	2,433,343	894,576
EMPLOYEE BENEFITS		0
FEDERAL UNEMPLOYMENT		3,123
STATE UNEMPLOYMENT		6,977
FICA TAXES		281,437
INSURANCE-WORKMAN'S COMP		9,660
INSURANCE-EMPLOYEE GROUP		581,780
	2,433,343	1,777,553
INDIRECT EXPENSES	1,777,553	
DIRECT EXPENSES	2,433,343	= 0.730498
		INDIRECT
O/H ON GENERAL & ADMINISTRATIVE	TOTAL G&A	G&A EXPENSE
GENERAL TIME	825,762	825,762
TAXES-OTHER	15,722	15,722
INSURANCE-GENERAL	174,469	174,469
RENT / UTILITIES / MAINTENANCE	279,852	279,852
OFFICE EQUIP MAINT./SUPPLIES	0	0
TELEPHONE	59,499	59,499
PROJECT DIRECT EXPENSES	1,079,566	0
OFFICE SUPPLIES & EXPENSE	42,434	42,434
LITIGATION LEGAL	17,683	0
COMPUTER & RELATED EXPENSE	119,558	119,558
TRAVEL EXPENSE	82,204	82,204
DEPRECIATION & AMORT	74,240	74,240
TREASURY INTEREST	0	0
MORTGAGE INTEREST	0	0
LIBRARY & REFERENCE	0	0
ACCTG / LEGAL FEES	20,999	20,999
DIRECTORIES & ADVERTISING	34,209	34,209
MARKETING EXPENSES	0	0
MISCELLANEOUS	5,925	5,925
MEMBERSHIPS & DUES	56,567	56,567
MEETINGS / CONVENTIONS / SEMINARS	34,277	34,277
BANK CHARGES	0	0
BUSINESS DEVELOPMENT	0	0
BUSINESS CONSULTANTS	6,513	6,513
DONATIONS & CONTRIBUTIONS	4,289	4,289
	2,933,768	1,836,519
INDIRECT & G&A EXPENSES	1,836,519	
DIRECT EXPENSES	2,433,343	= 0.754731
Direct		
THP LIMITED, INC. OVERHEAD - THRU 12-31-10	1.485229	= 1.49



CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7232

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and **THELEN ASSOCIATES, INC.**, a ~~Corporation~~ organized under the laws of the State of Ohio, the address of which is 1780 Canillon Boulevard ("Consultant").
Kentucky Cincinnati, Ohio 45240-2795

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*


Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Thelen Associates, Inc., a *Kentucky*
[insert Consultant's name] *corporation*

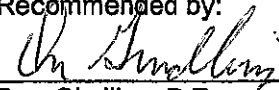
By: 


Printed Name: J. Dale Proffitt

Title: Senior Vice President-Treasurer

Date: January 19, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

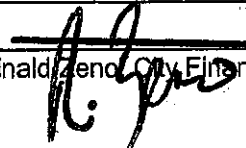
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
GEOTECHNICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Geotechnical Engineering Services may include any of the following:

Geotechnical inspections & investigations	Subsurface exploration
Geotechnical studies	Preliminary Engineering
Planning & feasibility studies	Geotechnical analysis and design
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Borings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED



PAYMENT SCHEDULE 2012-2015

Page 1 of 11

Client: **City of Cincinnati
Greater Cincinnati Water Works
Metropolitan Sewer District of Greater Cincinnati**

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
	DRILLING		
102	Drilling Services	LS	*****
103	Equipment Rental	LS	*****
104	Per Diem, Two-Person Crew	Day	\$250.00
105	Out-of-Pocket Expense	Each	*****
106	Travel Time for Drill Crew	Hour	\$140.00
107	Environmental Supply Trailer	Day	\$325.00
108	Mob. & Demob. of Environmental Supply Trailer	Mile	\$1.75
108A	Mob. & Demob. of Environmental Supply Trailer	LS	*****
109	Steam Cleaning Equipment	Day	\$130.00
110	Casing Cover, Installed	Each	\$210.00
111	Decontamination of Drill Rig & Tools	Hour	\$215.00
112	Bentonite Pellets	Pail	\$50.00
113	Arrow Board	Day	\$125.00
114	Cement	Bag	\$17.50
115	Bentonite	Bag	\$20.00
116	Grout Backfill	Foot	\$8.00
117	Protective Clothing, Hazardous Drilling	Day	\$157.50
118	Mobilization & Demobilization of Drill Rig	LS	\$300.00
119	Mobilization & Demobilization of Drill Rig	Mile	\$6.75
120	Truck-Mounted Drill Rig	Hour	\$250.00
121	Skid-Mounted Drill Rig	Hour	\$245.00
121A	All-Terrain Drill Rig	Hour	\$245.00
122	Overtime, Drill Rig	Hour	\$260.00
123	Double Time, Drill Rig	Hour	\$275.00
124	Standby Time, Drill Rig and Crew	Hour	\$200.00

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
125	Standby Time, Drill Rig and Crew, Overtime	Hour	\$250.00
126	Standby Time, Drill Rig and Crew, Double Time	Hour	\$260.00
127	Staking Boring Locations by Drill Crew	Hour	\$200.00
128	Auger Boring Using 4-1/4" Roller Bit	Foot	\$42.50
129	Excess Moving of Drill Rig, Soft Ground Conditions	Hour	\$200.00
130	Excess Moving of Drill Rig Due To Site Conditions	Hour	\$200.00
131	Mobilization & Demobilization of Dozer	LS	\$500.00
132	Mobilization & Demobilization of Dozer	Mile	\$10.50
133	Equipment for Access of Drill Rig	LS	*****
134	Equipment, Thelen Dozer	Hour	\$125.00
135	Overtime for Drill Crew	Hour	\$75.00
136	Water Truck	Day	\$300.00
138	Environmental Supply Truck	Hour	\$85.00
139	Hole Advancement Using 6-1/4" Roller Bit	Foot	\$55.00
140	Test Boring With Truck-Mounted Drill Rig	Foot	\$22.00
140S	Add'l Drilling Ftg to Address Site Seismic Conds.	Foot	\$22.00
141	Test Boring With Skid-Mounted Drill Rig	Foot	\$26.75
141A	Test Boring With All-Terrain Drill Rig	Foot	\$24.50
142	Auger Boring Using CFA, Soil	Foot	\$17.25
143	Auger Boring Using CFA, Bedrock	Foot	\$36.50
144	Auger Boring Using 3-1/4" ID HS Augers, < 50'	Foot	\$16.25
145	Auger Boring Using 3-1/4" ID HS Augers, 51' -100'	Foot	\$22.75
146	Auger Boring Using 3-1/4" ID HS Augers, > 100'	Foot	\$25.75
147	Auger Boring Using 4-1/4" ID HS Augers, < 50'	Foot	\$19.25
148	Auger Boring Using 4-1/4" ID HS Augers, > 50'	Foot	\$24.75
149	Auger Boring Using 6-1/4" ID HS Augers, < 50'	Foot	\$20.75
149A	Auger Boring Using 6-1/4" ID HS Augers, > 50'	Foot	\$30.25
150	Auger Boring Using 8-1/4" ID HS Augers, < 50'	Foot	\$30.25
151	Hole Advancement Using 3-1/2" Roller Bit	Foot	\$35.25
152	Soil Test Boring With Hand Equipment	Foot	\$41.25
153	Two-Inch Split Spoon Sample With Hand Equipment	Each	\$35.00
154	Three-Inch O.D. Continuous Sample, 5' Length	Each	\$120.00
155	Three-Inch O.D. Continuous Sample, 5' Clear Liner	Each	\$48.50
158	Senior Technician	Hour	\$57.75
159	Staff Technician	Hour	\$48.75
160	Overtime for Senior Technician	Hour	\$66.00
161	Overtime for Staff Technician	Hour	\$62.75
162	Drill Coordinator	Hour	\$72.50
163	Technician for Property/Utility Clearance	Hour	\$60.00

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
164	Flagperson	Hour	\$57.75
165	Staff Geotechnical Engineer	Hour	\$115.00
166	Soil Samples for Chemical Analysis	Each	*****
167	Water Samples for Chemical Analysis	Each	*****
168	Two-Inch O.D. Split Spoon Sample, < 50'	Each	\$23.75
169	Two-Inch O.D. Split Spoon Sample, 51' to 100'	Each	\$27.50
170	Two-Inch O.D. Split Spoon Sample, > 100'	Each	\$32.50
171	Three-Inch O.D. Split Spoon Sample	Each	\$40.00
172	Three-Inch Shelby Tube Sample	Each	\$87.75
173	Bulk Bag Sample	Each	\$88.75
174	Setup Charge for Rock Coring	Each	\$167.50
175	Rock Coring, NXM Size	Foot	\$40.00
176	Rock Coring, Wireline	Foot	\$35.00
177	Pressure Testing	Hour	\$250.00
178	Well Developing Equipment	Day	\$58.50
179	Monitoring Well Installation	Hour	\$250.00
180	Piezometer Installation	Foot	\$22.00
181	Slope Inclinator Installation/Sampling Included	Foot	\$46.75
182	Monitoring Well Installation, 5' Screen, 2" Stainless Steel	Foot	\$75.00
183	Monitoring Well Installation, 10' Screen, 2" Stainless Steel	Foot	\$76.00
184	Monitoring Well Installation, 5' Screen, 2" PVC	Foot	*See note below
185	Monitoring Well Installation, 10' Screen, 2" PVC	Foot	*See note below
186	Monitoring Well Installation, 5' Screen, 4" PVC	Foot	*See note below
187	Monitoring Well Installation, 10' Screen, 4" PVC	Foot	*See note below
188	Guard Post, 3" Galvanized	Each	\$137.50
189	55 Gallon Drum	Each	\$85.00
190	Street Opening/Closing Fee	LS	\$450.00
191	Concrete Core	Each	\$120.00
192	Asphalt Core	Each	\$97.50
193	Core With Base Thickness Measurement	Each	\$125.00
194	Concrete Coring Equipment	Hour	\$16.50
195	Diamond Bit Charge	Inch	\$7.75
196	Backhoe Test Pit Excavation	Hour	\$105.00
197	Borehole Surface Patch/Asphalt	Each	\$45.75
198	Borehole Surface Patch/Concrete	Each	\$35.00
199	Mileage for Personnel	Mile	\$0.85
199A	Fuel Surcharge	LS	*****

* Note: Please see attached Exhibit A for Items 184, 185, 186 and 187.

EXHIBIT A

PVC MONITORING WELL INSTALLATION

<u>Item No.</u>	<u>Item Description</u>	<u>Depth of Well</u>	<u>Unit</u>	<u>Rate</u>
184-A	Monitoring Well Install., 5' Screen, 2" PVC	0 - 15	Foot	\$34.25
184-B	"	16 - 20	Foot	\$30.25
184-C	"	21 - 25	Foot	\$25.50
184-D	"	26 - 30	Foot	\$24.25
184-E	"	31 - 40	Foot	\$21.50
184-F	"	41 - 50	Foot	\$21.00
185-A	Monitoring Well Install., 10' Screen, 2" PVC	0 - 15	Foot	\$37.50
185-B	"	16 - 20	Foot	\$32.00
185-C	"	21 - 25	Foot	\$26.50
185-D	"	26 - 30	Foot	\$25.50
185-E	"	31 - 40	Foot	\$22.75
185-F	"	41 - 50	Foot	\$21.00
186-A	Monitoring Well Install., 5' Screen, 4" PVC	0 - 15	Foot	\$36.50
186-B	"	16 - 20	Foot	\$32.75
186-C	"	21 - 25	Foot	\$27.25
186-D	"	26 - 30	Foot	\$26.25
186-E	"	31 - 40	Foot	\$23.75
186-F	"	41 - 50	Foot	\$22.00
187-A	Monitoring Well Install., 10' Screen, 4" PVC	0 - 15	Foot	\$44.75
187-B	"	16 - 20	Foot	\$35.00
187-C	"	21 - 25	Foot	\$30.00
187-D	"	26 - 30	Foot	\$29.00
187-E	"	31 - 40	Foot	\$25.50
187-F	"	41 - 50	Foot	\$23.25

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
	ENGINEERING		
202	Engineering Services	LS	*****
203	Equipment Rental	LS	*****
204	Per Diem	Day	\$150.00
205	Out-of-Pocket Expense	LS	*****
206	Printing Cost	LS	*****
207	Film & Developing to Document Conditions	Each	\$4.25
208	Pickup Truck	Day	\$20.00
209	Pickup Truck	Mile	\$1.75
212	Crack Monitor	Each	\$45.00
213	Slope Inclinometer	Day	\$190.00
214	Rebar Location Meter	Day	\$135.00
215	Settlement Plate, Materials & Fabrication	Each	\$210.00
216	Fireproofing Density Test	Each	\$42.50
217	Fireproofing Bond Test Supplies	Each	\$30.00
220	Seismograph Rental	Hour	*****
223	Project Coordinator	Hour	\$90.00
224	Principal of Firm	Hour	\$152.50
225	Registered Engineer	Hour	*****
226	Survey Party Chief	Hour	*****
227	Survey Rodperson	Hour	*****
247	Three-Person Survey Crew	Hour	\$150.00
248	Two-Person Survey Crew	Hour	\$125.00
248A	Two-Person Rod Crew - Rodperson	Hour	*****
249	Draftsperson	Hour	\$60.00
250	Computer Time	Hour	\$72.50
251	Preparation of Geotechnical Report	LS	*****
251A	Eng. Services to Prepare Site Seismic Eval. with GE	LS	*****
251B	Eng. Services to Prepare Site Seismic Eval. without GE	LS	*****
252	Graduate Geotechnical Engineer	Hour	\$87.75
253	Staff Engineer	Hour	\$105.00
254	Staff Geotechnical Engineer	Hour	\$115.00
255	Senior Geotechnical Engineer	Hour	\$127.50
256	Principal Geotechnical Engineer	Hour	\$150.00
257	Chief Geotechnical Engineer	Hour	\$135.00
258	Senior Technician	Hour	\$57.75
258A	Senior Technician (2 hour minimum)	Hour	\$57.75
259	Staff Technician	Hour	\$48.50

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
259A	Staff Technician (2 hour minimum)	Hour	\$48.50
260	Overtime for Senior Technician	Hour	\$66.00
260A	Overtime for Senior Technician (2 hour minimum)	Hour	\$66.00
261	Overtime for Staff Technician	Hour	\$60.00
261A	Overtime for Staff Technician (2 hour minimum)	Hour	\$60.00
262	Testing Manager	Hour	\$86.50
263	Senior Project Technician	Hour	\$77.50
263A	Senior Project Technician (2 hour minimum)	Hour	\$77.50
264	Overtime for Senior Project Technician	Hour	\$92.50
264A	Overtime for Senior Project Technician (2 hour minimum)	Hour	\$92.50
271	Junior Engineer	Hour	\$90.00
272	Materials Engineer	Hour	\$105.00
273	Staff Engineer	Hour	\$105.00
274	Staff Professional Engineer	Hour	\$115.00
275	Senior Professional Engineer	Hour	\$127.50
276	Principal Professional Engineer	Hour	\$150.00
277	Chief Professional Engineer	Hour	\$135.00
278	Graduate Engineer	Hour	\$87.75
279	Staff Engineering Geologist	Hour	\$105.00
280	Senior Engineering Geologist	Hour	\$115.00
281	Certified Welding Inspector	Hour	\$105.00
282	Associate Welding Inspector	Hour	\$87.75
283	Project Manager	Hour	\$115.00
285	Geotechnical Engineer for Legal Case Preparation	Hour	\$200.00
286	Geotechnical Engineer for Deposition & Testifying	Hour	\$275.00
287	Stenographer/Word Processing	Hour	\$42.50
288	Technician for Property/Utility Clearance	Hour	\$63.50
289	Engineering Technician to Log Test Pits	Hour	\$63.50
290	Flagperson	Hour	\$57.75
291	Geotechnical Engineer for Log Preparation	Hour	\$115.00
293	Senior Technician for Structural Steel Review	Hour	\$87.75
294	Overtime, Senior Technician for Structural Steel Review	Hour	\$101.75
299	Mileage for Personnel	Mile	\$0.85
299A	Fuel Surcharge	LS	*****
	FIELD TESTING		
302	Field Testing Services	LS	*****
303	Equipment Rental	LS	*****
304	Per Diem	Day	\$150.00
305	Out-of-Pocket Expense	LS	*****

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
306	Printing Cost	LS	*****
307	Film & Developing to Document Conditions	Each	\$4.25
308	Pickup Truck	Hour	\$20.00
309	Pickup Truck	Mile	\$1.75
332	Three-Inch Shelby Tube Sample	Each	\$87.75
347	Three-Person Survey Crew	Hour	\$150.00
348	Two-Person Survey Crew	Hour	\$125.00
349	Draftsperson	Hour	\$60.00
353	Staff Engineer	Hour	\$105.00
354	Staff Geotechnical Engineer	Hour	\$115.00
355	Senior Geotechnical Engineer	Hour	\$127.50
356	Assistant Testing Manager	Hour	\$75.00
357	Overtime for Assistant Testing Manager	Hour	\$86.75
358	Senior Technician	Hour	\$57.75
358A	Senior Technician (2 hour minimum)	Hour	\$57.75
359	Staff Technician	Hour	\$48.50
359A	Staff Technician (2 hour minimum)	Hour	\$48.50
360	Overtime for Senior Technician	Hour	\$66.00
360A	Overtime for Senior Technician (2 hour minimum)	Hour	\$66.00
361	Overtime for Staff Technician	Hour	\$60.00
361A	Overtime for Staff Technician (2 hour minimum)	Hour	\$60.00
362	Testing Manager	Hour	\$86.50
363	Nuclear Density Equipment	Day	\$70.00
364	Nuclear Density Equipment	Visit	\$70.00
365	Two-Inch Split Spoon Sample With Hand Equipment	Each	\$35.00
366	Soil Test Boring With Hand Equipment	Foot	\$41.25
367	Auger Boring With Hand Equipment	Foot	\$41.25
368	Overtime for Testing Manager	Hour	\$96.50
369	Nuclear Density Equipment, Asphalt	Day	\$105.00
370	Flagperson	Hour	\$57.75
371	Senior Project Technician	Hour	\$77.50
371A	Senior Project Technician (2 hour minimum)	Hour	\$77.50
372	Overtime for Senior Project Technician	Hour	\$92.50
372A	Overtime for Senior Project Technician (2 hour minimum)	Hour	\$92.50
373	Bulk Bag Sample	Each	\$88.75
377	Asphalt Core	Each	\$97.50
378	Asphalt Core With Base Thickness Measurement	Each	\$125.00
379	Asphalt Coring Equipment	Hour	\$16.50
380	Diamond Bit Charge	Inch	\$7.75

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
387	Stenographer/Word Processing	Hour	\$42.50
393	Senior Technician for Structural Steel Review	Hour	\$87.75
394	Overtime, Senior Technician for Structural Steel Review	Hour	\$101.75
399	Mileage for Personnel	Mile	\$0.85
399A	Fuel Surcharge	LS	*****
	CONCRETE TESTING		
402	Concrete Testing Services	LS	*****
403	Equipment Rental	LS	*****
404	Per Diem	Day	\$150.00
405	Out-of-Pocket Expense	LS	*****
406	Printing Cost	LS	*****
407	Film & Developing to Document Conditions	Each	\$4.25
408	Pickup Truck	Hour	\$20.00
409	Pickup Truck	Mile	\$1.75
410	Concrete Coring Equipment	Hour	\$16.50
411	Diamond Bit Charge	Inch	\$7.75
412	Concrete Core With Base Thickness Measurement	Each	\$125.00
413	Horizontal Concrete Core	Each	\$125.00
415	Concrete Core Compression Test	Each	\$52.50
416	Windsor Probe Shot	Each	\$20.00
416A	Windsor Pin Shot	Each	\$20.00
417	Unit Weight Test	Each	\$41.50
418	Yield Test	Each	\$41.50
419	Trip Charge for Cylinder Pickup	Trip	*****
421	Conc. Cyl. Made by Client, Picked Up & Tested by Thelen 2/Set	Each	\$46.25
424	Conc. Cyl. Made by Client, Picked Up & Tested by Thelen 3/Set	Each	\$41.25
427	Conc. Cyl. Made by Client, Picked Up & Tested by Thelen 4/Set	Each	\$40.00
430	Conc. Cyl. Made by Client, Picked Up & Tested by Thelen 5/Set	Each	\$38.50
433	Conc. Cyl. Made by Client, Picked Up & Tested by Thelen 6/Set	Each	\$36.75
435	Air Content Test (Pressure Method)	Each	\$23.75
435A	Air Content Test (Volumetric Method)	Each	\$23.75
436	Concrete Test Cylinder Delivered to Thelen	Each	\$22.50
436A	Concrete Test Cylinder Compression Test	Each	\$14.00
437	Concrete Test Beam Delivered to Thelen	Each	\$72.50
437A	Concrete Test Beam Compression Test	Each	\$35.00
438	Concrete Test Beam by Client/Contractor	Each	\$77.00
439	Concrete Test Beam by Thelen	Each	\$84.75
440	Grout/Mortar Cube by Thelen	Each	\$40.00
440A	Grout/Mortar Cube Compression Test	Each	\$11.75

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
441	Concrete Cylinder Mold	Each	\$5.50
442	Verification of Concrete Mix Design, 6 Cylinders	Each	\$500.00
442A	Concrete Trial Mixture, 3 Water Cement Ratios	Each	\$1,500.00
444	Rapid Chloride Permeability Test	Each	\$275.00
445	Accelerated Concrete Curing	Each	\$90.00
446	Petrographic Exam. of Hardened Concrete, ASTM C856	Each	*****
447	Linear Traverse of Hardened Concrete, ASTM C457	Each	*****
448	Masonry Block Absorption Test	Each	\$85.00
449	Masonry Block Compression Test	Each	\$110.00
450	Computer Time	Hour	\$72.50
451	Concrete Curing Box, if not provided by Contractor	Day	\$7.00
452	Concrete Core of Abrasive Materials	Each	\$205.00
453	Density of Concrete Core	Each	\$55.00
454	Masonry Block Prism Test	Each	*****
455	Grout Flow Test	Each	\$55.00
456	Assistant Testing Manager	Hour	\$75.00
457	Overtime for Assistant Testing Manager	Hour	\$86.75
458	Senior Concrete Technician	Hour	\$57.75
458A	Senior Technician (2 hour minimum)	Hour	\$57.75
459	Staff Technician	Hour	\$48.50
459A	Staff Technician (2 hour minimum)	Hour	\$48.50
460	Overtime for Senior Technician	Hour	\$66.00
460A	Overtime for Senior Technician (2 hour minimum)	Hour	\$66.00
461	Overtime for Staff Technician	Hour	\$60.00
461A	Overtime for Staff Technician (2 hour minimum)	Hour	\$60.00
462	Testing Manager	Hour	\$86.50
463	Concrete Field Laboratory	Day	*****
464	Grout/Mortar Cube by Contractor	Each	\$28.75
465	Nitrate Test	Each	\$41.50
466	Concrete Core	Each	\$120.00
467	Air Meter Calibration	Each	\$185.00
468	Overtime for Testing Manager	Hour	\$96.50
469	Shotcrete Cores from Shotcrete Panel	Panel	*****
470	Flagperson for Coring Crew	Hour	\$57.75
471	Ice for Hot Weather Concrete	Bag	\$3.25
472	Sub-Floor Moisture Test Kit	Each	\$23.75
473	Determine Evaporation Rate of Concrete	Hour	\$90.75
474	Staff Professional Engineer	Hour	\$115.00
475	3" x 3" x 6" Masonry Grout Specimen	Each	\$70.00

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
475A	3" x 3" x 6" Masonry Grout Specimen Compression Test	Each	\$24.25
476	Floor Flatness and Floor Levelness Determination	Hour	\$62.75
476A	Floor Flatness and Floor Levelness Equipment	Day	\$137.50
477	Deduction for Hold Cylinder	Each	\$3.75
478	Restrained Expansion of Concrete, 3 Per Set	Set	\$400.00
479	Length Change of Cement Mortar & Concrete, 3/Set	Set	\$240.00
480	Concrete Cylinder by Thelen, 7 Per Set	Each	\$45.00
483	Concrete Cylinder by Thelen, 3 Per Set	Each	\$55.00
486	Concrete Cylinder by Thelen, 4 Per Set	Each	\$50.00
489	Concrete Cylinder by Thelen, 5 Per Set	Each	\$47.75
492	Concrete Cylinder by Thelen, 6 Per Set	Each	\$45.00
493	CLSM-CDF 3" x 6" Cylinders by Thelen, 3 Per Set	Each	\$53.75
495	Splitting Tensile Strength	Each	\$97.50
496	Cement Content of Hardened Concrete, ASTM C1084	Each	*****
497	Water Soluble Chloride Test	Each	*****
499	Mileage for Personnel	Mile	\$0.85
499A	Fuel Surcharge	LS	*****
	LABORATORY TESTING		
502	Laboratory Testing Services	LS	*****
503	Equipment Rental	LS	*****
505	Out-of-Pocket Expense	LS	*****
507	Film & Developing to Document Conditions	Each	\$4.25
508	Direct Shear Test	Point	\$195.00
509	Residual Direct Shear Test	Point	\$210.00
513	Standard Proctor w/ Oversize Correction of Unit Weight	Each	\$215.00
514	Modified Proctor w/ Oversize Correction of Unit Weight	Each	\$245.00
515	Slake Durability Index	Each	\$115.00
516	Wet-Dry/Freeze-Thaw Test	Each	\$1,400.00
517	Shale-Mortar Bond Test	Each	\$357.50
519	Brick Compression Test	Each	\$68.75
520	Brick Prism Compression Test	Each	*****
521	Brick Flexural Test	Each	\$68.75
522	Extrusion of Shelby Tube	Each	\$24.00
523	Relative Density Test	Each	\$275.00
524	Laboratory CBR Test (Without Proctor Test)	Each	\$400.00
525	Unconfined Compression Test, Remolded Sample	Each	\$150.00
526	Percentage of Shale in Aggregate	Each	\$66.00
527	Natural Moisture Content Test	Each	\$10.00
528	Atterberg Limits Test	Each	\$65.50

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
529	Shrinkage Limit Test	Each	\$78.75
530	Specific Gravity Test, Soil	Each	\$60.00
531	Unconfined Compression Test, Soil	Each	\$72.00
532	Unconfined Compression Test, Bedrock	Each	\$200.00
533	Triaxial Compression Test; CD With P.P.	Point	\$350.00
534	Triaxial Compression Test; UU With P.P.	Point	\$310.00
535	Triaxial Compression Test; CU With P.P.	Point	\$350.00
536	Miniature Vane Shear Test	Each	\$10.00
537	Consolidation Test, Standard Loading	Each	\$975.00
538	Consolidation Test, With Time Curves	Each	\$1,000.00
539	Consolidation Test, Special Loading	Each	\$1,000.00
540	Natural Density Test	Each	\$57.75
540A	Natural Density Test, Paraffin Method	Each	\$78.75
541	Sieve Analysis, Dry	Each	\$58.00
542	Sieve Analysis, Washed	Each	\$72.00
543	Sieve and Hydrometer Analysis	Each	\$135.00
544	Hydrometer Analysis	Each	\$100.00
545	Standard Proctor Moisture-Density Test	Each	\$155.00
546	Modified Proctor Moisture-Density Test	Each	\$187.50
547	Triaxial Compression Test, UD	Each	\$250.00
548	Sand Equivalent Test	Each	\$105.00
549	Lightweight Pieces (Chert)	Each	\$350.00
550	Computer Time	Hour	\$72.50
551	Tx Compression Test, CD With P.P., Remolded Sample	Each	\$450.00
552	Tx Compression Test, UU With P.P., Remolded Sample	Each	\$450.00
553	Tx Compression Test, CU With P.P., Remolded Sample	Each	\$450.00
554	Staff Geotechnical Engineer	Hour	\$115.00
555	Effect of Organic Impurities	Each	\$1,750.00
556	Assistant Testing Manager	Hour	\$75.00
557	Overtime for Assistant Testing Manager	Hour	\$86.75
558	Senior Technician	Hour	\$57.75
559	Staff Technician	Hour	\$48.50
560	Overtime for Senior Technician	Hour	\$66.00
561	Overtime for Staff Technician	Hour	\$60.00
562	Testing Manager	Hour	\$86.50
563	Potential Alkali-Silica Reactivity, ASTM C1260	Each	\$1,075.00
564	Clay Lumps and Friable Particles, Coarse Aggregate	Each	\$150.00
568	Overtime for Testing Manager	Hour	\$96.50
569	Material Finer than No. 200 Sieve	Each	\$85.00

<u>Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
570	Organic Carbon Determination	Each	\$63.50
571	Maximum Specific Gravity of Asphalt (Rice Test)	Each	\$136.50
572	Asphalt Extraction, Gradation and Ash Correction	Each	\$195.00
573	Density of Asphalt Core	Each	\$55.00
574	Los Angeles Abrasion Test	Each	\$250.00
575	Marshall Method Mix Verification	Each	\$575.00
576	Bulk Unit Weight Test, Aggregate	Each	\$70.00
577	One-Dimensional Swell Test (Thelen method)	Each	\$110.00
578	Clay Lumps and Friable Particles in Fine Aggregate	Each	\$100.00
579	Lightweight Pieces (Coal and Lignite)	Each	\$180.00
580	Organic Impurities in Fine Aggregate	Each	\$70.00
581	Percent Crushed Pieces	Each	\$85.00
582	Percent Flat or Elongated Pieces	Each	\$90.00
583	Specific Gravity & Absorption, Aggregate	Each	\$150.00
584	Soundness Test (5 Size Designations)	Each	\$375.00
585	Soundness Test (> 5 Size Designations)	Each	\$600.00
586	pH Determination	Each	\$40.00
587	Sulfides Content	Each	\$55.00
588	Redox Potential	Each	\$40.00
589	Resistivity Test	Each	\$66.00
590	Permeability Test, Remolded	Each	\$525.00
591	Cation Exchange Capacity	Each	\$100.00
592	Permeability Test	Each	\$475.00
593	Marshall Method Density Verification	Each	\$250.00
594	Porosity Test	Each	\$120.00
599	Mileage for Personnel	Mile	\$0.85
599A	Fuel Surcharge	LS	*****

Note: Items designated as ***** will be invoiced at cost plus 5% or price will be quoted upon request for specific project.

Concrete test cylinder and beams/grout cubes and specimen unit prices for Items 480, 483, 486, 489, 492, 439, 440 and 475 include travel time, mileage, fabricating test cylinders/specimens, performing air content test (on concrete), pick- up, compression test and reporting results.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See Attached Payment Schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 187.0% and a net fee (profit) of 8 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup



THELEN ASSOCIATES, INC.

www.thelenassoc.com

Geotechnical • Testing Engineers

• 1780 Carillon Boulevard, Cincinnati, Ohio 45240-2795 / 513-825-4350 / Fax 513-825-4756

Offices
Erlanger, Kentucky
Lexington, Kentucky
Cincinnati, Ohio
Dayton, Ohio

Costs included in Overhead Calculation:

Division Rents
Personnel Overhead
Advertising
Contributions
Dues & Subscriptions
Employee Benefits
Heat & Utilities
Interest Expense
Interest Income
Drug & Alcohol Testing
Insurance, Property & Casualty
Insurance, Workers Comp.
Insurance, Life
Insurance, Errors & Omission
Legal Fees
Accounting Expense
Penalties & Fines
Postage
Repairs & Maintenance
Maintenance Agreement Contract
Security Monitoring
Office Equipment Rental/Lease
Stationery & Supplies
Computer Related Expenses
Ohio CAT Tax
Taxes and Permits
Telephone
Depreciation
Gain (Loss) on Sale of Assets
Professional Fees

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Nancy Goins [ngoins@thelenassoc.com]
Sent: Tuesday, February 21, 2012 1:18 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea; Dale Proffitt
Subject: RE: Thelen Associates, Inc. Contingency Contract

Yes that change is acceptable to us.

Have a good day!

Nancy M. Goins, CPSM
Thelen Associates, Inc.
ngoins@thelenassoc.com

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Tuesday, February 21, 2012 11:58 AM
To: Nancy Goins
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: Thelen Associates, Inc. Contingency Contract

Ms. Niemeyer Goins,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The corporation is organized under the laws of the State of Kentucky (not Ohio)

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that this amendment is acceptable to you.

Thank you,

Mel McVay

Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

Contract No. **25x7215**

**Agreement
for Architectural and Engineering Services**

The Survey Company (Land Consultants, Inc.)

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and ~~Land Consultants~~ a corp. organized under the laws of the State of IN, the address of which is 555 Gest Street ("Consultant"). Cincinnati, OH 45203

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "**Project**"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "**Budget**"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: *Milton Dohoney, Jr.*
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

The Survey Company (Land Consultants, Inc.)
[insert Consultant's name] an Indiana corporation

By: *Jeff Talkers*

Printed Name: JEFF TALKERS

Title: VICE - PRESIDENT

Date: Jan. 18, 2012

Recommended by:

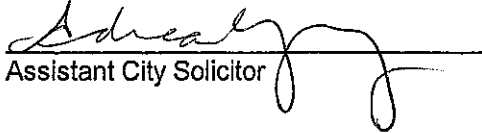
Don Gindling
Don Gindling, P.E.
City Engineer

Michael R. Moore
Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
SURVEYING AND MAPPING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Surveying and Mapping Services may include any of the following:

Geodetic surveying services	Mapping and charting services
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Cost estimates
Aerial photography	Aerial surveys
Land surveying	
Property and boundary surveys	
Monumentation	
Marking and posting	
Tract descriptions	
Plats with seal & signature	
Topographic surveying services	
Topographic oriented surveying and mapping data acquisition for design, construction, master planning, operations, as-built conditions, and precise structure stability studies using various surveying methods.	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Principal Engineer	\$	140.00
Managing Engineer	\$	120.00
Managing Surveyor	\$	95.00
Project Engineer	\$	90.00
Project Designer	\$	85.00
Project Surveyor	\$	80.00
Design Technician	\$	70.00
Field Crew	\$	130.00
Administrator	\$	50.00

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150% and a net fee (profit) of 15%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: McVay, Melissa
Sent: Thursday, February 23, 2012 3:40 PM
To: Yang, Andrea
Cc: Brazina, John
Subject: FW: Land Consultants, Inc. Contingency Contract
Attachments: 20120223105046214.pdf

From: Ashley B. Stoops [mailto:abs@landconsul.com]
Sent: Thursday, February 23, 2012 11:17 AM
To: McVay, Melissa
Subject: RE: Land Consultants, Inc. Contingency Contract

Melissa,

Attached is our State of Ohio business certificate of which our Ohio business name is The Survey Company (Land Consultants, Inc.). Could you please let me know what, if any, adjustments you need made to our contract? Thank you for your help and please let me know if you need any additional information.

Thank you,
Ashley

Your message is ready to be sent with the following file or link attachments:
20120223105046214.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

--
Ashley B. Stoops
Assistant Controller

Land Consultants
314 Front Street
Lawrenceburg, IN 47025
Phone: (812) 537-2145 ext.221

555 Gest Street, Suite 200
Cincinnati, OH 45203
(513) 381-1020

Toll-free: (888) 537-2145
Fax: (812) 537-4901
www.landconsul.com

SBE Certified





DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
05/09/2011	201112601169	DOMESTIC/REINSTATEMENT (REN)	26.00	.00		.00	.00

Receipt

This is not a bill. Please do not remit payment.

LAND CONSULTANTS
314 FRONT ST
LAWRENCEBURG, IN 47026

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, Jon Husted

1775672

It is hereby certified that the Secretary of State of Ohio has custody of the business records for
THE SURVEY COMPANY (LAND CONSULTANTS, INC.)
and, that said business records show the filing and recording of:

Document(s)
DOMESTIC/REINSTATEMENT

Document No(s):
201112601169



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 5th day of May, A.D.
2011.

Ohio Secretary of State



Form 5258 Prescribed by the:
Ohio Secretary of State

Central Ohio: (614) 466-3910
Toll Free: (877) SOS-FILE (767-3453)

www.sos.state.oh.us
Busserv@sos.state.oh.us

Expedite this form: (select one)
Mail form to one of the following:

- Expedite PO Box 1390
Columbus, OH 43216
*** Requires an additional fee of \$100 ***
- Non Expedite PO Box 788
Columbus, OH 43216

REINSTATEMENT
Filing Fee: \$25

(CHECK ONLY ONE (1) BOX)

<p>(1) <input type="checkbox"/> Reinstatement of a Nonprofit Corporation (for failure to file a statement of continued existence) (109-RENN)</p>	<p>(2) <input type="checkbox"/> Reinstatement of a Limited Liability Partnership (for failure to file biennial report(s)) (112-PLR)</p> <p>THIS FORM MUST BE ACCOMPANIED BY ALL DELINQUENT BIENNIAL REPORT(S) AND FILING FEE(S)</p>
<p>(3) <input checked="" type="checkbox"/> Reinstatement of a Professional Corporation (for failure to file biennial report(s)) (110-RENP)</p> <p>THIS FORM MUST BE ACCOMPANIED BY ALL DELINQUENT BIENNIAL REPORT(S) AND FILING FEE(S)</p>	

2011 MAY -5 AM 8:32

Name of Entity The Survey Company, Inc. d.b.a. Land Consultants, Inc

Charter/Registration Number 1775672

Cancellation Date
The entity was canceled on 11/30/2010

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

REQUIRED
Must be authenticated (signed) by an authorized representative (See Instructions)

Dennis T. Dinkelacker 5/10/2011
Signature Date

DENNIS T. DINKELACKER
Print Name

Signature Date

Print Name

Yang, Andrea

From: jet@landconsul.com
Sent: Friday, February 24, 2012 11:21 AM
To: McVay, Melissa
Cc: abs@landconsul.com; Brazina, John; Yang, Andrea
Subject: Re: Land Consultants, Inc. Contingency Contract

It is acceptable to amend contract. Thank you.
Sent from my Verizon Wireless BlackBerry

From: "McVay, Melissa" <Melissa.McVay@cincinnati-oh.gov>
Date: Fri, 24 Feb 2012 10:50:11 -0500
To: <jet@landconsul.com>
Cc: <abs@landconsul.com>; Brazina, John<John.Brazina@cincinnati-oh.gov>; Yang, Andrea<Andrea.Yang@cincinnati-oh.gov>
Subject: FW: Land Consultants, Inc. Contingency Contract

Please "reply all" to confirm that it is acceptable to amend the contract to reflect that the entity is "The Survey Company (Land Consultants, Inc.)."

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Thank you,

Mel McVay

From: Ashley B. Stoops [mailto:abs@landconsul.com]
Sent: Thursday, February 23, 2012 11:17 AM
To: McVay, Melissa
Subject: RE: Land Consultants, Inc. Contingency Contract

Melissa,

Attached is our State of Ohio business certificate of which our Ohio business name is The Survey Company (Land Consultants, Inc.). Could you please let me know what, if any, adjustments you need made to our contract? Thank you for your help and please let me know if you need any additional information.

Thank you,
Ashley

Your message is ready to be sent with the following file or link attachments:
20120223105046214.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

--
Ashley B. Stoops
Assistant Controller

Land Consultants

314 Front Street
Lawrenceburg, IN 47025
Phone: (812) 537-2145 ext.221

555 Gest Street, Suite 200
Cincinnati, OH 45203
(513) 381-1020

Toll-free: (888) 537-2145
Fax: (812) 537-4901
www.landconsul.com

SBE Certified



CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7231

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Terracon Consultants, Inc. a corporation organized under the laws of the State of KS, the address of which is 18001 W. 106th St., Suite 300 Olathe, KS 66061 ("Consultant").

A Delaware

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver. *except for professional liability.*

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

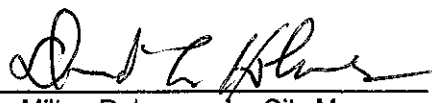
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

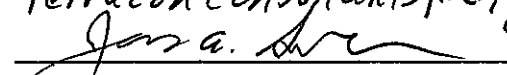
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[Insert Consultant's name]


By: Terracon Consultants, Inc., a Delaware corporation


Printed Name: Jess A. Schroeder, P.E.

Title: Sr. Principal, Office Manager

Date: Jan. 27, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

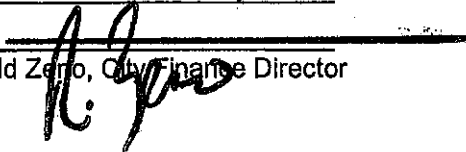
By: 
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
GEOTECHNICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Geotechnical Engineering Services may include any of the following:

Geotechnical inspections & investigations	Subsurface exploration
Geotechnical studies	Preliminary Engineering
Planning & feasibility studies	Geotechnical analysis and design
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Borings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Please see attached Fee Schedule.

JTS

Requested costs for overhead calculation not applicable, as this is a unit rate, not cost-plus contract.

JTS

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of _____% and a net fee (profit) of _____%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT B, PRICE SCHEDULE
TERRACON CONSULTANTS
GEOTECHNICAL ENGINEERING SERVICES
AND RELATED TESTING SERVICES
INDEX TO PRICES
2012-2015

STANDARDS AND PROCEDURES -----	PAGE 2
GEOTECHNICAL ENGINEERING-----	PAGE 3 DRILLING
SERVICES -----	PAGES 4 - 8
Footage Basis -----	Pages 4 -5
Day Rate Basis -----	Page 6
Marine -----	Page 7
Cone Penetrometer Testing (CPT) -----	Page 8
SOIL LABORATORY TEST SCHEDULE -----	PAGES 9 – 10
ASPHALT/CONCRETE/SOIL/MASONRY INSPECTION SERVICES -----	PAGES 11 - 13
Asphalt/Concrete Cores -----	Page 12
Concrete Nondestructive Testing -----	Pages 12-13
ASPHALT/CONCRETE LABORATORY TEST SCHEDULE -----	PAGES 14 - 15
Concrete Design Mixes -----	Page 14
Concrete Sealer-----	Page 14
Asphalt Materials -----	Page 14
Asphalt Design Mixes -----	Page 15
Asphalt/Concrete Aggregate -----	Page 15
CONCRETE TEST CYLINDERS/BEAMS -----	PAGE 16
CONCRETE AND VITRIFIED PIPE FIELD AND LABORATORY SERVICES-	PAGE 17
MASONRY LABORATORY TEST SCHEDULE-----	PAGE 18
PETROGRAPHIC SERVICES -----	PAGE 19
ROOFING -----	PAGE 20
STEEL -----	PAGES 21 - 22
LEAD PAINT SURVEYS-----	PAGE 23
DIVING SERVICES -----	PAGE 24

FIELD AND LABORATORY SERVICES

The following is a coded list of standards and procedures followed by The H. C. Nutting Company in field and laboratory services.

<u>CODE</u>	<u>STANDARD OR PROCEDURE</u>
AISS	Asphalt Institute Specification Series
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AMR	According to Manufacturer's Recommendations
APHA	American Public Health Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
AWWA	American Water Works Association
BOCA	Building Officials Conference of America
CRD	U.S. Corps of Engineers
CSI	Construction Specification Institute
FAA	Federal Aviation Administration
FHAR	Federal Housing Authority Regulation
FHWA	Federal Highway Administration
HCNP	H. C. Nutting Procedure
HCR	Hamilton County Regulation
HSCAT	Hesse, "Soil Chemical Analysis Textbook"
INDOT	Indiana Department of Transportation
KDOT	Kentucky Department of Transportation, Manual of Instructions for Soil Consultants
LSTE	Lambe, "Soil Testing for Engineers"
ODOT	Ohio Department of Transportation
OOH	Tests Performed "Out-of-House" by Others
SOM	State of Ohio California Bearing Ratio (CBR) Method

GEOTECHNICAL ENGINEERING

Engineering Fees:

Supervision, Evaluation, Analysis,
Consultation (Field, Office, Telephone)
and Preparation of Soil Engineering
Report of Recommendations Based Upon:

136	Principal Engineer	175.00/hour
101	Senior Geotechnical Engineer	135.00/hour
104	Project Engineer	120.00/hour
105	Staff Engineer	97.00/hour
107	Geologist	90.00/hour
106	Engineering Aide	74.00/hour
137	Secretarial Services	48.00/hour
	Mileage (in excess of 50 mile radius from Fountain Square)	.68/mile
	Out-of-Pocket Expenses	At Cost Plus 5%

Expert Witness Fees: (including office preparation, court testimony and deposition time) Applicable Rate Plus 50%, Materials Plus 5%

Engineering fees for review of plans, specifications, and consultation during design and subsequent construction, following submission of final report, shall be charged at the above rates.

Miscellaneous Fees

Video Camera Charge in Addition to Operator	40.00/day/project
Archive Research	74.00/hour
File Retrieval	48.00/hour

DRILLING SERVICES

FIELD EXPLORATION AND SAMPLING - FOOTAGE BASIS

Mobilization

Per Rig (Within 30-Mile Radius of Downtown Cincinnati)	\$ 315.00/unit
Support Truck Mileage - Day Rate Plus	.68/mile
Support Truck (Day Rate)	89.00/day

Drilling Overburden

Note: Projects requiring skid-mounted or portable equipment to be charged at the applicable day rate.

Minimum Drilling Charge (Excluding Mobilization)	1000.00
Standard Split-Spoon Test Borings - Truck/ATV/Track Rig	18.00/LF
Auger Boring (With Sampling) - Truck/ATV/Track Rig	14.00/LF
Soundings (No Sampling) - Truck/ATV/Track Rig	12.50/LF

Deep Drilling (Soil and/or Rock) Add to Footage Rate:	
Depth 50 to 100 feet	5.25/LF
100 to 150 feet	9.50/LF

Hard Drilling (Soil and/or Rock) Add to Footage Rate:	
30 to 50 Blows per Foot	4.5025/LF
Over 50 Blows per Foot	8.50/LF

ATV/Track Rig Surcharge	42.00/hour
False Starts: At Applicable Above Rates Plus	53.00/move
Augering Concrete	31.50/LI
Additional Cost per Day for Drilling With 6-1/4" ID Auger	605.00/8-hr. day

Rock Coring

Set-Up Charge Per Hole	125.00/each
2-Inch Diameter Coring: Truck/ATV/Track Rig	36.75/LF

Special Sampling

Shelby-Tube Samples	ASTM D-1587	73.50/each
Bulk (Bag) Samples		63.00/each
Piston-Tube Samples	AMR	150.00/each
Additional Split-Spoon Samples:		21.00/each

Miscellaneous:

Laboratory Visual Classification - Soil (Jar)	5.25/each
Laboratory Visual Classification - Rock (Core)	6.00/LF
Piezometer and Inclinator Installation: Drill Crew	190.00/hour
All Materials	At Cost Plus 5%
Layout (Approximate) of Borings 2-Man Drill Crew	190.00/hour
Excess Moving, Site Preparation or Set-Up Time, Standby (In Excess of 1/4 Hour per Boring Location)	190.00/hour
Test Boring Backfill and Water Level Readings by Drill Crew (Includes Disposal of Excess Cuttings)	190.00/hour

FIELD EXPLORATION AND SAMPLING - FOOTAGE BASIS (Continued)

Pavement Patching in Pedestrian & Paved Areas per Boring Location	\$ 63.00/each
Tractor or Bulldozer Assistance (Subcontracted)	At Cost Plus 5%
Water Truck/Hauling plus driver	\$ 370.00/day
Driver/Operator (3rd Man)	47.00/hour
Drill Department Aide	74.00/hour
Checking of Site for Underground Utilities and/or Obtaining Clearance and Permits	74.00/hour
Flagman	47.00/hour
Permits	At Cost Plus 5%

FIELD EXPLORATION AND SAMPLING - DAY RATE BASIS

Mobilization

Per Rig	\$ 315.00/unit
Support Truck Mileage, - Day Rate Plus	.68/mile
Support Truck (Day Rate)	89.00/day

Day Rates (Equipment and 2-Man Crew)

Minimum charge (4 Hours or Less, Excluding Mobilization)	1000.00
Portable Equipment	185.00/hour
Adjustable Angle Skid Rig	240.00/hour

Special Sampling

Rock Coring - Day Rate Plus	4.75/LF
Shelby-Tube Samples - Day Rate, Plus	34.00/each
Piston-Tube Samples - Day Rate, Plus	50.00/each
Bulk (Bag) Samples	At Hourly Rate
Additional Split-Spoon Samples	At Hourly Rate
Augering Concrete - Day Rate, Plus	7.35/LI

Miscellaneous:

Laboratory Visual Classification - Soil (Jar)	5.25/each
Laboratory Visual Classification - Rock (Core)	6.00/LF
Piezometer and Inclinator Installation: Drill Crew	190.00/hour
All Materials	At Cost Plus 5%
Checking of Site for Underground Utilities and/or Obtaining Clearance and Permits	74.00/hour
Layout (Approximate) of Borings by 2-Man Drill Crew	At Hourly Rate
Excess Moving, Site Preparation or Set-Up Time: Standby	At Hourly Rate
Pavement Patching in Pedestrian & Paved Areas	At Hourly Rate Plus 42.00/each
Tractor or Bulldozer Assistance (Subcontracted)	At Cost Plus 5%
Water Truck/Hauling plus driver	370.00/day
Driver/Operator (3rd Man)	47.00/hour
Drill Department Aide	74.00/hour
Flagman	47.00/hour
Permits	At Cost Plus 5%

FIELD EXPLORATION AND SAMPLING - MARINE

Mobilization

Round Trip - Barge	Price Upon Request
Support Truck Mileage - Day Rate Plus	\$0.68/mile
Support Truck (Day Rate)	89.00/day
Barge Assembly/Loading/Disassembly - Quotes on Per Project Basis	Lump Sum
Barge Rental (HCN Small Barge)	Price Upon Request
Commercial Tow and Barge (if required)	At Cost Plus 5%
Drilling/Maneuvering/Set-Up	
Rig Plus 2-Man Crew (On HCN Small Barge)	Price Upon Request
Minimum Charge (4 Hours or Less)	Lump Sum
Barge Assistant	
3rd Person Required to Mobilize HCN's Barge to Site, Help with Rigging, Assembling and Launching	47.00/hour
Marine Insurance	215.00/day

CONE PENETROMETER TESTING (CPT)

Mobilization	\$ 315.00/each
Support Truck Mileage	0.68/mile
Cone Penetration Testing (footage)	11.25/LF
Location Setup	80.00/each
Hourly (used for day rate testing or standby on footage rate projects)	190.00/hour
Travel (beyond 50 mi radius)	190.00/hour
Excess Moving	190.00/hour
Grouting	190.00/hour
False Starts	190.00/hour
Data Interpretation	3.50/LF
Lost and Damaged Equipment	Cost Plus 5%

SOIL LABORATORY TEST SCHEDULE

Classification:

1692	Description (Visual Manual Procedure)	ASTM D-248	\$ 14.00/each
1693	USCS and AASHTO Classification	ASTM D-248	5.25/each
1694	Visual Classification	HCNP	5.25/each

Index Properties:

2014	Moisture Content	ASTM D-2216	9.50/each
3047	Dry Unit Weight	HCNP	47.25/each
2012	Specific Gravity	ASTM D-854	53.50/each

Gradation:

2010	Sieve Analysis	ASTM D-422	51.00/each
2006	Hydrometer Analysis (24 Hours)	ASTM D-422	58.75/each
2006	Hydrometer (1 Hour)	ODOT	42.00/each
3030	Sieve 200 (Decantation)	AASHTO T-11, T-27	46.00/each

Atterberg Limits:

1907	Liquid Limit	ASTM D-423	44.00/each
1908	Liquid Limit (1-pt.)	AASHTO T-89	32.50/each
3049	Plastic Limit	ASTM D-424	31.00/each
2009	Shrinkage Limit	ASTM D-427	132.00/each
2015	Field Moisture Equivalent	AASHTO T-93	77.00/each

Structural Properties:

2025	Unconfined Compression	ASTM D-2166 & D-2938	79.00/each
2026	Unconfined Compression (Remolded)	ASTM D-2166	89.00/each
2027	Torvane Shear Test	AMR	6.25/each
2028	Pocket Penetrometer Test	AMR	3.25/each
2029	Slake Durability	KDH	79.00/each
2030	X-Ray Diffraction (Sulfate, Sulfide)		205.00/each
2038	Brazilian Tensile Test		105.00/each

Triaxial Compression:

2035	QuUU	LSTE; ASTM D-2850	116.00/point
2036	R CU	LSTE	278.00/point
2022	R With Pore Pressure Measurements	LSTE	300.00/point
2032	Direct Shear	LSTE; ASTM D-3080	184.00/point
2034	Vane Shear	AMR	84.00/point
2037	Qu CU (For M of E Data)		293.00/point
2021	RCD (Consolidated, Drained)		840.00/point

SOIL LABORATORY TEST SCHEDULE (Continued)

2020	Multi-Stage Consolidated Undrained With Pore Pressure	LSTE	\$ 685.00/each
1207	Sample Preparation (If Remolding Required)		68.00/hour

Miscellaneous Tests:

2069	pH Determination	HSCAT	29.00/each
2064	Sulfate Content	HSCAT	84.00/each
3334	Sulfides Content (Pyrite Indicator)	HSCAT	84.00/each
3033	Loss on Ignition	HSCAT	40.00/each
2071	Potential Acidity		94.50/each
2058	Permeability	LSTE	200.00/each
2045	Preparation of Disturbed Sample for Permeability		68.00/each

Consolidation:

3322	Standard - 7 Load Increments	ASTM D-2435	446.00/each
3323	Additional Load Increments		68.00/each
3333	With Pore Pressure Measurements	AMR	800.00/each
2042	Time Curves		68.00/each

Tests of Compacted Samples:

2044	One Point Proctor Standard Proctor		84.00/each
2039	4" Mold	ASTM D-698 AASHTO T-99	149.00/each
2040	6" Mold Modified Proctor	ASTM D-1557	170.00/each
2046	4" Mold	AASHTO T-180	170.00/each
2047	6" Mold		190.00/each
1905	Standard Proctor - Fly Ash	ASTM D-698	263.00/each
1906	Modified Proctor - Fly Ash	ASTM D-1557	292.00/each
2053	Relative Density of Non-Cohesive Soil	ASTM D-4253	289.00/each
2023	California Bearing Ratio (Single Specimen)	ASTM D-1883	263.00/point
3050	Volume Change (Swell)		257.00/each

ASPHALT - CONCRETE - SOIL - MASONRY INSPECTION SERVICES

Personnel Fees

1110	Principal Engineer	\$ 175.00/hour
1115	Senior Materials Engineer	135.00/hour
1120	Materials Engineer	120.00/hour
1144	Materials Consultant	85.00/hour
1211	Engineering Aide	74.00/hour
1181	Secretarial Service	48.00/hour
1220	Technician:	41.00/hour
1205	Senior Technician:	52.50/hour
1207	Laboratory Technician	54.50/hour
1624	Vehicle Charge	31.50/trip
1615	Mileage (in excess of 50 miles radius from Fountain Square)	.68/mile
1605	Out-of-Pocket Expense	At Cost Plus 5%
	Project Review (Reports, Plans, Specifications)	Performed at Applicable Hourly Rates
1221,	Overtime (Above Hourly Rates)	Plus 50%
1206		

Miscellaneous

2511	Hydraulic Jack Calibration	365.00/test
2512	Inclinometer Equipment in Addition to Operator	47.50/hour
	Resistivity Meter Equipment in Addition to Operator	50.00/hour
	Seismographic Equipment	At Cost Plus 5%
	VME Seistector Plus Film	At Cost Plus 5%
	Video Camera Charge in Addition to Operator	40.00/day/project
	Film Development	At Cost Plus 5%
1630	Density Test w/Nuclear Meter-Technician Rate Plus	47.50/day
	Report Reproduction (Minimum Charge \$20.00/copy)	0.16/page

ASPHALT or CONCRETE CORES

CORING

1236	General Coring (Operator)	ASTM C-42	\$ 76.00/hour
1653	Core Truck (Day Rate)		90.00/day
1615	Core Truck Mileage		.68/mile
7203	Minimum Charge for 4 Hours or Less (Excluding Bit Charge)		341.00
1237	Assistant Operator		47.00/hour
1632	Bit Charge		1.60/in. of dia./ in. of length
1639	Extract Core from Submitted Specimen		110.00/each
1656	Electric Generator (If Provided by HCN)		94.50/day
1605	Backfill Materials		At Cost Plus 5%

Testing:

3355	Compression Test, core	ASTM C-42, C-39	36.75/each
1658	Measurement	ASTM C-174	12.50/each
1660	Unit Weight lbs./ft. ³		25.00/each

CONCRETE NON-DESTRUCTIVE TESTING

Rebound Hammer Testing: ASTM C-805

1190	Senior Concrete Technician		52.50/hour
------	----------------------------	--	------------

Windsor Probe Testing:

1217	Materials Consultant		85.00/hour
1667	Probe Charge (Three Probe Test)		57.00/each
	Pulse Echo Testing (Apparatus)		315/day+ Operator
	Pulse Echo Operator Engineer		116.00/hour
1624	Vehicle Charge		31.50/trip
1615	Mileage (in excess of 50 mile radius from Fountain Square)		0.68/mile

CONCRETE NON-DESTRUCTIVE TESTING (Continued)

Concrete Moisture Testing

1144	Materials Consultant	\$ 85.00/hour
1689	Moisture Vapor Emission Test Kit	52.50/test kit
1690	Ph Testing Materials	18.00/test
1691	Moisture Meter	42.00/day
1615	Mileage	.68/mile

Rebar Locating

1270	Materials Consultant (4 hr. minimum)	85.00/hour
1663	Ferrosan Equipment	263.00/lump sum
7203	Pachometer	52.50/day
1615	Mileage	.68/mile

Floor Flatness

1265	Materials Consultant	85.00/hour
1670	Floor Flatness Equipment	158.00/trip
1615	Mileage	.68/mile

ASPHALT - CONCRETE LABORATORY TEST SCHEDULE

CONCRETE DESIGN MIXES (Materials FOB)

1407	First Point Mixes, Including Specific Gravity, Gradation and Absorption of Each Size Aggregate		\$ 700.00/each
1408	Subsequent Mixes (Using Same Source & Size of Aggregate)		400.00/each
1409	Calculated Mixes		142.00/each
3331	Flexure Strength (Beams)	C-78 or C-293	46.00/break
1415	Proof Cylinders	C-39	20.00/each
1420	Proof Cylinders (High Strength 8000 psi)	C-39	33.50/each

HARDENED CONCRETE

4012	Cement Content of Hardened Concrete	ASTM C-85	500.00/each
4013	Chloride Content of Hardened Concrete		55.75/each
4015	Rapid Chloride Permeability	AASHTO T277	255.00/each

CONCRETE SEALER

1647	Preparation		55.00/hour
1648	Concrete Sealer Paper Mix		194.00/each
1649	Materials		At Cost Plus 5%
4017	Freeze Thaw Test	ASTM C-672	Price Upon Request
	Rapid Freeze Thaw Test (Chamber)		
1654	Chloride Penetration	FHWA	81.00/each
7203	Concrete During Compound Moisture Retention	ASTM C-309	Price Upon Request
7203	Lab Qualification of Admixture	ASTM C-494	Price Upon Request

ASPHALT MATERIALS

7203	Asphalt Cement		Price Upon Request
7203	Penetration Test Only	AASHTO M20	Price Upon Request
7203	Asphalt Emulsions	AASHTO M140, M208	Price Upon Request
7203	Asphalt Liquids	AASHTO M226	Price Upon Request
7203	Tars	ASTM D-490	Price Upon Request
7203	Filler Material (Preformed Expansion Joints)	ASTM D-242	Price Upon Request
1620	Extraction and Gradation	ASTM D-2172	
		AASHTO T-184	158.00/each
1621	Specific Gravity	ASTM D-2041	121.00/each
1625	Laboratory Core Measurement		13.75/core
1623	Density of Asphalt Cores		34.00/each

ASPHALT DESIGN MIXTURES

7203 Laboratory Marshall Design

Price Upon Request

ASPHALT- CONCRETE AGGREGATE

3040	Abrasion - Los Angeles Coarse Aggregate (Includes Sieve Analysis)	ASTM C-131	\$ 216.00/each
3044	Absorption	ASTM C-127, C-128	24.00/each
3056	Alkali Reactivity	ASTM C-289, C-227	Price Upon Request
3037	Clay Lumps	ASTM C-142	52.50/each
2501	Comparative Mortar Compression Strength	ASTM C-780	Price Upon Request
2502	Deleterious Materials (Coarse Aggregate)	ASTM C-142	184.00/each
2503	Deleterious Materials (Fine Aggregate)	ASTM C-40	142.00/each
3034	Light Weight Particles	ASTM C-123	142.00/each
3033	Loss on Ignition	ASTM C-114	40.00/each
3042	Organic Impurities (or Colorimetric)	ASTM C-40	44.00/each
3046	Percent Crushed Material (See Bit Aggregate Page)	ODOT SS 1021	63.00/each
3031	Percent Silt		34.00/each
2005	Plasticity Index		75.00/each
1907	Liquid Limit	ASTM D-423	44.00/each
2002	Plastic Limit	ASTM D-424	31.00/each
3052	Sand Equivalent	ASTM D-2419	Price Upon Request
3030	Sieve Analysis - Dry	ASTM C-136, AASHTO T-27	51.00/each
3038	Soundness, Magnesium Sulfate (5 cycles) (includes Sieve Analysis)	ASTM C-88	390.00/each
3039	Soundness, Sodium Sulfate (5 cycles) (includes Sieve Analysis)	ASTM C-88	390.00/each
2012	Specific Gravity	ASTM C-127, C-128	65.00/each
3045	Staining	ASTM C-641	Price Upon Request
3048	Stripping Test	ASTM D-1664, D-1075	Price Upon Request
2070	Sulfur Content		Price Upon Request
3050	Swell Test		Price Upon Request
3032	Washed Sieve Analysis	AASHTO T-11, T-27	63.00/each
1660	Weight Per Cubic Foot	ASTM C-29	34.00/each
3035	Gradation Base Course Material		68.00/each
3039	Base Course Materials - Sodium Sulfate Soundness	ASTM C-88	390.00/each
3051	Flat & Elongated Particles	CRD C-119	84.00/each

CONCRETE TEST CYLINDERS – BEAMS

Sampling and testing of concrete cylinders and beams will be cast and picked up, plus all field tests conducted at the applicable technician rate plus travel charges plus laboratory test rates, as follows:

Compression Testing of Cylinders, including hold cylinders	\$ 19.00/each
Compression Testing of Grout Prisms	19.00/each
Compression Testing of 2" Cubes	19.00/each
Compression Testing of High-Strength Cylinders, including holds	33.50/each
3331 Flexural Testing of Beams, including hold beams	44.00/each

Concrete Cylinders and/or beam fabricated by others, picked up and tested by Terracon (within 25 mile radius of downtown)*

4007 2 cylinders per set	\$ 46.00/cylinder
4008 3 cylinders per set	40.00/cylinder
4009 4 cylinders per set	36.75/cylinder
4010 5 cylinders per set	34.75/cylinder
4011 6 cylinders per set	32.50/cylinder
3324 Compression Testing of Concrete Cylinders fabricated and delivered by others (FOB) to Terracon laboratory	\$ 17.00/cylinder
2056 Concrete Cylinder Molds When cylinders fabricated by others (Plus shipping cost)	\$ 2.50/each

*Note - Delays in excess of 1/2 hour at any project site (not due to Terracon) will be chargeable at the rate of: \$ 41.00/hour

CONCRETE AND VITRIFIED PIPE FIELD AND LABORATORY SERVICES

Local Plant Inspection

1220	Technician On-Site 0-4 Hours (4 hours minimum)	\$	41.00/hour
1624	Vehicle Charge		31.50/trip
1615	Mileage (in excess of 50 mile radius from Fountain Square)		.68/mile

MASONRY LABORATORY TEST SCHEDULE

BLOCK

2505	Absorption (Includes Suspended Weight)	ASTM C-90, C-140	\$ 21.00/each
2506	Compression (Gross & Net)	ASTM C-90, C-140, C-145	52.50/each
2507	Prism Test	ASTM E-447	357.00/each

BRICK

2513	Compression - 5 Brick	ASTM C-67	31.50/each
2514	Absorption - 5 Brick	ASTM C-67	13.75/each
2515	Efflorescence Test - 10 Brick	ASTM C-67	126.00/each
2516	Flexure Test - 5 Brick	ASTM C-67	38.00/each
7203	Rate of Absorption - 5 Brick (3 or 5 Hour Boil & Saturation Coefficient)	ASTM C-67, ASTM C-216	Price Upon Request
2519	Prism Test		315.00/each
2520	Freeze-Thawing	ASTM C-67	31.50/each cycle

MASONRY CEMENT

7203	Physical	ASTM C-144, C-270	Price Upon Request
7203	Chemical	ASTM C-404, C-476	Price Upon Request

BAUXITE

3332	<u>Chemical Analysis:</u> (Silicon Dioxide and Loss on Ignition)		Price Upon Request
------	--	--	--------------------

GYPSUM

2522	Compression Testing of Gypsum Cubes	ASTM C-472	17.00/each
3034	Compression testing of Light Weight Insulating Concrete	ASTM C-495	21.00/each
2523	Unit Weight	ASTM C-495	19.00/each
2521	Stripping of Cylinders from Styrofoam molds will be performed by the concrete laboratory technician		54.50/hour

PETROGRAPHIC SERVICES (ROCK, CONCRETE, AGGREGATE)

Concrete

1192	Visual Description, Fracture Logging		\$ 19.00/LF
1430	Air Content	ASTM C-457	600.00/each
1440	Air Void System Parameters (Includes Item #3002)	ASTM C-457	840.00/each
1441	Petrographic Examination	ASTM C-856	1050.00/each
	Chloride Ion Test		100.00/each

Aggregate

1442	Petrographic Examination of Coarse Aggregate	ASTM C-295	1050.00/each
1450	Petrographic Examination of Fine Aggregate	ASTM C-295	850.00/each
1451	Chert (Includes Refractive Index and Microcrystalline Quartz/Chalcedony Content)		400.00/each

Riprap, Armorstone, Quarry Run, etc.

1452	Petrographic Examination		650.00/each
------	--------------------------	--	-------------

Personnel Services

1215	Petrographer		130.00/hour
1144	Materials Consultant		85.00/hour
1207	Laboratory Technician		54.50/hour
1181	Secretary		48.00/hour
1605	Out-of-Pocket Expenses		At Cost Plus 5%
1624	Vehicle Charge		31.50/trip
1615	Plus Mileage at		.68/mile
	(in excess of 50 mile radius from Fountain Square)		

ROOFING

Personnel Fees

3320	Roofing Consultant	155.00/hour
1115	Senior Materials Engineer	135.00/hour
1120	Materials Engineer	120.00/hour
1144	Materials Consultant	85.00/hour
1211	Engineering Aide	74.00/hour
1250	Roofing Technician	
	On-Site 0-2 Hours (2 Hours Minimum)	52.50/hour
	On-Site 2-4 Hours (4 Hours Minimum)	
1207	Laboratory Technician	54.50/hour
1181	Secretarial Services	48.00/hour
1624	Vehicle Charge	31.50/trip
1615	Mileage (in excess of 50 mile radius from Fountain Square)	0.68/mile
1605	Out-of-Pocket Expenses	At Cost Plus 5%
	Overtime (Above Hourly Rates)	Plus 50%

Miscellaneous Fees

7203	Video Camera in Addition to Operator	38.00/day/project
1605	Materials, Film, Development, etc.	At Cost Plus 5%

Testing:

7203	Steep Asphalt	ASTM D-312	Price Upon Request
7203	Pitch	ASTM D-450	Price Upon Request

Roof Cuts:

		ASTM D-2829	
7203	a. Asphaltic Built-Up Roofing		Price Upon Request
7203	b. Coal Tar Pitch Built-Up Roofing		Price Upon Request
7203	Gradation of Wearing Surface Aggregate	ASTM D-451, 1863	Price Upon Request

STEEL

Personnel Fees

1115	Senior Materials Engineer	\$ 130.00/hour
1120	Materials Engineer	120.00/hour
1144	Materials Consultant	85.00/hour
1211	Engineering Aide	74.00/hour
1207	Laboratory Technician	54.50/hour

Mill, Visual, or Welding Inspection

1275	Steel Technician	80.00/hour
4019	Steel Testing Equipment: Torque Wrench, Film Thickness Gauge, Ultrasonics, Dye Penetrant, Magnetic Particle Equipment Technician Rate Plus	63.00/day

1605	Materials	At Cost Plus 5%
1181	Secretarial Services	48.00/hour
1624	Vehicle Charge	31.50/trip
1615	Mileage (in excess of 50 mile radius from Fountain Square) Overtime (Above Hourly Rates)	.68/mile Plus 50%

Miscellaneous Fees

1605	Out-of-Pocket Expenses	At Cost Plus 5%
------	------------------------	-----------------

Welding Procedure Qualification (In-House)

(Includes Witnessing, Equipment, Materials, and Normal Laboratory Services)

1685	Plate (Normal AWS Specifications)	735.00/Position
	Pipe (Normal ASME Specifications)	
1685	6.0" Diameter Piping	735.00/Position
1685	2.5" Diameter Piping	735.00/Position

Laboratory Services

1682	Machining	ASME-IX	54.50/hour
1683	Guided Bend	AWS-V	33.75/each
1684	Tensile Test	AWS-V	63.00/each
7203	Sectioning Test (Brazing)	ASME	Price Upon Request
7203	Machining		Price Upon Request

Welding Performance Qualification (In-House)

(Includes Witnessing, Equipment, Materials and Normal Laboratory Services)

a. Physical

Plate (Normal AWS Specification)

7203	Plate - 3/8" Plate	\$	330.00/Position
7203	1" Plate		41500/Position
7203	Pipe (Inclined Fixed 6G Position) 6.0" Diameter		525.00/Position
7203	Pipe (Inclined 6G Position) 2.5" Diameter		620.00/Position

b. General (Field and Laboratory)

1682	Machining	ASME-IX	54.50/hour
7203	Fillet Weld Shear Test	AWS-V	47.25/each
7203	Free Bend	AWS-V	36.75/each
1683	Guided Bend	AWS-V	36.75/each
7203	Joint 1-Butt Joint in Plate	AWS-V	Price Upon Request
7203	Joint 2-Butt Joint in Tubing	AWS-V	Price Upon Request
7203	Joint 3-"T" Joint	AWS-V	Price Upon Request
7203	Joint 4-Cluster Weld	AWS-V	Price Upon Request
7203	Joint 6 or 7-Etching	AWS-V	Price Upon Request
7203	Macro Etch	AWS-V	Price Upon Request
1684	Tensile Test	AWS-V	56.75/each
1144	Witnessing		84.00/hour

Reinforcing Steel or Cadweld Tests

1275 Sampling at Steel Technician Rate
Bend or Tensile Test (Includes Measurement for Deformations)

4024	Bar Nos. 1 - 5	ASTM A-615, 616	28.50/each
4025	Bar Nos. 6 - 9	ASTM A-615, 616	38.00/each
4026	Bar Nos. 10 - 11	ASTM A-615, 616	52.50/each
4027	Bar No. 14	ASTM A-615, 616	68.25/each
4028	Bar No. 18	ASTM A-615, 616	104.00/each
4029	Deformations (Only)	ASTM A-615, 616	20.00/each

Laboratory Testing:

1682	Machining	ASTM A-436	54.50/hour
1684	Tensile Tests	ASTM A-48	56.75/each
	Transverse Tests	ASTM A-48	56.75/each

LEAD PAINT SURVEYS

103	Senior Geologist/Scientist/Consultant	\$ 130.00/hour
106	Senior Technician/Draftsperson	74.00/hour
1181	Secretary	48.00/hour
1624	Vehicle Charge	31.50/trip
1615	Mileage (in excess of 50 mile radius from Fountain Square)	0.68/mile
1605	Out of Pocket Expenses	At Cost Plus 5%
2066	Professional Liability Insurance Fee	3% of Project Fee
2067	Lead Paint Laboratory Analysis	61.00/sample
3335	Minimum Charge Per Project	630.00/lump sum

DIVING SERVICES

1000	Mobilization, Local area (within 25 miles of Fountain Square), Lump Sum	\$280.00/LS
1001	Dive Team Supervisor	80.00/hour
1002	Dive Technician	59.00/hour
1003	Professional Diver (PE Diver)	120.00/hour
1004	Additional Dive Technician	59.00/hour
1005	Additional Field Personnel	41.00/hour
1006	Staff Engineer	97.00/hour
1007	Principal Engineer	175.00/hour
1008	Engineering Aide	74.00/hour
1010	Three Person Dive Team (OSHA Required) (w/technician divers)	198.00/hour
1012	Three Person Dive Team (OSHA Required) (w/P.E. Diver)	259.00/hour
	Project requiring additional safety and health Requirements or additional man power	POR*
1020	Shallow Water Dive Package (0' to 100')	90.00/day
1021	Dive Boat	225.00/day
1022	Support Truck Mileage	.68/mile
1023	Truck Mileage (towing trailer)	.79/mile
1024	Per Diem (per person)	115.00/day
1026	Generator	90.00/day
1030	Closed Circuit Underwater Video	115.00/day
1434	Out-of-Pocket Expenses	Cost plus 15%

Projects requiring special equipment or material
(i.e. work Barge, Confined space related equipment,
Still photography equipment, underwater non-destructive
testing equipment, underwater welding and cutting
burning equipment)

POR*

***POR = Price on Request**

All time (On-site) in excess of 8 hours per day, Saturdays, Sundays, Holidays and nights subject to 50% premium in addition to above standard rates.

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Schroeder, Jess A. [jaschroeder@terracon.com]
Sent: Tuesday, February 21, 2012 4:06 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: RE: Terracon Consultants Contingency Contract

Yes, that is correct. The company name should be Terracon Consultants, Inc. The State of incorporation was Delaware.

Thanks, Jess

Jess A. Schroeder, P.E.

Senior Principal

Office Manager

Terracon

611 Lunken Park Drive | Cincinnati, OH 45226

P (513) 321 5816, ext. 338 | F (513) 321 0294

jaschroeder@terracon.com | www.terracon.com

Formerly H. C. Nutting – Engineering your projects since 1921

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]

Sent: Tuesday, February 21, 2012 3:55 PM

To: Schroeder, Jess A.

Cc: Brazina, John; Yang, Andrea; Henderson, Andrea

Subject: Terracon Consultants Contingency Contract

Mr. Schroeder,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered some minor discrepancies between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the contract as follows:

- The corporation name should be Terracon Consultants, Inc
- The corporation is organized under the laws of the State of Delaware (not Kansas)

If these amendments are acceptable to you, we will make the changes to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that these amendments are acceptable to you.

Thank you for following up on the certificate of liability insurance.

Thank you,

Mel McVay

Melissa McVay

City Planner

Department of Transportation & Engineering

City Hall, Room 450

801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax

Terracon provides geotechnical, environmental, construction materials, and facilities consulting engineering services delivered with responsiveness, resourcefulness, and reliability.

Private and confidential as detailed here (www.terracon.com/disclaimer). If you cannot access hyperlink, please e-mail sender.

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7230
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and TCC Engineering, Inc., a S. Corp. organized under the laws of the State of Ohio, the address of which is 161 Northland Blvd, Cincinnati, OH 45246 ("Consultant").

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "**Project**"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "**Budget**"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability Insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

TEC Engineering, Inc.
[insert Consultant's name]

By: 
Milton Dohoney, Jr., City Manager

By: 

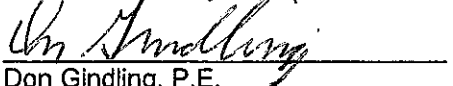
Date: 3/12/, 2012

Printed Name: JAMES CORNETT

Title: CFO

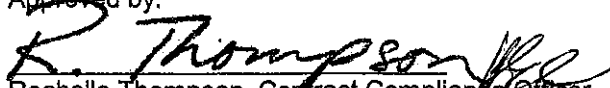
Date: 01/16, 2012

Recommended by:

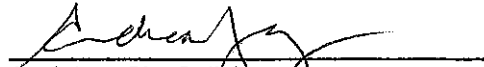

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

MAR 01 2012

Certified Date:

Fund/Code: **CERTIFICATION OF**
FUNDS NOT REQUIRED

Amount: _____

By: _____


Reginald Zeno, City Finance Director

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TRAFFIC ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Traffic Engineering Services may include any of the following:

Detailed contract plans and specifications	Right-of-way plans
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Preliminary studies & layouts	Evaluation studies & reports
Capacity analysis	Benefit-cost analysis
TSM studies and plans	Geometrics and alignment
Accident analysis	Signalization, signage & pavement marking
Photometrics analysis	Pole & foundation design
Analysis of existing lighting systems	Electrical wiring evaluation & design
Data collection/tabulation/summarization	Traffic counts, surveys, and studies
Parking surveys and studies	Accident records and statistics
Utilities records	Property records
Traffic control inventories	Signal timing, operation & coordination
Lighting equipment inventories	Street lighting design and specifications
Environmental impact studies	
Physical, social & economic data collection, analysis and reports	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Principal	\$185.77
Associate	\$154.08
Project Manager	\$129.48
Project Engineer	\$129.48
Design Professional	\$68.34
Senior Technician	\$85.12
Administrative	\$55.38
Co-op Employee	\$41.73
Technician	\$60.71

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 176.74 % and a net fee (profit) of 12 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

SS

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7229

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and Sprand Associates, Inc. a corporation organized under the laws of the State of Wisconsin, the address of which is 910 W. Wiegara Drive ("**Consultant**").
Madison, WI 53715

Recitals:

- A. The City's Department of Transportation & Engineering ("**DOTE**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (*Scope of Services*). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

Unable to name additional insureds on a professional liability policy. Will name City as additional insured on other policies as applicable. MSR

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, ~~naming the City as an additional insured~~, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

negligent acts, errors and omissions

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the ~~acts~~ of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage. MSR

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City, Re-use of Work Product by the City for anything other than the intended Project shall be at the City's sole risk and without liability to Consultant.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law. MSR

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

Strand Associates, Inc.
[insert Consultant's name]

By: *Milton Dohoney, Jr.*
Milton Dohoney, Jr., City Manager

By: *Matthew S. Richards*

Date: *3/12/*, 2012

Printed Name: *Matthew S. Richards*

Title: *Corporate Secretary*

Date: *4/26*, 2012

Recommended by:

Don Gindling
Don Gindling, P.E.
City Engineer

Michael R. Moore
Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
 EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

STRAND ASSOCIATES, INC.
 July 1, 2011 - June 30, 2012 *

Staff Category	Billing Rate Range (\$/hr)		
Principal Engineer	\$281.00	to	\$414.00
Senior Project Manager	\$173.00	to	\$291.00
Project Manager	\$91.00	to	\$216.00
Project Engineer/Scientist	\$78.00	to	\$154.00
Engineering Technicians	\$55.00	to	\$133.00
Office Production	\$83.00		
* Updated annually on July 1			

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 194.27% and a net fee (profit) of 15%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

Strand Associates, Inc.
Overhead

Description	Percent of Direct Labor
Payroll & Fringes	103.39%
General & Administrative	<u>87.86%</u>
Total Indirect	191.25%
Facilities Capital Cost of Money	<u>3.02%</u>
Total	<u><u>194.27%</u></u>

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Lyons, John

From: Brazina, John <John.Brazina@cincinnati-oh.gov>
Sent: Wednesday, January 25, 2012 12:54 PM
To: Lyons, John
Subject: RE: Contingency Consultant Program

John,

I talked to our lawyer. We are ok with the change to 5 (A) and to 11 (A). We are not ok with any changes to 6. Lastly, we are ok with adding "negligent acts, errors and omissions" to 5 (C) but not the other changes requested in 5 (C).

Let me know how you want to proceed.

Thanks,
John

From: Lyons, John [<mailto:John.Lyons@strand.com>]
Sent: Tuesday, January 24, 2012 11:34 AM
To: Brazina, John
Subject: Contingency Consultant Program

John,

Thanks for talking with me the other day regarding potential minor changes to your standard contract.

Per our discussion, I have attached some proposed changes for your consideration.

If you have any questions please feel free to call me at 513-861-5600.

Please let me know that you received this e-mail.

Thanks,

John Lyons
Strand Associates, Inc.

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7228
Contract No. _____

**Agreement
for Architectural and Engineering Services**

Associates, Inc.

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and Steven Schaefer Assoc. a Corp. organized under the laws of the State of OH, the address of which is 10411 Medallion Dr. ("Consultant").
Suite 121 Cincinnati, OH

Recitals:

- A. The City's Department of Transportation & Engineering ("**DOTE**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

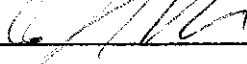
City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[Insert Consultant's name]

Steven Schaefer Associates, Inc.

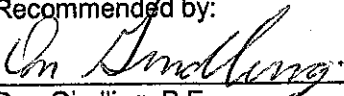
By: 

Printed Name: James R. Miller

Title: President

Date: March 5, 2012

Recommended by:



Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

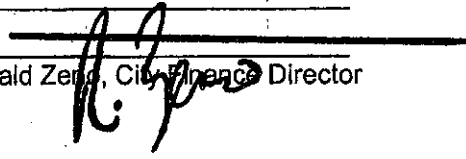
Certified Date: MAR 08 2012
Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
BUILDING STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Building Structures Engineering Services may include any of the following:

Structural Inspections	Structural investigations
Building studies	Preliminary Engineering
Planning & feasibility studies	Structural analysis and design of buildings
Condition studies and product evaluation	Cathodic protection design & maintenance
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 1.77 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

EXHIBIT B**Steven Schaefer Associates, Inc.
Employee Payment Schedule**

Category	2012 rates			
	Billing Rate	Base Pay (1.00)	Overhead 1.77	Profit 15%
Principal	\$196.00	\$61.50	\$108.86	\$25.55
Sr Project Mgr	\$174.00	\$54.50	\$96.47	\$22.64
Project Mgr II	\$154.00	\$48.25	\$85.40	\$20.05
Project Mgr I	\$136.00	\$42.50	\$75.23	\$17.66
Project Engineer	\$113.00	\$35.50	\$62.84	\$14.75
Design Engineer II	\$94.00	\$29.50	\$52.22	\$12.26
Design Engineer I	\$80.00	\$25.00	\$44.25	\$10.39
Sr. Modeler	\$120.00	\$37.50	\$66.38	\$15.58
Modeler/Designer II	\$106.00	\$33.25	\$58.85	\$13.82
Modeler/Designer I	\$80.00	\$25.00	\$44.25	\$10.39
Project Coordinator	\$106.00	\$33.25	\$58.85	\$13.82
Clerical Support Staff	\$57.00	\$17.75	\$31.42	\$7.38
Co-op	\$56.00	\$17.50	\$30.98	\$7.27

Steven Schaefer Associates, Inc.
Overhead Calculation
(Based on Year ending 12/31/11)

Overhead Expenses

Indirect Expenses

Indirect Labor		\$1,801,373
Employee Taxes		\$314,206
Employee Benefits, Cont Ed, PE Reg		\$372,077
Rent, Phone, Utilities		\$228,721
Other Office Expenses		\$159,164
Legal, Professional, Business Ins		\$165,882
Auto, Travel, Hotels, Meals		\$99,280
Relocation Exp		\$4,000
Depreciation		\$87,782
Interest Exp		\$4,243
Retirement (401k)		\$87,065
Direct Project Exp (Unbillable)		<u>\$28,522</u>
Total Overhead		\$3,352,315
Direct Labor	\$	1,895,524.00
Overhead Calculation		1.77

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Jim R. Miller [jrm@ssastructural.com]
Sent: Monday, March 05, 2012 12:44 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Carol C. Weber
Subject: RE: Steven Schaefer Associates, Inc Contingency Contract

Melissa,
Your amendments are acceptable.

Thank you,
Jim Miller

James R. Miller, P.E.
President

Steven Schaefer Associates, Inc.
Consulting Structural Engineers
(513) 542-3300 (800) 542-3302
(513) 607-8543 mobile

www.ssastructural.com



This email is the property of Steven Schaefer Associates, Inc. and is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply-email and destroy all copies of the communication and any attachments.

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Monday, March 05, 2012 12:31 PM
To: Jim R. Miller
Cc: Brazina, John; Yang, Andrea
Subject: Steven Schaefer Associates, Inc Contingency Contract

Mr. Miller,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered some minor issues with your contract. In order to finalize your contract we will need to make the following amendments:

- The corporation name in the first paragraph should be Steven Schaefer Associates, Inc. (this is the name registered with the Ohio Secretary of State)
- The signature block must be dated

If these amendments are acceptable to you, we will make the changes to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that these amendments are acceptable to you, and that we may insert the date that we receive your consent as the execution date on the contract.

Thank you,

Mel McVay

Melissa McVay

City Planner

Department of Transportation & Engineering

City Hall, Room 450

801 Plum Street

Cincinnati, Ohio 45202

513.352.5269 office

513.352.5336 fax

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7227
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and Stantec Consulting Services Inc a corporation organized under the laws of the State of New York the address of which is 11687 Lebanon Rd. Cincinnati, OH 45241 ("**Consultant**").

Recitals:

- A. The City's Department of Transportation & Engineering ("**DOT**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. **DOT** serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. **DOT** also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance **DOT**'s expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: *Milton Dohoney, Jr.*
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Stantec Consulting Services Inc.
11687 Lebanon Road
Cincinnati, OH 45241

By: *Stan A. Harris*

Printed Name: Stan A. Harris

Title: Principal

Date: 1/27, 2012

Recommended by:

Don Gindling
Don Gindling, P.E.
City Engineer

Michael R. Moore
Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adra
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

By: R. Zera
Regina Zera, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
GEOTECHNICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Geotechnical Engineering Services may include any of the following:

Geotechnical inspections & investigations	Subsurface exploration
Geotechnical studies	Preliminary Engineering
Planning & feasibility studies	Geotechnical analysis and design
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Borings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TECHNICAL TESTING/INSPECTION SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Technical Testing/Inspection Services may include any of the following:

Structural inspections & investigations	Subsurface exploration
Structural studies	Preliminary Engineering
Planning & feasibility studies	Structural analysis and testing
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Underwater inspection

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 171.11% and a net fee (profit) of 12%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup



Stantec Consulting Services, Inc.
11687 Lebanon Road
Cincinnati OH 45241-2012
Tel: (513) 842-8200
Fax: (513) 842-8250

Stantec

Schedule of Fees

Engineering Services and Consultation

1.	Professional Consultation (In Connection with Hearings and Litigation)	\$ 380.00/hour
2.	Senior Principal Engineer.....	\$ 250.00/hour
3.	Principal Engineer.....	\$ 225.00/hour
4.	Associate Engineer.....	\$ 210.00/hour
5.	Project Manager	\$ 170.00/hour
6.	Senior Engineer:	
	a. Water Resources Engineer	\$ 180.00/hour
	b. Geotechnical Engineer	\$ 180.00/hour
	c. Civil Engineer	\$ 170.00/hour
7.	Senior Project Engineer	\$ 130.00/hour
8.	Project Engineer	\$ 100.00/hour
9.	Senior Geologist	\$ 120.00/hour
10.	Geologist	\$ 75.00/hour
11.	Senior Geohydrologist	\$ 130.00/hour
12.	Geohydrologist.....	\$ 85.00/hour
13.	Environmental Manager.....	\$ 170.00/hour
14.	Senior Environmental Scientist	\$ 140.00/hour
15.	Environmental Scientist.....	\$ 95.00/hour
16.	Environmental Planner.....	\$ 100.00/hour
17.	GIS Manager	\$ 150.00/hour
18.	GIS Project Manager	\$ 120.00/hour
19.	GIS Specialist	\$ 90.00/hour
20.	GIS Technician	\$ 75.00/hour
21.	Senior Engineering Technician	\$ 100.00/hour



Engineering Services and Consultation (Continued):

22.	Public Works Technician.....	\$ 90.00/hour
23.	Engineering Technician.....	\$ 80.00/hour
24.	Senior Technician	\$ 75.00/hour
25.	Technician	\$ 65.00/hour
26.	Structural Engineer Manager	\$ 165.00/hour
27.	Senior Structural Engineer	\$ 137.00/hour
28.	Structural Engineer	\$ 88.00/hour
29.	Structural Detailer	\$ 80.00/hour
30.	Roadway Engineer Manager.....	\$ 148.00/hour
31.	Senior Roadway Engineer	\$ 120.00/hour
32.	Roadway Engineer.....	\$ 88.00/hour
33.	Roadway Detailer.....	\$ 73.00/hour
34.	Right-of-Way/Survey Manager.....	\$ 132.00/hour
35.	Right-of-Way Technician.....	\$ 75.00/hour
36.	Design CADD Technician	\$ 110.00/hour
37.	Senior CADD Technician	\$ 90.00/hour
38.	CADD Technician	\$ 75.00/hour
39.	Clerical.....	\$ 65.00/hour
40.	Reimbursable Expenses:	
	Travel by Automobile or Pickup Truck.....	\$ 0.75/mile
	Travel by Survey Crew Truck.....	\$ 1.25/mile
	Travel by Public Conveyance.....	Actual Cost + 10%
	Per Diem – Meals	\$ 36.00/day/person
	Per Diem – Lodging	\$ 80.00/day/person
	All Other Direct Expenses	Actual Cost + 5%

NOTE: The above rates assume office work or normal field work. Add \$8.00/hour for Level C and \$15.00/hour for Level B personal protection for environmental field work. Work at Level personal protection will be quoted on a job basis.



Stantec Consulting Services, Inc.
 11687 Lebanon Road
 Cincinnati OH 45241-2012
 Tel: (513) 842-8200
 Fax: (513) 842-8250

Stantec

Schedule of Fees

Drilling and Sampling Services

This schedule is for the purpose of establishing a range within which cost for items set forth herein may fall. Actual charges shall be governed in accordance with the following conditions: (1) quantity of work to be done, (2) materials to be drilled, augered or sampled, (3) availability of water for drilling, and (4) accessibility and complexity of set-up. Final charges will be within the range detailed in this schedule and as agreed upon by the CLIENT and STANTEC CONSULTING SERVICES INC. Some jobs may be performed with a drill and personnel on a time basis with rates ranging from \$130.00 to \$320.00 per hour plus reimbursable expenses.

NOTE: The following rates do not include the cost of immediate field supervision or logging and sampling by the engineer attending the project.

1. Rock Core Drilling:

a.	AX Diamond Bit (1 ¹ / ₈ -Inch Diameter Core)	\$ 38.00/foot
b.	BX Diamond Bit (1 ⁵ / ₈ -Inch Diameter Core)	\$ 38.00/foot
c.	NQ Diamond Bit (2-Inch Diameter Core)	\$ 38.00/foot
d.	HQ Diamond Bit (2 ¹ / ₂ -Inch Diameter Core)	\$ 55.00/foot
e.	PQ Diamond Bit (3 ¹¹ / ₃₂ -Inch Diameter Core).....	\$ 75.00/foot
f.	Four-Inch Diameter Core.....	\$ 90.00/foot
g.	Six-Inch Diameter Core	\$ 110.00/foot
h.	Drilling from Floating Equipment and Angle Hole Drilling	Prices Upon Request
i.	Rig Set-Up.....	\$ 250.00/each

2. Soil Drilling and Sampling (Minimum 8-Hour Charge):

a.	Rig, Driller and Helper (Rig Equipped for Auger Work Only)	
	CME 45B.....	\$ 220.00/hour
	CME 55, CME 45T, CME 55T, Mobile B61	\$ 240.00/hour
	CME 85	\$ 320.00/hour
b.	Geoprobng (Rig and Two-Man Crew).....	\$ 275.00/hour



Drilling and Sampling Services (Continued)

2. Soil Drilling and Sampling (Continued):

c.	Rod Sounding (Manually Driven).....	\$ 125.00/hour
d.	Mechanical Auger Soundin.....	\$ 12.00/foot
e.	Soil Profile Auger Boring	\$ 13.00/foot
f.	Hollow-Stem Augers:	
	(1) 3¼-Inch I.D.....	\$ 13.00/foot
	(2) 4¼-Inch I.D.....	\$ 14.00/foot
	(3) 6¼-Inch I.D.....	\$ 18.00/foot
	(4) 12¼-Inch I.D..... (Add \$5.00/Foot for Revert Drilling Fluid)	\$ 50.00/foot
g.	Rotary Borings 6-Inch Diameter:	
	(1) With Water.....	\$ 14.00/foot
	(2) With Bentonite Drilling Mud.....	\$ 17.00/foot
	(3) With Revert.....	\$ 22.00/foot
h.	Undisturbed Soil Sampling: (Prices Do Not Include Cost of Drilling)	
	(1) Thin-Wall Tube Sample (Shelby-Tube), ASTM D-1587, 2½-Inch or 3-Inch Diameter	\$ 40.00/sample
	(2) CME Continuous Sampling	\$ 45.00/sample
	(3) 6-Inch Denison Sample.....	Prices Upon Request
	(4) 3-Inch and 5-Inch Piston Sample	Prices Upon Request
i.	Disturbed Soil Sampling: (Prices Do Not Include Cost of Drilling)	
	(1) Standard Penetration Test, ASTM D-1586.....	\$ 25.00/test
	(2) Bag Sample (30 pounds).....	\$ 30.00/sample

3. Air Rotary Drilling:

a.	8¾-Inch Roller Bit.....	\$ 22.00/foot
b.	10-Inch Roller Bit.....	\$ 25.00/foot



Drilling and Sampling Services (Continued)

- 3. Air Rotary Drilling (Continued):
 - c. 12¼-Inch Roller Bit..... \$ 28.00/foot
 - d. 6½-Inch Down Hole Hammer \$ 18.00/foot
 - e. 8⁵/₈-Inch Down Hole Hammer..... \$ 20.00/foot
 - f. 10-Inch Down Hole Hammer \$ 24.00/foot
 - g. Overburden Casing:
(Includes Materials and Installation)
 - (1) 10-Inch Diameter PVC..... \$ 20.00/foot
 - h. Air Rig with Two-Man Crew Equipped to do
Soil and Rock Work to Depths of 100 Feet..... \$ 260.00/hour
- 4. Cement and Chemical Grouting, Water-Pressure Testing and Piezometer Installation are Quoted per Job Request.
- 5. Equipment Mobilization and Demobilization:
 - a. Truck-Mounted Drill Rig (Single Rear Axle) \$ 2.50/mile
 - b. Truck-Mounted Drill Rig (Dual Rear Axle)..... \$ 3.50/mile
 - c. Air Rotary Drill Rig..... \$ 4.50/mile
 - d. Skid-Mounted Drill Rig..... \$ 4.50/mile
 - e. Utility Truck (Four-Wheel Drive) \$ 1.25/mile
 - f. Truck and Low-Boy Trailer \$ 4.50/mile
 - g. Flatbed Utility Truck..... \$ 3.50/mile
 - h. Crew Travel Time (Two-Man Crew)..... \$ 125.00/hour
 - i. Dozer Assistance for Rig Access..... \$ 85.00/hour

Mileage shall be determined as follows:

- a. Moving-In: From the central office or from the point of departure to the project site, whichever is less.
- b. Moving-Out: From the project site to the central office or to the next project, whichever is less.

The foregoing methods of computing mobilization costs are subject to review and approval by the CLIENT for each project. It is intended that STANTEC CONSULTING SERVICES INC. receive just compensation for all equipment mobilization; however, the CLIENT is to be charged only that mileage applicable to move equipment to and from his project site.



Stantec Consulting Services, Inc.
 11687 Lebanon Road
 Cincinnati OH 45241-2012
 Tel: (513) 842-8200
 Fax: (513) 842-8250

Stantec

Schedule of Fees

Laboratory Services

1. Construction Monitoring:

a.	Senior Engineering Technician.....	\$ 100.00/hour
b.	Public Works Technician	\$ 90.00/hour
c.	Engineering Technician.....	\$ 80.00/hour
d.	Senior Technician.....	\$ 75.00/hour
e.	Technician.....	\$ 65.00/hour
f.	Travel by Automobile or Pickup Truck	\$ 0.75/mile
g.	Travel by Public Conveyance	Actual Cost + 5%
h.	Per Diem – Meals.....	\$ 36.00/day/person
i.	Per Diem – Lodging.....	\$ 80.00/day/person
j.	Other Direct Expenses	Cost + 5%

2. Soils:

a.	Natural Moisture Content, ASTM D 2216.....	\$ 9.00/test
b.	Atterberg Limits (LL, PL and PI), ASTM D 4318	\$ 65.00/test
	Wet Method.....	\$ 105.00/test
c.	Shrinkage Limit and Shrinkage Ratio, ASTM D 427	\$ 105.00/test
d.	Material in Soils Finer than the No. 200 Sieve, ASTM D 1140.....	\$ 50.00/test
e.	No. 200 Wash Gradation, ASTM D 1140, ASTM C 136.....	\$ 90.00/test
f.	Sieve and Hydrometer Analysis (Does not include Specific Gravity), ASTM D 422	\$ 90.00/test
g.	Specific Gravity of Soils, ASTM D 854.....	\$ 50.00/test
h.	Organic Content	\$ 50.00/test
i.	Fertility	\$ 75.00/test



Stantec

Laboratory Services (Continued)

2. Soils (Continued):

j.	Soil Resistivity, ASTM G 57	\$ 45.00/test
k.	Moisture-Density Curve:	
	(1) Standard Proctor, ASTM D 698:	
	Methods A and B	\$ 180.00/test
	Method C	\$ 235.00/test
	(2) Modified Proctor, ASTM D 1557:	
	Methods A and B	\$ 245.00/test
	Method C	\$ 310.00/test
	(3) Correction for Oversize Particles, ASTM D 4718	\$ 60.00/test
l.	Laboratory CBR, ASTM D 1883	\$ 175.00/point
m.	Shelby Tube Sample Extrusion	\$ 12.00/tube
n.	Unconfined Compression Test (2½-Inch or 3-Inch), ASTM D 2166	\$ 60.00/test
o.	Unit Dry and Wet Weight (Laboratory Determination for Undisturbed Specimens)	\$ 50.00/test
p.	Remolded Soil Specimen	\$ 55.00/each
q.	Sample Trimmed to 1.4" Diameter for Special Testing	\$ 55.00/each
r.	Vane Shear Strength (Torvane) Includes Unit Weight and Natural Moisture Content Determination, ASTM D 4648	\$ 35.00/test
s.	One-Dimensional Consolidation Test (1/4 to 16 Ton Loading, Includes Specific Gravity), ASTM D 2435 (Add \$100.00 for Each Unload-Reload Cycle)	\$ 400.00/test
t.	Triaxial Compression Test (Includes Specific Gravity):	
	(1) Unconsolidated Undrained, ASTM D 2850	\$ 150.00/1-point
	(2) Consolidated Undrained with Pore Pressure Measurements, ASTM D 4767	\$ 850.00/3-points
u.	Permeability Test, Flexible Wall/Backpressure (Includes Specific Gravity), ASTM D 5084:	
	(1) 2.8-Inch Diameter Sample	\$ 320.00/test
	(2) 4.0-Inch Diameter Sample	\$ 540.00/test
	(3) 2.0-Inch Diameter Sample (Rock Core)	\$ 800.00/test



Stantec

Laboratory Services (Continued)

2. Soils (Continued):

v.	Permeability Test, Constant Head, ASTM D 2434	\$ 300.00/test
w.	Direct Shear Test, ASTM D 3080	\$ 400.00/test
	Residual Direct Shear (3 points per test)	\$ 550.00/test
x.	Field Density Test (Rate Includes Operator's Time):	
	(1) Nuclear Density Apparatus, ASTM D 2922	\$ 65.00/hour
	(2) Sand Cone, Reinhardt Balloon or Calibrated Cup	\$ 65.00/hour
y.	Maximum and Minimum Index Densities, ASTM D 4253 and D 4254	\$ 275.00/test

3. Concrete:

a.	Molding Concrete Cylinders, ASTM C 31	\$ 65.00/hour
b.	Unit Weight, Yield and Air Content (Pressure Method) of Concrete, ASTM C 138 and ASTM C 231	\$ 65.00/hour
c.	Slump Test of Concrete, ASTM C 143.....	\$ 65.00/hour
d.	Concrete Mix Design, ACI 211	\$ 600.00/each
e.	Compressive Strength Test of Concrete Cylinders, ASTM C 39:	
	(1) Curing and Breaking Cylinders (One Copy of Test Report to One Address)	\$ 18.00/each
	(2) Additional Copies of Test Reports.....	\$ 0.70/each
	(3) Additional Distribution of Test Reports (Per Each Cylinder).....	\$ 2.00/addr.
	(4) Handling and Curing Cylinders Not Tested	\$ 4.50/each
	(5) E-mail Test Report Converted to PDF Format Up to 10 E-mail Addresses	\$ 1.25/report
f.	Thin-Wall Concrete Coring, Operator, Crew and Equipment (Rate Applies from Office Departure to Return, 4-Hour Min.)	\$ 180.00/hour
g.	Sawing, Curing, Capping and Breaking Thin-Wall Concrete Cores, ASTM C 42	\$ 70.00/each
h.	Flexural Strength Test of Concrete Beams, ASTM C 78.....	\$ 55.00/each
i.	Compressive Strength Test of Mortar Cubes, ASTM C 109.....	\$ 15.00/each
j.	Floor Flatness Testing, ASTM E 1155	\$ 90.00/hour



Laboratory Services (Continued)

3.	Concrete (Continued):	
k.	Compression Testing of Concrete Masonry Units, ASTM C 140 (3 Coupons)	\$ 150.00/test
l.	Absorption of Concrete Masonry Units, ASTM C 140 (3 Block Section)	\$ 125.00/test
4.	Aggregates:	
a.	Specific Gravity and Absorption:	
	(1) ASTM C 127	\$ 55.00/test
	(2) ASTM C 128	\$ 120.00/test
b.	Lightweight Particles, ASTM C 123	Actual Cost + 5%
c.	Clay Lumps and Friable Particles, ASTM C 142.....	\$ 70.00/test
d.	Organic Impurities in Sands for Concrete, ASTM C 40.....	\$ 90.00/test
e.	Sieve Analysis of Fine and Coarse Aggregates, ASTM C 136:	
	(1) Fine Aggregate	\$ 60.00/test
	(2) Coarse Aggregate.....	\$ 115.00/test
f.	Soundness of Aggregates, Sodium or Magnesium Sulfate, Five Cycles, ASTM C 88.....	\$ 310.00/test
g.	Los Angeles Abrasion, ASTM C 535 (Price Includes Sample Preparation)	\$ 250.00/test
h.	Slake Durability Index (SDI):	
	(1) KM 64-513-79	\$ 55.00/test
	(2) ASTM D 4644 - Two Cycles.....	\$ 70.00/test
	(3) ASTM D 4644 - Four Cycles	\$ 125.00/test
i.	Jar Slake, KM64-514-95.....	\$ 30.00/test
j.	Calcium Carbonate, ASTM D4373.....	\$ 125.00/test
k.	Material Finer than No. 200 Sieve in Mineral Aggregate, ASTM C 117.....	\$ 50.00/test
l.	Flat and/or Elongated Particles, ASTM D 4791.....	\$ 165.00/test



Stantec

Laboratory Services (Continued)

- 5. Rock Core:
 - a. Compression - Peak Strength (NX-Size to 4-Inch Diameter):
 - (1) Peak Strength Only, ASTM D 2938..... \$ 130.00/test
 - (2) Peak Strength with Simple Strain Measurement,
ASTM D 2938 \$ 150.00/test
 - b. Using Rock Extensometer Package, ASTM D 3148
Elastic Modulus and Poisson's Ratio \$ 450.00/test
 - c. Tensile Strength:
 - (1) Splitting (Brazilian Method), ASTM D 3967 \$ 140.00/test
 - (2) Direct, ASTM D 2936 \$ 290.00/test
 - d. Shear Strength - Includes Vertical and Horizontal
Deformation, ASTM D 5607 (NX-Size to 6-Inch Diameter)
Peak Strength and Sliding Friction (Post Peak)..... \$ 575.00/point
 - e. Bonded Shear Strength - Includes Vertical and Horizontal
Deformation, ASTM D 5607 (NX-Size to 6-Inch Diameter):
 - (1) Intact Sample - Grout on Rock or Concrete and
Sliding Friction (Post Peak)..... \$ 400.00/point
 - (2) Lab Prepared Sample - Grout on Rock or
Concrete with Sliding Friction (Post Peak) \$ 500.00/point
 - f. Rock Anchor Bond Strength, Corps of Engineers Rock
Testing Handbook (RTH) Guidelines
(2.5-Inch to 6-Inch Diameter)
Peak Strength with Sliding Friction (Post Peak)..... \$ 450.00/point
 - g. Specific Gravity and Absorption, ASTM C 128 \$ 50.00/test
 - h. Effective Dry Unit Weight and Porosity, RTH 109..... \$ 220.00/test
 - i. Water Content, ASTM D 2216 or RTH 106..... \$ 20.00/test
 - j. Unit Weight - Sawn and Measured \$ 60.00/test
 - k. Slake Durability Test:
 - (1) Kentucky Method KM 64-513..... \$ 55.00/test
 - (2) ASTM D 4644 - Two Cycles..... \$ 70.00/test
 - (3) ASTM D 4644 - Four Cycles \$ 125.00/test
 - l. Jar Slake Test, Kentucky Method KM 64-514..... \$ 30.00/test
 - m. Permeability, ASTM D 5084 \$ 800.00/test



Stantec

Laboratory Services (Continued)

- 6. Asphalt:
 - a. Marshall Mix Design, KM 64-411-90 Actual Cost + 5%
 - b. Gradation and Asphalt Content (Extraction),
KM 64-405-92 and KM 64-433-89 \$ 200.00/each
 - c. Unit Weight and Thickness, AASHTO T-166 \$ 50.00/each



Stantec Consulting Services, Inc.
 11687 Lebanon Road
 Cincinnati OH 45241-2012
 Tel: (513) 842-8200
 Fax: (513) 842-8250

Stantec

Schedule of Fees

Monitoring Well and Hazardous Drilling Services

The drilling, sampling and mobilization associated with monitoring well construction and hazardous drilling conditions are as set forth in the Drilling and Sampling Services Schedule of Fees unless otherwise noted. The rates do not include immediate field supervision by an engineer or geologist.

- 1. Decontamination of Equipment Prior to Mobilization \$ 550.00/rig
- 2. Standard Penetration Tests \$ 35.00/test
- 3. Undisturbed Thin Wall Tube Samples (3" Diameter) \$ 50.00/each
- 4. Drilling and Sampling Services:
 - a. Level A Personnel Protection Prices Upon Request
 - b. Level B Personnel Protection Standard Drilling Price Plus 100%
 - c. Level C Personnel Protection Standard Drilling Price Plus 50%
 - d. Level D Personnel Protection Standard Drilling Price Plus 20%

NOTE: Charges for personnel protective equipment and monitoring equipment are additional.

- 5. Self Contained Breathing Apparatus (SCBA) and Compressed Air (Three-Man Crew) \$ 425.00/day
- 6. Saranex Coveralls (Level B) \$ 20.00/each
- 7. Tyvek Coveralls with Polycoating (Level C)..... \$ 15.00/each
- 8. Tyvek Coveralls (Level D)..... \$ 5.00/each



Monitoring Well and Hazardous Drilling Services (Continued)

9. PVC Monitoring Well Materials:

a. 2-Inch, Schedule 40:

(1)	Riser Pipe	\$ 3.00/foot
(2)	Slotted Screen	\$ 7.00/foot
(3)	PVC Plug and Cap.....	\$ 9.00/each

b. 2-Inch, Schedule 80:

(1)	Riser Pipe	\$ 4.00/foot
(2)	Slotted Screen	\$ 9.00/foot
(3)	PVC Plug and Cap.....	\$ 9.00/each

c. 4-Inch, Schedule 40:

(1)	Riser Pipe	\$ 5.00/foot
(2)	Slotted Screen	\$ 13.00/foot
(3)	PVC Plug and Cap.....	\$ 14.00/each

d. 4-Inch, Schedule 80:

(1)	Riser Pipe	\$ 11.00/foot
(2)	Slotted Screen	\$ 18.00/foot
(3)	PVC Plug and Cap.....	\$ 19.00/each

e. 8-Inch, Schedule 40:

(1)	Riser Pipe	\$ 23.00/foot
(2)	Slotted Screen	\$ 35.00/foot
(3)	PVC Plug and Cap.....	\$ 130.00/each

10. Stainless Steel Monitoring Well Materials:

a. 2-Inch, Type 304:

(1)	Riser Pipe	Prices Upon Request
(2)	Wire Wrapped Screen (Five Feet).....	Prices Upon Request
(3)	Plug and Cap.....	Prices Upon Request

b. 2-Inch, Type 316:

(1)	Riser Pipe	Prices Upon Request
(2)	Wire Wrapped Screen (Five Feet).....	Prices Upon Request
(3)	Plug and Cap.....	Prices Upon Request

c. 4-Inch, Type 304:

(1)	Riser Pipe	Prices Upon Request
(2)	Wire Wrapped Screen (Five Feet).....	Prices Upon Request
(3)	Plug and Cap.....	Prices Upon Request



Monitoring Well and Hazardous Drilling Services (Continued)

- 10. Stainless Steel Monitoring Well Materials (Continued):
 - d. 4-Inch, Type 316:
 - (1) Riser Pipe Prices Upon Request
 - (2) Wire Wrapped Screen (Five Feet)..... Prices Upon Request
 - (3) Plug and Cap Prices Upon Request
 - e. 8-Inch, Type 304:
 - (1) Riser Pipe, Black Steel
Threaded and Coupled Prices Upon Request
 - (2) Wire Wrapped Screen (Five Feet)..... Prices Upon Request
 - (3) Lockable Cap Prices Upon Request
 - 11. Protective Well Covers (2-Inch and 4-Inch)..... \$ 150.00/each
 - 12. Concrete Pad for Well Covers..... \$ 500.00/each
 - 13. Expanding Caps, Lockable and Watertight (2-Inch and 4-Inch)..... \$ 45.00/each
 - 14. Flushmount Manhole (2-Inch and 4-Inch)..... \$ 90.00/each
 - 15. Flushmount Manhole, Lockable and Watertight (2-Inch and 4-Inch).. \$ 190.00/each
 - 16. Well Backfill Materials (Cement, Bentonite, Pellets, Sand)
 - a. 2-Inch and 4-Inch Monitoring Wells \$ 9.00/foot
 - b. 8-Inch Monitoring Wells \$ 22.00/foot
 - c. 6-Inch Monitoring Wells \$ 13.00/foot
- NOTE:** Items 9 through 16 include materials only -- not installation.
- 17. Well Installation..... \$ 250.00/hour
 - 18. Well Development
(Two-Man Crew w/Bailer or Air Compressor)..... \$ 250.00/hour
 - 19. Pump Installation, Pumping Tests
and Aquifer Hydraulic Tests \$ 250.00/hour
 - 20. Decontamination of Drilling Tools
and Monitoring Well Materials..... \$ 250.00/hour
 - 21. Deionized Water \$ 3.00/gal.
 - 22. Containerization of Solvents, Wastes, Debris, Drilling Fluids, and
Well Development Water, Drill Cuttings and Leave by Boring \$ 150.00/drum



Stantec

Monitoring Well and Hazardous Drilling Services *(Continued)*

23.	HNU Meter (Equipment Only)	\$ 60.00/day
24.	Field Gas Chromatograph (Equipment Only)	\$ 60.00/day
25.	Oil/Water Level Gauge	\$ 30.00/day
26.	Explosion Meter	\$ 15.00/day
27.	Draeger Tubes	\$ 25.00/day
28.	Stand-By Time	\$ 250.00/hour
29.	Per Diem – Meals	\$ 36.00/day/person
30.	Per Diem – Lodging	\$ 80.00/day/person



Stantec Consulting Services, Inc.
11687 Lebanon Road
Cincinnati OH 45241-2012
Tel: (513) 842-8200
Fax: (513) 842-8250

Stantec

Schedule of Fees

Underwater Inspection and Commercial Diving Services

1. Personnel:

a.	Senior Engineer Diver (PE)	\$ 160.00/hour
b.	Diving Supervisor	\$ 110.00/hour
c.	Engineer Diver (EIT).....	\$ 100.00/hour
d.	Senior Commercial Diver.....	\$ 90.00/hour
e.	Commercial Diver.....	\$ 75.00/hour
f.	Underwater Hazard Surcharge	\$ 65.00/hour
	(Additional to hourly rate for each dive hour.)	

2. Equipment:

a.	Air Compressor/Dive Equipment	\$ 175.00/day
b.	Dive Boat.....	\$ 150.00/day
c.	Work Boat	\$ 100.00/day
d.	Barge Platform (10' x 16')	\$ 525.00/day
e.	Underwater Photographic Equipment.....	\$ 35.00/day
f.	Underwater Video Equipment.....	\$ 100.00/day
g.	Hydrographic Survey Equipment.....	\$ 100.00/day
h.	Hydraulic Power Unit.....	\$ 80.00/day
i.	Hydraulic Power Tools.....	\$ 50.00/day
j.	Welder.....	\$ 75.00/day (plus mobilization)
k.	Cutting Rods	\$ 150.00/box



Stantec

Underwater Inspection and Commercial Diving Services

(Continued)

2. Equipment (Continued)

l.	Ultrasonic Thickness Gauge.....	\$ 100.00/day
m.	Hot Water Suit.....	\$ 75.00/day
n.	Hand Dredge with Hose and Pump	\$ 175.00/day
o.	Recompression Chamber.....	Prices Upon Request

Other Direct Expenses:

a.	Mileage – Crew Cab Tow Vehicle.....	\$ 1.25/mile
b.	Mileage – Automobile or Pickup Truck	\$ 0.75/mile
c.	Per Diem – Meals.....	\$ 36.00/day/person
d.	Per Diem – Lodging.....	\$ 80.00/day/person
e.	Other Costs	Actual Cost + 5%

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and SFA Architects, Inc., a Corp. organized under the laws of the State of Ohio, the address of which is 300 W 4th STREET ("Consultant").

*Suite 100
Cincinnati, Ohio 45202-2665*

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

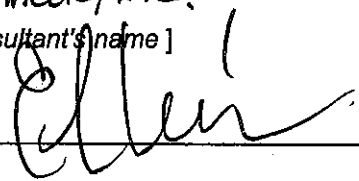
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

SFA Architects, Inc.
[insert Consultant's name]

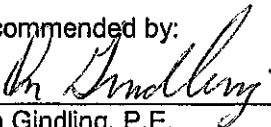
By: 

Printed Name: Emilio T Fernandez

Title: President

Date: January 16, 2012

Recommended by:

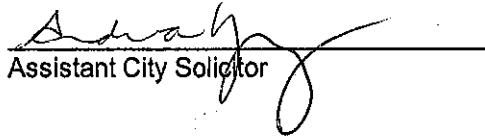

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: **MAR 01 2012**

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

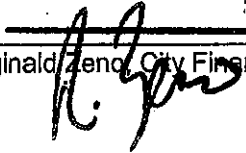
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
MECHANICAL/PLUMBING/FIRE PROTECTION/ELECTRICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Mechanical/Plumbing/Fire Protection/Electrical Engineering Services may include any of the following:

Planning & feasibility studies	Preliminary Engineering
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Engineering and architectural analyses and evaluations	
Design of mechanical, Plumbing, fire protection, and electrical systems	
Second Opinion reports on reuse of adaptation of systems in existing buildings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See ATTACHED -

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of _____% and a net fee (profit) of _____%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

SFA ARCHITECTS INC.
Overhead Analysis
12/31/10 to 12/31/11

Officers	\$ 251,330.88		
Professional	\$ 1,914,424.85		
		\$ 2,165,755.73	1.0

Total Expenses \$ 4,847,802.35

Less:

Auto Expense	\$ (74,704.14)		
Business gifts	\$ (2,620.00)		
Employee Morale	\$ (7,714.79)		
Per Diem	\$ (1,596.13)		
Travel	\$ (10,713.29)		
Meals & Entertainment	\$ (11,136.31)		

\$ 4,739,317.69 2.19

Direct Labor	1.00		
Overhead	2.19		
Sub-Total	3.19 (Overhead Multiplier)		
Profit 10.0%	0.32		
Total	3.51		

2012-2015

EXHIBIT B (Attachment)

PAYMENT SCHEDULE

TITLE	BASE	MULTIPLIER	RATE
Principal Architect/ Principal Engineer	43.27	3.51	151.75
Project Manager	32.40	3.51	113.63
Project Architect	28.44	3.51	99.74
Project Engineer	28.65	3.51	100.48
Architect	21.77	3.51	76.35
Interior Designer	20.44	3.51	71.69
Clerical	13.94	3.51	48.89
CADD	15.95	3.51	55.94

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7192

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and S&ME, Inc., a Corp. organized under the laws of the State of NC, the address of which is 3201 Spring Forest Rd ("Consultant").
Raleigh, NC 27616

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: *Milton Dohoney, Jr.*
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

S & ME, Inc., a North Carolina corporation
[insert Consultant's name]

By: *Stephen C. Pasternack, P.E.*
Printed Name: Stephen C. Pasternack P.E.

Title: *Ohio Branch Manager*
Date: *Jan 17*, 2012

Recommended by:
Don Gindling
Don Gindling, P.E.
City Engineer

Michael R. Moore
Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Assistant City Solicitor

MAR 01 2012

Certified Date:

Fund/Code:

Amount:

By:


Reginald Zeno, City and County Director

**CERTIFICATION OF
FUNDS NOT REQUIRED**

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
GEOTECHNICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Geotechnical Engineering Services may include any of the following:

Geotechnical inspections & investigations	Subsurface exploration
Geotechnical studies	Preliminary Engineering
Planning & feasibility studies	Geotechnical analysis and design
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Borings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

SEE ATTACHED PAYMENT SCHEDULE

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of N/A % and a net fee (profit) of N/A %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

S&ME Inc.
SCHEDULE OF FEES
PERSONNEL

Item #	S&ME Classifications	Unit	Unit Rate
PERSONNEL			
P7, P6, P5	Expert Witness	hr	\$ 250.00
P7	Technical Principal	hr	\$ 220.00
P6	Principal	hr	\$ 220.00
P5	Senior Professional/Geologist/Scientist	hr	\$ 155.00
P4	Project Engineer/Scientist II	hr	\$ 120.00
P3	Project Engineer/Scientist I	hr	\$ 100.00
P2	Staff Professional/Geologist/Scientist II	hr	\$ 85.00
P1	Staff Professional/Geologist/Scientist I	hr	\$ 70.00
C3	CAD Operator III	hr	\$ 69.00
C2	CAD Operator II	hr	\$ 54.00
C1	CAD Operator I	hr	\$ 40.00
S2	Administrative Support	hr	\$ 57.00
T4	Senior Engineering Technican IV	ST / hour	\$ 65.50
T4	Senior Engineering Technican IV	OT / hour	\$ 98.25
T3	Engineering Technician III	ST / hour	\$ 54.00
T3	Engineering Technician III	OT / hour	\$ 81.00
T2	Engineering Technician II	ST / hour	\$ 44.00
T2	Engineering Technician II	OT / hour	\$ 66.00
T1	Engineering Technician I	ST / hour	\$ 39.00
T1	Engineering Technician I	OT / hour	\$ 58.50
NOTES for Personnel:			
ST = Straight Time (hourly)			
OT = Overtime - Over 8 hours daily and Saturdays (hourly)			
OTHER			
M5.	Mileage	mile	\$ 0.66
M5B.	Trip Charge (varies per site)	each	
M11.	Subsistence (per person)	night	\$ 135.00
M12.	Direct Costs		

S&ME, Inc.
SCHEDULE OF FEES
CONSTRUCTION MATERIALS TESTING

ITEM #	DESCRIPTION	Unit	Unit Rate
AGGREGATE			
M1.	Sodium Sulfate Soundness, Ledge Rocks (slabs) (ASTM D 5240)		\$ 510.00
M2.	Sodium Sulfate Soundness (ASTM C 88)		\$ 280.00
M3.	Magnesium Sulfate Soundness (ASTM C 88)		\$ 280.00
M4.	LA Abrasion (ASTM C 131, C 535)		\$ 195.00
M5.	Gradation (ASTM C 136)		\$ 78.00
M6.	Material Finer Than No. 200 Decant (ASTM C 117)		\$ 47.00
M7.	Specific Gravity & Absorption (ASTM C 127, C 128)		\$ 90.00
M8.	Deleterious Substances (visual) (ASTM S 1029)		\$ 170.00
M9.	Crushed Count Percent Fractured, 1-face, 2-face (ODOT S 1021)		\$ 88.00
M11.	Organic Impurities (ASTM C 40)		\$ 47.00
M12.	Clay Lumps & Friable Particles (ASTM C 142)		\$ 45.00
M13.	Unit Weight (ASTM C 29)		\$ 64.00
M14.	Flat & Elongated (ASTM D 4791)		\$ 92.00
M16.	Oxidation-Reduction Potential		\$ 90.00
M17.	As-Received Moisture Content (ASTM C 566)		\$ 17.00
M18.	Slake Durability Index Test (ASTM D 4644)		\$ 105.00
M19.	Filter Sand Effective Size Uniformity Coefficient (ASTM C 136)		\$ 140.00
ASPHALT			
M25.	Extraction, Grading Dust Test (Centrifuge) (ASTM D 2172)		\$ 165.00
M26.	Density Only (cores or Marshall Specimens, uncoated) (ASTM D 2726)		\$ 40.00
	Asphalt Sieve (Dublin)		\$ 52.00
M27.	Thickness Measurement of Core (ASTM D 3549)		\$ 17.00
M28.	Rice Maximum Theoretical Specific Gravity (ASTM D 2041)		\$ 107.00
CONCRETE			
M31.	Concrete Compression Test (ASTM C 39)		\$ 16.50
M32.	Concrete Compressive Strength on Core (ASTM C 42)		\$ 63.00
M33.	Concrete Beam (ASTM C 78)		\$ 48.50
M34.	Core Thickness Measurement (ASTM C 174)		\$ 19.00
M35.	Core, Unit Weight (ASTM C 642)		\$ 41.00
M36.	Core, Absorption (ASTM C 497, C 642)		\$ 47.00
M37.	Complete Mix Design (ASTM C 192)		\$ 1,400.00
M38.	Unit Weight (lightweight - ASTM C 567)		\$ 52.00
M39.	Splitting Tensile (ASTM C 496)		\$ 61.00
M40.	Verification Batch (ASTM C 192)		\$ 690.00
M21.	Micro Deval (AASHTO T 327, LS-619, MN 1217)		\$ 255.00
M20.	% Sulfides (ANSI / AWWA C105 / A21.5)		\$ 30.00
CONCRETE MASONRY UNIT			
M44.	Grout Prism (ASTM C 1019)		\$ 42.00
M45.	Mortar Cube (ASTM C 109)		\$ 20.00
M46.	CMU Compression Test (ASTM C 140)		\$ 51.00
M47.	CMU Absorption Test (ASTM C 140)		\$ 51.00
M48.	CMU Compression / Absorption / Dimensions (ASTM C 140)		\$ 290.00
M49.	CMU Prism Test (ASTM C 1314)		\$ 105.00
M50.	CMU Fire Rating (set of 3) (NCMA)		\$ 200.00
M51.	CMU Linear Drying Shrinkage (ASTM C 426)		\$ 515.00

S&ME, Inc.
SCHEDULE OF FEES
DRILLING SERVICES

ITEM #	DESCRIPTION	unit	2012
DRILLING SERVICES			
MOBILIZATION:			
D1.	Truck Rig (Hamilton County)		\$ 495.00
D2.	ATV Rig (Hamilton County)		\$ 495.00
AUGER DRILLING:			
D4.	No Sampling (above 50 feet)	linear ft	\$ 9.00
D5.	5-Foot SPT Interval (above 50 feet)	linear ft	\$ 13.00
D6.	2-1/2-Foot SPT Interval (above 50 feet)	linear ft	\$ 20.00
D7.	Continuous SPT (above 50 feet)	linear ft	\$ 24.00
D8.	Surcharge between 50'-80' depth	linear ft	\$ 9.00
D9.	Surcharge between 80'-120' depth	linear ft	\$ 11.00
D10.	Surcharge between 120'-160' depth	linear ft	\$ 13.00
D11.	Hourly Charge for Boring Layout, Standby, Difficult Access, Etc.	hour	\$ 175.00
ROTARY DRILLING:			
D14.	Hourly Charge for Loading/Unloading Coring Equipment, Changeover, Driving & Pulling Casing, Hauling Water, Etc.	hour	\$ 175.00
D15.	5-Foot SPT Interval (above 50 feet)	linear ft	\$ 20.00
D16.	2-1/2-Foot SPT Interval (above 50 feet)	linear ft	\$ 26.00
D17.	Continuous SPT (above 50 feet)	linear ft	\$ 31.00
D18.	Surcharge between 50'-80' depth	linear ft	\$ 9.00
D19.	Surcharge between 80'-120' depth	linear ft	\$ 11.00
D20.	Surcharge between 120'-160' depth	linear ft	\$ 13.00
ROCK CORING:			
D14.	Hourly Charge for Loading/Unloading Coring Equipment, Changeover, Driving & Pulling Casing, Hauling Water, Etc.	hour	\$ 175.00
D25.	NX, NQ or Rock Core	linear ft	\$ 34.00
D26.	Surcharge between 50'-80' depth	linear ft	\$ 9.00
D27.	Surcharge between 80'-120' depth	linear ft	\$ 11.00
D28.	Surcharge between 120'-160' depth	linear ft	\$ 13.00
D29.	Extended Storage of Rock Core	.00/mo after 60 days	
RENTAL RATES: (Truck or ATV Rig)			
D14.	Hourly Rate (includes Mobilization, Drilling, Loading/Unloading, Changeover, Hauling Water, Driving & Pulling Casing, Difficult Access, Standby, Boring Layout, Setting Wells, Decontamination of Drilling Equipment or Personnel, Etc.	hour	\$ 175.00
D33.	Daily Rate (10 hr day portal to portal)	day	\$ 1,775.00
D34.	Half-Day Rate (4 hrs or less on site, includes local mobilization)	half day	\$ 975.00
OTHER EXPENSES:			
D39.	Subsistence (per person)	night	\$ 135.00
D40.	Shelby Tube Sampling, Per Attempt	each	\$ 65.00
D41.	Standard Penetration Test (Additional)	each	\$ 17.50
D42.	OSHA Level C Surcharge	per project	
TRAFFIC CONTROL (not including labor):			
R12	Traffic Control - Standard Setup (signs and cones)	per day	\$ 90.00
R13	Traffic Control - Difficult Setup (signs, cones, barrels, and lights)	per day	\$ 175.00
R14	Traffic Control - Arrow Board	per day (min)	\$ 175.00

S&ME, Inc.
SCHEDULE OF FEES
DRILLING SUPPLIES

ITEM #	DESCRIPTION	unit	2012
DRILLING SUPPLIES			
	<u>2" Flush-joint, Sch 40 PVC</u>		
	Risers	per foot	\$ 3.50
	Screens	per foot	\$ 4.75
	Slip Cap, Bottom Plug	each well	\$ 16.00
	<u>4" Flush-joint, Sch 40 PVC</u>		
	Risers	per foot	\$ 9.00
	Screens	per foot	\$ 12.00
	Slip Cap, Bottom Plug	per well	\$ 30.00
	<u>Slope Inclinator Casing</u>		
	Casing (2.75")	per foot	\$ 15.00
	Slip Cap, Bottom Plug	each well	\$ 20.00
	Grout Foot Valve and Quick Connect To Tremie	each well	\$ 225.00
	<u>Sch 40 pvc (Stand Pipe)</u>		
	1.5" or 2" Hand Slotted	per foot	\$ 3.00
	<u>Grouts Seals and Abandonment</u>		
	Portland Cement - 94 lb. Bag	per bag	\$ 15.00
	Bentonite Sand (Benseal) - 50 lb. Bag	per bag	\$ 15.00
	Bentonite Gravel (Hole Plug) - 50 lb. Bag	per bag	\$ 18.00
	Bentonite Pellets - 5 Gallon Bucket	per bucket	\$ 75.00
	Quick Gel - 50 lb. Bag	per bag	\$ 18.00
	Concrete Mix - ("Sacrete") - 40 lb. Bag	per bag	\$ 15.00
	Asphalt Patch	per bag	\$ 18.00
	Quick Set Concrete - 40 lb. Bag	per bag	\$ 18.00
	Very Quick Set Concrete (Set 45) - 40 lb. Bag	per bag	\$ 65.00
	Grout Pump	per day	\$ 150.00
	Hole Plug Device (S&ME)	each	\$ 10.00
	<u>Other Items</u>		
	Quartz Sand	per bag	\$ 15.00
	4" x 5' Locking Pro-cover and Lock	per well	\$ 125.00
	6" x 5' Locking Pro-cover and Lock	per well	\$ 225.00
	Flush Pro-cover 6" Diameter x 9" Deep w/Bolts	per well	\$ 85.00
	Steel Drum	each	\$ 65.00

S&ME, INC.
SCHEDULE OF FEES
SOILS LABORATORY TESTS

Code	ITEM #	DESCRIPTION	unit	2012
SOILS				
010	T1.	Visual Identification and Classification	each	\$ 9.50
	T2.	Visual Unified Soil Classification (ASTM D 2488-93)	each	\$ 9.50
020	T3.	Visual Identification, Classification and Natural Moisture Content	each	\$ 16.00
021	T4.	Moisture Content; oven @ 105°C (ASTM D 2216)	each	\$ 9.50
030	T5.	Density, Moisture Content and Visual Identification	each	\$ 87.50
040	T6.	Liquid and Plastic Limits (D 4318)	each	\$ 67.00
044	T7.	Liquid and Plastic Limits (non-plastic)	each	\$ 25.00
052	T8.	Sieve / Hydrometer Analysis on - 10 material; includes Sieve Nos. 40, 70 and 200 (ASTM D 422)	each	\$ 118.00
050	T9.	Sieve Analysis; including washing on No. 200 Sieve	each	\$ 69.00
051	T10.	Sieve / Short Hydrometer	each	\$ 77.00
041	T11.	Shrinkage Limit (ASTM D 427)	each	\$ 118.00
083	T12.	Maximum and Minimum Density (cohesionless soil, D 4253, D 4254)	each	\$ 285.00
140	T13.	Specific Gravity (D 854)	each	\$ 69.00
090	T14. *	Permeability; water or air (ASTM D 2434 / D 5084)	each	\$ 280.00
070	T15.	Visual Identification of Rock Core	per box	\$ 59.00
	T16.	Preparation of Soft Rock Sample	each	\$ 45.00
110	T17. *	Unconfined Compression; stress-strain curve (D 2166) - soil and rock	each	\$ 116.00
		Triaxial Compression (per confinement):		
111	T21. *	Unconsolidated - Quick (D 2850)	each	\$ 155.00
	T22. *	Unconsolidated - Quick Saturated (D 4767)	each	\$ 170.00
112	T23. *	Consolidated - Quick with pore-pressure measurements in saturated (back pressure) specimen (D 4767)	each	\$ 390.00
		Consolidated - Drained on saturated (back pressure) specimen (D 4767)		
115	T24. *	(back pressure) specimen (D 4767)	each	\$ 490.00
T-19a	T25.	Multi-Stage (as per T16, T17, T18 or T19 type)	each	\$ 690.00
122	T28. *	Direct Shear - Quick (per point) (ASTM D 3080)	per point	\$ 260.00
120	T29. *	Direct Shear - Drained (per point) (ASTM D 3080)	per point	\$ 480.00
121	T30. *	Direct Shear - Residual	each	\$ 134.00
130	T31. *	Consolidation Test - to 16 tsf and rebound (ASTM D 2435) (includes specific gravity)	each	\$ 590.00
Note		***Unload-Reload Cycle is included in Test T31		
131	T32. *	Swelling of Expansive Soils	each	\$ 250.00
L135	T33. *	Torvane ASTM D4658	each	\$ 22.50
L045	T34. *	Oven-dried LL (ODOT)	each	\$ 33.00
		Optimum Moisture (compaction):		
080	T36.	"Standard" (ASTM D 698)	each	\$ 200.00
081	T37.	"Modified" (ASTM D 1557)	each	\$ 260.00
082	T38.	"One Point"	each	\$ 75.00
		California Bearing Ratio:		
100	T41. *	Preparation of one specimen in laboratory; 4-day soaking; penetration (ASTM D 1883)	each	\$ 370.00
	T42.	Complete Design, Method 1	each	\$ 1,150.00
	T43.	Complete Design, Method 2	each	\$ 3,375.00
		* May Require Test T46		
060	T44.	Handling Charge for Shelby Tube Sample: includes extrusion; Shelby Tube Log, and storage of wax-preserved specimens for later tests, if required	per tube	\$ 76.00
151	T45.	Processing of Large Bulk Soil Sample	per sample	\$ 69.00
150	T46.	Preparation of Remolded Test specimen	per specimen	\$ 66.00
172	T47.	Insoluble Carbonate Residue (ASTM D 3042-86)	each	\$ 220.00
170	T48.	pH Determination (AASHTO T 289-91)	each	\$ 57.00
171	T49.	Resistivity (AASHTO T 288-91)	each	\$ 149.00
160	T50.	Loss on Ignition (ASTM D 2974-87)	each	\$ 52.00
L161	T51.	Porosity (if unit dry weight pre-determined)	each	\$ 79.00
L162	T52.	Porosity (includes Specific Gravity and Unit Dry Weight determinations)	each	\$ 130.00
163	T53.	Uniformity Coefficient	each	\$ 138.00
	T54.	Undisturbed Specimen Preparation	per specimen	\$ 99.00
166	T55.	Boutwell Permeability Field Tests (installation plus data reduction)	each	\$ 6,000.00

S&ME, INC.
SCHEDULE OF FEES
SOILS LABORATORY TESTS

Code	ITEM #	DESCRIPTION	unit	2012
	T56.	Boutwell Permeability Field Tests (more than 5- permeameters and 1-TEG		
	T57.	Special Tests NOT listed; performed by Lab Assistant	per hour	\$ 65.00
	T58.	Special Tests NOT listed; performed by Lab Supervisor	per hour	\$ 100.00
SOILS with ADDITIVES				
043	T61.	Liquid and Plastic Limits with Additive	each	\$ 88.00
114	T62.	Unconfined Compression with Additive	each	\$ 138.00
085	T63.	Optimum Moisture (compaction) (ASTM D 698) with Additive	each	\$ 250.00
086		Modified Proctor (ASTM D 1557) with Additive	each	\$ 290.00
101	T64.	California Bearing Ratio: preparation of one specimen in laboratory; 4-day soaking; penetration (ASTM D 1883) with Additive	each	\$ 395.00
149	T65.	Preparation of Remolded Test specimen with Additive	each	\$ 79.00
	T66.	Controlled Curing with Additive	per sample	\$ 13.00
NOTES on Laboratory Testing Fees:				
a) Prices listed cover: performance of the indicated tests under engineering supervision; computation of the test results; and submission of results in tabular or curve form, in duplicate.				
b) Charges for other routine or special tests and preparator procedures will be provided upon request.				

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7224
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and R.L. Banks + Associates, Inc., a Corp. organized under the laws of the State of Ohio, the address of which is 2107 Wilson Boulevard ("Consultant").

↓
Delaware

Suite 750
Arlington, Virginia 22201-3077

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

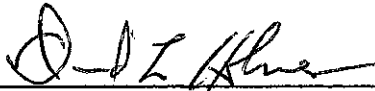
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

R.L. Banks + Associates, Inc.
[insert Consultant's name]

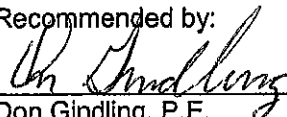
By: Ken Withers


Printed Name: Ken Withers

Title: Vice President

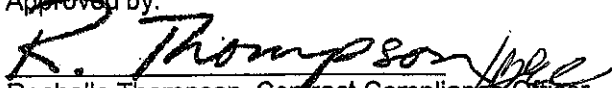
Date: January 20, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: MAR 08 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

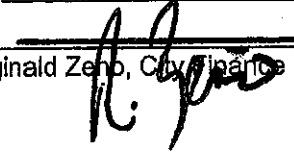
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
RAILROAD PLANNING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Railroad Planning Services may include any of the following:

Existing Conditions	Related Reports
Cost Estimates (budgetary)	Equipment rental
Historic Research	Attendance at public meetings
Site Analysis	Community input exhibits
Planning & feasibility studies	Interim and final reports
Utility coordination	Related engineering & surveying
Coordination with other agencies	Related design services

- Review and identification of the City's railroad objectives and interests.
- Assessment of rail carrier interests and positions.
- Evaluation of railroad related issues and opinions.
- Recommendations and assistance to the City in carrying out specific steps to implement its objectives.
- Technical advice regarding railroad operations and facilities.
- Communications with state and federal agencies regarding railroad matters.
- Coordination meetings with railroads.

These services are to assist the City of Cincinnati to preserve unused or underused railroad corridors, and in some cases acquire, in a timely manner, for future public transportation related use. Advisory services required are to provide primarily conceptual and strategic planning, rather than railroad engineering.

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting, phone call or email correspondence will be initiated by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting, phone call or email correspondence with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Principal	\$245.00
Seniors	\$220.00
Intermediate	\$200.00
Analysts	\$ 80.00
Support Staff	\$ 50.00

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 297 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

R.L. Banks & Associates, Inc.

Costs Included in Overhead Calculation

Indirect Salary Expense
Management & Administrative Salaries
Holiday Expense
Annual Leave Expense
Sickpay Expense
Bank Service Charge
Computer Service - Accounting Dept.
Computer Service - Vendors
Computer - Parts and Software
Conventions & Seminars
Depreciation
Amortization
Dues & Fees
Couriers & Express Mail
Couriers - Air Express
Group Hospital & Major Medical
Group Disability Insurance
Group Life and Accidental Death and Dismemberment Insurance
Other Insurance
Legal & Professional Services
Office Supplies & Expense
Photocopying and Duplication
Outside Accounting Services
Postage Expense
Profit Sharing Contribution
Profit Sharing Trust Expense
Employee Benefits
Publications
Recruiting Employee Expense
Rent Expense
Repairs & Maintenance
Taxes - Others
Taxes- Payroll
Telephone Expense – Local
Telephone - Long Distance
Internet Access
Travel
Copy Expense
Printing, Copying, Duplicating
Fax Expense

Rate Used: 297%



Yang, Andrea

From: Ken Withers, P.E. [kenwithers@rlbadc.com]
Sent: Monday, February 27, 2012 10:06 AM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Ron Miller
Subject: RE: R.L. Banks & Associates, Inc Contingency Contract

Mel McVay:

Yes, we are a corporation under laws in State of Delaware.
Certainly that change in the contract wording is acceptable.

Ron Miller of RLBA (copied on this) will register RLBA as an Entity in Ohio, and send proof to you.

We thank you for your consideration.

Ken

Ken Withers, P.E.
Vice President

R.L. BANKS & ASSOCIATES, INC



kenwithers@rlbadc.com

Please visit our web site at www.rlbadc.com.

R.L. Banks & Associates, Inc.
Suite 750
2107 Wilson Boulevard
Arlington, VA 22201
703 276 7522 (T)
703 276 7732 (F)

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Wednesday, February 22, 2012 11:34 AM
To: Ken Withers, P.E.
Cc: Brazina, John; Yang, Andrea
Subject: R.L. Banks & Associates, Inc Contingency Contract

Mr. Withers,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

It appears that R.L. Banks & Associates, Inc. does not have a valid Foreign Entity Registration with the Ohio Secretary of State. In order for your contract to be processed, you must expedite your registration and send us proof of valid Foreign Entity Registration in Ohio.

Additionally, the information listed with your prior registration states that the corporation is organized under the laws of the State of Delaware (not Ohio). In order to finalize your contract we will need to amend the first paragraph to reflect

that change. If that is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract once we receive proof of your valid Foreign Entity Registration in Ohio .

Please "reply all" with any questions or comments, and to confirm that the amendment is acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

201205800021

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
02/27/2012	201205800021	FOREIGN LICENSE/FOR-PROFIT (FLF)	125.00	100.00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

DIAMOND ACCESS
ATTN: LISA VAIDO
887 SOUTH HIGH STREET
COLUMBUS, OH 43206

**STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted**

2084838

It is hereby certified that the Secretary of State of Ohio has custody of the business records for
R.L. BANKS & ASSOCIATES, INC.
and, that said business records show the filing and recording of:

Document(s)

Document No(s):

FOREIGN LICENSE/FOR-PROFIT

201205800021

Authorization to transact business in Ohio is hereby given, until surrender, expiration or
cancellation of this license.



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 24th day of February, A.D. 2012.

Jon Husted

Ohio Secretary of State

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7225
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and RA CONSULTANTS, LLC a LIMITED LIABILITY COMPANY organized under the laws of the State of KY, the address of which is 4250 CREEK RD./CINTI, OH 45241 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (*Scope of Services*). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

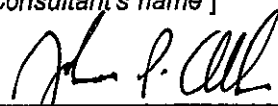
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

RA Consultants, LLC, a Kentucky limited liability company
[insert Consultant's name]

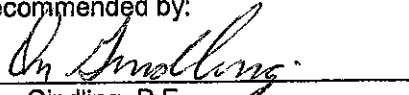
By: 

Printed Name: John P. Allan

Title: President

Date: January 24th, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

MAR 01 2012

Certified Date:

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

By: *[Signature]*
Reginald Zerbo, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ROW AND SUBDIVISION PERMIT SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for ROW and Subdivision Permit Services may include any of the following:

Right-of-Way Permit and Plan Review	Manual Preparation
Subdivision Permit and Plan Review	Interim and final reports
Shop Drawing Review	Quality Review
Research and Studies	Equipment rental
Product Evaluation	
Coordination with other City and Private Agencies/Utilities	
Related Engineering and ROW Management Services	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule.

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 158 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

MASTER SERVICE AGREEMENT NO. 25X7225

Exhibit B

I. CURRENT FEE SCHEDULE

NOTE agrees to pay the RA Consultants for any work performed under this Agreement upon Written Notice to Proceed in accordance with the following salary schedule:

<u>LABOR CLASSIFICATION</u>	<u>ESTIMATED RANGE OF September 20012 – January 2013 DIRECT LABOR, HOURLY WAGES</u>
Principal	\$65 - \$79
Sr. Project Manager	\$55 - \$75
Project Manager	\$39- \$69
Structural Engineer	\$30 - \$63
Staff Supplement	\$20- \$79
Senior Engineer	\$39 - \$71
Senior Architect	\$30 - \$62
ROW and Subdivision Permit Services	\$29 - \$78
Mechanical Designer	\$18 - \$59
Sr. Project Engineer	\$29- \$63
Project Engineer	\$27 - \$43
Sewer Design Checking	\$27- \$65
Assistant Engineer	\$19 - \$35
Surveying Services	\$15 - \$69
Technical Writing	\$30- \$60
Easement Acquisition	\$25- \$75
Training	\$35- \$75
Scheduling	\$25- \$45
Estimating	\$27- \$68
Cost Control	\$27- \$68
Environmental Permitting	\$25- \$55
CAD Technician	\$16 - \$37
Sr CAD Technician	\$22- \$55
Admin. /Word Processing	\$15 - \$37
ROW Permit Plan Review	\$29- \$75
Construction Management/Inspection	\$25- \$75
Easement Plats Registered P.S.	\$65- \$99

The above direct labor hourly rates will be subject to a multiplier of 2.97 for which will represent the total direct labor costs plus indirect costs plus a fixed percentage fee to be paid for this work. Reimbursable expenses, which include such items as mileage, copies, etc. are not subject to the above-described multiplier.

In addition to the above salaries, DOTE will reimburse the Consultant for the direct costs applicable for the project. Reimbursable direct costs shall be defined as the cost of all in-office and out-of-office expenses which are directly allocable to the services performed under this Agreement. Reimbursable expenses may include, but shall not be limited to: vehicle mileage and transportation expenses, printing, reproduction, approved sub agreements, contract document costs, and other items directly related to the work. All dollar amounts attributable to the Consultant's approved sub agreements shall be considered a reimbursable expense to the Consultant. Postage and long distance phone calls are not considered as a direct cost chargeable to a project.

II. REIMBURSABLE EXPENSES SCHEDULE

Local Mileage Reimbursement	\$0.555/mile
Subcontract Services	cost + 10%

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7223
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and PEDCO E&A Services, Inc., a corporation organized under the laws of the State of OH, the address of which is 11499 Chester Rd., Ste 301, Cincinnati, OH 45246 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects: Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.


(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

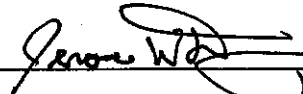
- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

PEDCO E&A Services, Inc.
[insert Consultant's name]

By: 
Milton Dohoney, Jr., City Manager

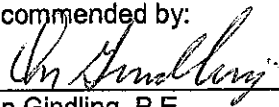
By: 
Printed Name: Jerome W. Doerger

Date: 3/12/, 2012

Title: Vice President

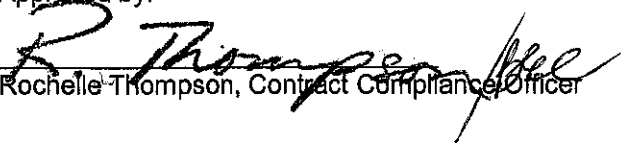
Date: March 5, 2012

Recommended by:



Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

MAR 08 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**


By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
MECHANICAL/PLUMBING/FIRE PROTECTION/ELECTRICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Mechanical/Plumbing/Fire Protection/Electrical Engineering Services may include any of the following:

Planning & feasibility studies	Preliminary Engineering
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Engineering and architectural analyses and evaluations	
Design of mechanical, Plumbing, fire protection, and electrical systems	
Second Opinion reports on reuse of adaptation of systems in existing buildings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

SEE ATTACHED SALARY RANGE

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

Salary Range (\$/Hr)*

11499 Chester Road
Suite 301
Cincinnati, OH 45246
513.782.4920
513.782.4950 fax

202 W. Berry Street
Suite 640
Fort Wayne, IN 46802
260.424.1279
260.424.6309 fax

www.pedcoea.com

	Salary Range \$/Hr.	
Principal in Charge	\$ 47.36	\$ 52.50
Project Manager	\$ 40.87	\$ 51.84
Senior M/E Engineer	\$ 42.43	\$ 50.91
M/E Engineer	\$ 24.88	\$ 47.71
Senior M/E Designer	\$ 26.44	\$ 40.78
M/E Designer	\$ 13.65	\$ 28.50
Project Administrator	\$ 15.99	\$ 22.79

* Salary range does not include overhead and profit

CITY OF CINCINNATI
CINCINNATI, OHIO

2012-2015 AGREEMENT FOR ARCHITECTURAL & ENGINEERING SERVICES

Overhead Calculation

	<u>Expenses</u>
Direct Labor	\$ 3,286,329
Indirect Labor	\$ 3,352,443
Insurance	\$ 274,623
Marketing	\$ 93,569
Consultants	\$ 9,250
Auto Expense	\$ 22,270
Employee Expense	\$ 99,992
P/R Taxes	\$ 391,466
Computer Exp	\$ 80,728
Telephone	\$ 35,264
Office Supplies	\$ 45,580
License/Registration Comp	\$ 2,965
Dues	\$ 32,369
Misc	\$ 7,231
Taxes - Other	\$ 20,923
Legal Fees	\$ 20,233
Profit Share	\$ 151,964
Rent	\$ 298,379
Depreciation Expense	\$ 6,246
	<u>\$ 8,231,824</u>
Overhead Calculations	
Indirect Expense =	\$ 4,945,495
Direct Labor =	\$ 3,286,329
Overhead Factor	1.50
Profit	10%
Multiplier on labor	2.75

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Michael Walsh [MWalsh@pedcoea.com]
Sent: Monday, March 05, 2012 1:38 PM
To: McVay, Melissa
Cc: Yang, Andrea; Brazina, John
Subject: Re: PEDCO E & A Contingency Contract

Mel,
Sorry for missing the date. I am fine with you modifying the contract by adding the date. Thanks!

Mike Walsh, PE, LEED AP, SPM
Project Manager

PEDCO E & A Services, Inc. | www.pedcoea.com
11499 Chester Road, Suite 301 | Cincinnati, OH 45246 | 513.782.4950 Fax
513.782.4920 Office | 513.782.4942 Direct | 513.260.2501 Cell
>>> "McVay, Melissa" <Melissa.McVay@cincinnati-oh.gov> 3/5/2012 12:16 PM >>>
Mr. Walsh,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

In order to finalize your contract your signature block must be dated. Please "reply all" to confirm that it is acceptable to you that we modify the contract by inserting the date that we receive your response to this e-mail.

Thank you,

Mel McVay

Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax

This e-mail and any files transmitted with it are confidential. If you are not the named addressee you should not disseminate, distribute, copy, or alter this e-mail. Any views or opinions presented in this e-mail are solely those of the author and might not represent those of PEDCO E & A Services, Inc. Warning: Although PEDCO E & A Services, Inc. has taken reasonable precautions to ensure no viruses are present in this e-mail, PEDCO E & A Services, Inc. cannot accept responsibility for any loss or damage arising from the use of this e-mail or attachments.

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Parsons Brinckerhoff, Inc. a Corp. organized under the laws of the State of N.Y., the address of which is 312 Elm St., Suite 2500 Cincinnati, Ohio 45202 ("Consultant").

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. TERM.

(A) Term. The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) Early Termination. Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, ~~naming the City as an additional insured~~, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement. JK

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver. JK

(Excluding Professional Liability)

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name]

Parsons Brinckerhoff, Inc.

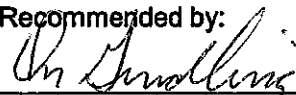
By: , VP

Printed Name: JUDI CRAIG

Title: VICE PRESIDENT

Date: 1/25, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
CONSTRUCTION MANAGEMENT SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Construction Management Services may include any of the following:

Provide Construction Management engineering, inspection and office, staff and services.
Provide construction scheduling and schedule analysis services
Provide cost estimating services
Provide claim analysis services
Provide mediation and resolution of owner/contractor disputes
Provide constructability reviews
Review and evaluation of construction codes, methods, specifications, material and equipment

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
FEDERALLY FUNDED PLANNING AND ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Planning or Engineering Design that have Federal Funds may include any of the following:

Preliminary engineering	Right-of-way plans
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See Attached Payment Schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 163.0 % and a net fee (profit) of 12 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT B - PAYMENT SCHEDULE

Position Title	OVERHEAD RATE	BILLING RATE
Area Mgr II	163.0%	\$208.96
Area Mgr III	163.0%	\$240.83
Asst Planner	163.0%	\$78.03
AUD Co-op	163.0%	\$46.82
CADD Operator I	163.0%	\$69.57
CADD Operator II	163.0%	\$80.06
CADD Operator III	163.0%	\$88.55
Computer Graphics Specialist III	163.0%	\$90.89
Consultant I	163.0%	\$150.81
Consultant II	163.0%	\$151.25
Document Control Coordinator I	163.0%	\$76.34
Engineer I	163.0%	\$93.63
Engineer I	163.0%	\$93.63
Engineer II	163.0%	\$106.12
Engineering Mgr	163.0%	\$229.19
Environmental Engineer II	163.0%	\$109.24
Environmental Manager	163.0%	\$217.79
Information Coordinator III	163.0%	\$113.45
Inspector I	163.0%	\$63.92
Inspector II	163.0%	\$75.66
Inspector III	163.0%	\$88.58
Lead Construction Engineer	163.0%	\$183.24
Lead Engineer	163.0%	\$148.38
Lead Environmental Engineer	163.0%	\$180.06
Lead Planner	163.0%	\$154.50
Lead Scheduler	163.0%	\$146.82
Lead Systems Analyst	163.0%	\$130.37
Mgt Technical Services	163.0%	\$177.84
Mkt Coordinator III	163.0%	\$93.63
Office Engineer	163.0%	\$91.95
Planner I	163.0%	\$94.88
Prin Technical Specialist	163.0%	\$176.69
Prin Technician	163.0%	\$127.78
Principal Consultant I	163.0%	\$224.10
Principal Consultant II	163.0%	\$312.12
Project Admin III	163.0%	\$85.68
Project Admin IV	163.0%	\$131.15
Project Controls Mgr	163.0%	\$151.84
Project Manager	163.0%	\$176.81
Sr. Admin Asst	163.0%	\$90.36
Sr. Admin Mgr	163.0%	\$154.68
Sr. Area Mgr	163.0%	\$306.47
Sr. CADD Designer	163.0%	\$95.04
Sr. CADD Operator	163.0%	\$84.71
Sr. Computer Graphics Specialist	163.0%	\$124.32
Sr. Construction Manager	163.0%	\$228.78
Sr. Designer	163.0%	\$100.56
Sr. Engineer	163.0%	\$124.78
Sr. Engineering Mgr	163.0%	\$236.52
Sr. Environmental Engineer	163.0%	\$117.14
Sr. Planner	163.0%	\$110.40
Sr. Planning Manager	163.0%	\$270.10
Sr. Principal Engineer	163.0%	\$169.07
Sr. Prin Technical Specialist	163.0%	\$211.80
Sr. Project Manager	163.0%	\$277.78
Sr. Supv CADD Designer	163.0%	\$118.51
Sr. Supv Construction Engineer	163.0%	\$254.87
Sr. Supv Engineer	163.0%	\$201.10
Supv Construction Engineer	163.0%	\$228.28
Supv Engineer	163.0%	\$189.33
Supv Environmental Scientist	163.0%	\$194.20
Supv Planner	163.0%	\$178.59
Supv Technician	163.0%	\$115.70

Note: Direct Expense Allowance =

5%

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and MSKZ, a LLC organized under the laws of the State of OH, the address of which is 462 LUDLOW ALLEY ("Consultant").
COLUMBUS, OHIO, 43215

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.


(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

MSKZ, LLC
[insert Consultant's name]

By: 
Milton Dohoney, Jr., City Manager

By: 

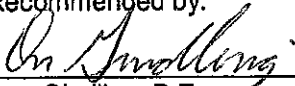
Date: 3/12/, 2012

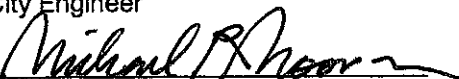
Printed Name: C.J. BENTEN

Title: PRINCIPAL

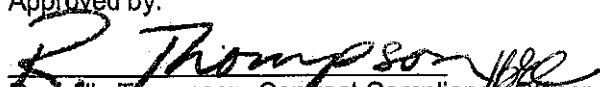
Date: 1/25/12, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

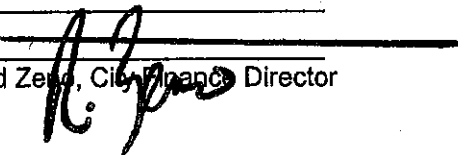
Certified Date: MAR 01 2012
Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Compensation Rates		
	Senior Principal	\$175/hour
	Principal	\$160/hour
	Associate Principal	\$140/hour
	Senior Associate	\$130/hour
	Associate	\$115/hour
	Urban Planner I	\$100/hour
	Urban Planner II	\$80/hour
	Urban Planner III	\$55/hour
	Landscape Architect I	\$95/hour
	Landscape Architect II	\$85/hour
	Landscape Architect III	\$55/hour
	Graphic Designer I	\$70/hour
	Graphic Designer II	\$55/hour
	Administration	\$50/hour

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150 % and a net fee (profit) of 12 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

MSK2 Overhead Rate Calculation

MSI 12 Months ended
12/31/2011

Indirect (Overhead) Expenses:
Payroll Burden

Employment Taxes	189532
Vacation, Sick Leave, Holiday	150901
Benefit Insurance	295565
Retirement Plan Admin Fees	6870
Moving Expense	2123
Outside Employment Services	926
Benefits - Other	19861
Total Payroll Burden	665778

General Overhead

Indirect Salaries & Payroll Variance	501955
Nonbillable salaries	8223
Other nonbillable services	25
Cost of Space	289998
Communications	60943
Misc. Expense	0
Business Insurance	53217
Interest and Taxes	72683
Bad Debt Expense	0
Depreciation	115388
Professional Services	16382
Office Supplies	190365
Repairs and Maintenance	1398
Travel, Meals and Lodging	0
Total General Overhead	1310577

Marketing Overhead

Marketing labor	0
Marketing & Business Development	0
Total Marketing	0

Total Overhead

1,976,355

Direct Labor Expense

Total Direct Labor **1,291,172**

Overhead Rate

1.53

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

Contract No. **25x7221**

**Agreement
for Architectural and Engineering Services**

**MOTZ CONSULTING
ENGINEERS, INC. DOING
BUSINESS AS
MOTZ ENGINEERING
300, W 4TH ST,
SUITE 300
CINCINNATI, OH 45202**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and a ~~CORPORATION~~ organized under the laws of the State of OHIO, the address of which is 300, W 4TH ST, SUITE 300 CINCINNATI, OH 45202 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "**Project**"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "**Budget**"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

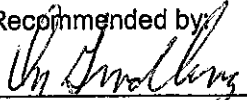
MOTZ CONSULTING ENGINEERS, INC.
[insert Consultant's name] DOING BUSINESS AS
MOTZ ENGINEERING

By: 

Printed Name: R. BRADLEY MOTZ

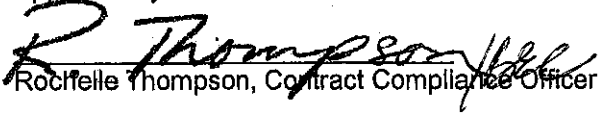
Title: CHAIRMAN AND CEO

Date: 1.25, 2012

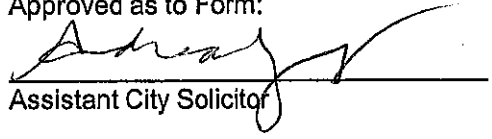
Recommended by:

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rockfelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

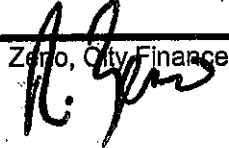
By: 
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
MECHANICAL/PLUMBING/FIRE PROTECTION/ELECTRICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Mechanical/Plumbing/Fire Protection/Electrical Engineering Services may include any of the following:

Planning & feasibility studies	Preliminary Engineering
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Engineering and architectural analyses and evaluations	
Design of mechanical, Plumbing, fire protection, and electrical systems	
Second Opinion reports on reuse of adaptation of systems in existing buildings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

EMPLOYEE NO. & POSITION TITLE	HOURLY LABOR FEE	OVERHEAD FEE	PROFIT FEE	TOTAL FEE
3 Engineer	\$46.15	\$92.30	\$4.62	\$143.07
5 Engineer	\$47.31	\$94.62	\$4.73	\$146.66
8 Vice President Sr. Electrical Engineer	\$47.31	\$94.62	\$4.73	\$146.66
9 Chief Executive Officer Principal	\$104.28	\$208.56	\$10.43	\$323.27
10 Vice President Sr. Mechanical Engineer	\$49.62	\$99.24	\$4.96	\$153.82
18 CADD Operator	\$30.00	\$60.00	\$3.00	\$93.00
22 Engineer	\$24.95	\$49.90	\$2.50	\$77.35
28 Administrative Assistant	\$27.50	\$55.00	\$2.75	\$85.25
53 Administrative Assistant	\$15.50	\$31.00	\$4.65	\$51.15
56 Coop	\$16.00	\$32.00	\$4.80	\$52.80
57 Coop	\$16.00	\$32.00	\$4.80	\$52.80

Note, Actual Billing Rate for Employee No. 9 will be \$153.82/Hour.

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 200 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7220
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Moody Nolan, Inc., a Corp. organized under the laws of the State of Ohio, the address of which is 434 Madison Avenue Covington, Kentucky 41011-3638 ("Consultant").

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. TERM.

(A) Term. The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) Early Termination. Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

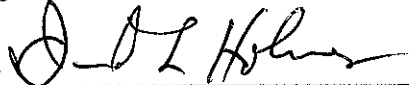
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

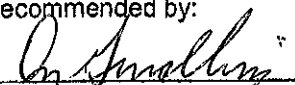
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

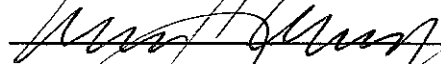
Date: 3/12, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Moody, Nolan, Inc., an Ohio Corporation
[Insert Consultant's name]

By: 

Printed Name: CURTIS J. MOODY FAIA

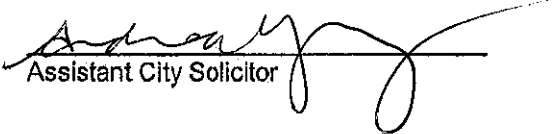
Title: PRESIDENT & CEO

Date: 1.20, 2012

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

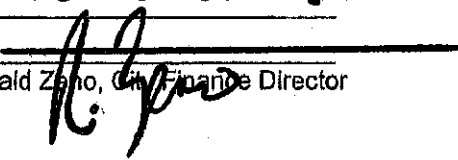
Certified Date: MAR 01 2012
Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See Moody•Nolan, Inc. Attachment, dated January 27, 2012

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 175 % and a net fee (profit) of 5 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

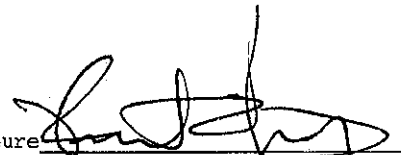
In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

Signature

Printed Name

Date:



VINCENT TERRY

3/7/12

Moody•Nolan Inc.
 Employee Salary Payment Schedule
 Exhibit B: January 27, 2012
 For: 2012-2015 DOTE Contingency Consultant Program

	Direct Salary Cost Per Hour	Payroll / OH Burden Rate	Total Hourly Cost. Inc. DSC	Profit Multiple	Billing Rate	Billing Rate Assigned
ARCHITECTURE						
Partner	\$66.25	1.90%	\$192.13	5.00%	\$201.73	\$ 200
Department Head	\$45.75	1.90%	\$132.68	5.00%	\$139.31	\$ 140
Project Manager	\$44.25	1.90%	\$128.33	5.00%	\$134.74	\$ 135
Senior Planner	\$41.00	1.90%	\$118.90	5.00%	\$124.85	\$ 125
Project Architect	\$37.00	1.90%	\$107.30	5.00%	\$112.67	\$ 115
Interior Designer	\$35.75	1.90%	\$103.68	5.00%	\$108.86	\$ 110
Construction Administration	\$46.00	1.90%	\$133.40	5.00%	\$140.07	\$ 140
Specifications	\$48.00	1.90%	\$139.20	5.00%	\$146.16	\$ 145
Senior Project Assistant	\$36.75	1.90%	\$106.58	5.00%	\$111.90	\$ 115
Graphic Designer	\$28.50	1.90%	\$82.65	5.00%	\$86.78	\$ 90
Project Assistant	\$26.50	1.90%	\$76.85	5.00%	\$80.69	\$ 80
Clerical	\$20.00	1.90%	\$58.00	5.00%	\$60.90	\$ 60

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7219
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Michael Schuster Associates, Inc. a Corp. organized under the laws of the State of Ohio, the address of which is 316 W 4th Street ("Consultant").

6th Floor
Cincinnati, Ohio 45202-2677

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

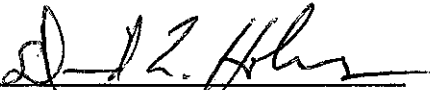
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Michael Schuster Associates, Inc.
[Insert Consultant's name]


By: 

Printed Name: Michael Schuster

Title: FAIA, Principal

Date: Jan 20, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ENVIRONMENTAL GRAPHIC DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Environmental Graphic Design Services may include any of the following:

Investigations & inspections	Site reconnaissance & photography
Condition studies	Rough sketches and working drawings
Planning & feasibility studies	Coordination with other agencies
Electronic file artwork	Computer Art file preparation
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Architectural, industrial design as related to signage	
Management of fabrication & installation	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Position Title	Hourly Labor Fee	Overhead Fee	Profit Fee	Total Profit Fee
Principal	50.00	87.50	13.75	151.25
Project Administrator	46.00	80.50	12.65	139.15
Senior Architect	34.00	59.50	9.35	102.85
Architect	32.00	56.00	8.80	96.80
Designer Level 1	30.00	52.50	8.25	90.75
Designer Level 2	28.00	49.00	7.70	84.70
Interior Design Manager	40.00	70.00	11.00	121.00
Interior Design Level 1	30.00	52.50	8.25	90.75
Interior Design Level 2	28.00	49.00	7.70	84.70
Sr. Graphic Designer	30.00	52.50	8.25	90.75
Graphic Designer Level 1	20.00	35.00	5.50	60.50
Draftsperson Level 1	20.00	35.00	5.50	60.50
Administrative Support	20.00	35.00	5.50	60.50

Overhead Fee Includes:

Health Benefits, Parking, Vacation/Sick, Personal Day, Education, Flexible Spending Account, Short Term & Long Term Disability Benefits, Jury Duty, 401K, Life Insurance, Medical Reimbursement, Armed Forces Active Duty, National & Company Holidays, Community Involvement, Coffee/Tea, Cincinnati Sports & Arts Tickets, Cincinnati Recreational Activities. In house reproduction, supplies, postage, deliveries, fax, telephone, and cell phones.

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 175 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7218
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Meisner and Associates a LLC organized under the laws of the State of Ohio, the address of which is 2043 Madison Road ("Consultant").
Cincinnati, OH 45208

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, ~~naming the City as an additional insured;~~ (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement. JMM

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the ~~acts of~~ ^{negligent} Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage. JMM

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Meisner & Associates, Inc., an Ohio Corporation
[insert Consultant's name]

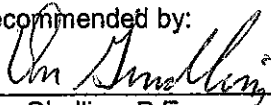
By: 

Printed Name: GARY W. MEISNER

Title: PRESIDENT

Date: JANUARY 17, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

A. Dealy
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

By: R. Zeno
Reginald Zeno, Compliance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

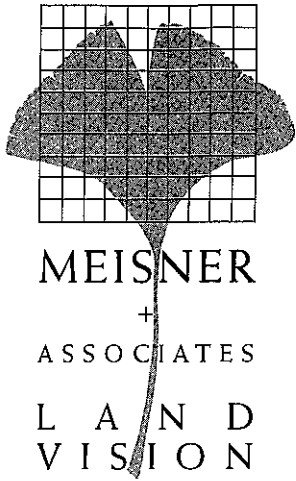
Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED



MEISNER
+
ASSOCIATES
L A N D
V I S I O N

P L A N N I N G
U R B A N D E S I G N
L A N D P L A N N I N G
L A N D S C A P E
A R C H I T E C T U R E

M +A / Land Vision

PAY SCHEDULE: Standard Billing Rates

Position	2011
Partner	\$130.00
Principal	\$110.00
LA I	\$100.00
LA II	\$ 90.00
LA III	\$ 80.00
LA IV	\$ 60.00
Planner I	\$100.00
Planner II	\$ 90.00
Planner III	\$ 80.00
Planner IV	\$ 60.00
3D Animations	\$100.00
Administration	\$ 60.00

2043 Madison Road
Cincinnati
Ohio 45208
(513) 321-2796
Fax (513) 321-3605

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 16 % and a net fee (profit) of 11 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Description	Amount	Adjustments		Amount Claimed
INDIRECT COST	2011			
Office Supplies	367.15			1,639.58
Bad Debt Expenses	19,534.32	(19,534.32)		-
Bank Charges/ Loan Interest				
RiverHills	6,999.96			-
5/3 LOC	9,329.00			-
Computer / Internet Hosting	280.55			280.55
Depreciation	2,000.00			2,000.00
Direct Project/ConsultantsTI	4,045.00	(4,045.00)		-
Dues and Subscriptions	746.55			746.55
Equipment Lease	3,217.37			3,217.37
Filing Fees	195.00			195.00
Health and Dental				
UHC	15,140.98			15,140.98
PNCHsa	31.60			31.60
Ohio National & John Hancock	1,994.64	(1,994.64)		-
Professional Liability	3,629.00			3,629.00
Property / General Liability/Umbrella	2,368.25			3,008.04
Library	37.40			37.40
License and Permits	125.00			125.00
Marketing	327.63			1,091.77
Admin Salaries	24,427.42	(24,427.42)	DL 39%	9,526.69
Design Salaries	23,958.40	(23,958.40)	DL 39%	9,136.69
Officer Salaries	56,250.00	(56,250.00)	DL 39%	21,937.50
Planning Salaries	70,677.18	(70,677.18)	DL 39%	27,564.10
Employer FICA	13,296.98			13,296.98
FUTA	280.00			4,120.37
SUTA	855.00			677.61
Admin Exp/Payroll& Tax Processing	2,140.62			2,140.62
Worker Compensation	1,021.68			1,021.68
Postage and Delivery	893.44			893.44
Printing and Reproduction	2,680.31			2,680.31
Accounting Fees	6,941.76			6,941.76
Legal Fees	8,432.50			8,432.50
Rent	15,000.00			15,000.00
Repairs & Maintenance	528.94			2,989.36
Employee Hospitality	206.74			206.74
Supplies /Alpine	255.90			232.90
Security Exp	204.08			204.08
Seminars & Cont. Ed	607.78			607.78
Taxes	650.00			650.00
Telephone/Cell/Long Dis				
Cinci Bell: Local, LD ,Internet	4,529.86			4,529.86
Verizon	944.89			944.89
Misc. Exp	298.28			298.28
Meals & Entertainment	157.03	(157.03)		-
Travel	767.54			2,271.18
Utilities	3,719.27			3,719.27
Total Indirect Cost	310,095.00	(201,043.99)		171,167.43
DIRECT LABOR				
Admin Salaries			61%	14,900.73
Design Salaries			61%	14,614.62
Officer Salaries			61%	34,312.50
Planning Salaries			61%	43,113.08
Total Direct Labor				106,940.93
Overhead Rate :				
Indirect Cost/Direct Labor				1.6
NET FEE (PROFIT):				11%

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7217

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and M-E COMPANIES, a ~~Corporation~~ organized under the laws of the State of Ohio, the address of which is 237 Triangle Park Drive ("Consultant").
Cm, Ohio 45246

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "**Project**"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "**Budget**"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, ~~naming the City as an additional insured~~, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement. OSK
1/20/12

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

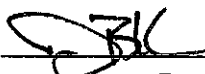
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

M-E Companies, Inc., an Ohio Corporation
[insert Consultant's name]

By: 
Printed Name: JEFFREY R KOEHN

Title: S.U.P.

Date: 1/26, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Andrew
Assistant City Solicitor

MAR 01 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF**

Amount: **FUNDS NOT REQUIRED**

By: Reginald Zeno
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

SEE ATTACHED PAYMENT SCHEDULE

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 157% and a net fee (profit) of 10%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

M•E Companies
COST OF SERVICES SCHEDULE – 2012 -2015 City of Cincinnati DOTE Contract
 EXHIBIT B (Continued)

HOURLY PERSONNEL RATES :

<u>POSITION</u>	<u>RATE</u>	<u>POSITION</u>	<u>RATE</u>
Senior Principal (SPR)	\$215/hr.	Design Engineer I (DE1)	\$65/hr.
Project Director/Executive (PD)	\$150/hr.	Design Engineer II (DE2)	\$80/hr.
Senior Technical Staff (STS)	\$135/hr.	Design Engineer III (DE3)	\$95/hr.
Project Manager (PM)	\$115/hr.	Designer I (DES1)	\$62/hr.
Senior Structural Engineer (SSE)	\$110/hr.	Designer II (DESII)	\$74/hr.
Structural Engineer (SE)	\$101/hr.	Senior Administrative Staff (SRA)	\$71/hr.
Senior Reviewer (SR)	\$95/hr.	Support Staff (SS)	\$52/hr.
Professional Surveyor (PRS)	\$95/hr.	CADD Operator (CADD)	\$50/hr.
Senior Project Engineer (SPE)	\$120/hr.	CADD Operator II (CADDII)	\$68/hr.
Construction Coordinator/Mgr.(CM)	\$95/hr.	Intern (INT)	\$48/hr.
Senior Construction Inspector (SCI)	\$82/hr.	Survey Crew - 2 Man GPS Crew	\$150/hr.
Construction Inspector (CI)	\$ 57/hr.	Survey Crew - 3 Man Crew	\$132/hr.
Title Researcher (TR)	\$ 48/hr.	Survey Crew - 2 Man Crew	\$120/hr.
Professional Staff (PS)	\$70/hr.	Crew Chief (CC)	\$80/hr.
Senior Professional Staff (SPS)	\$100/hr.	Instrument Operator (IO)	\$55/hr.

DIRECT REIMBURSABLE EXPENSES:

Reimbursement rates for outside reproduction and out-of-town travel are at cost. Reimbursement rates for out-of-pocket expenses, equipment rental and outside consultants are at cost plus 5%.

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and McGill Smith Punshon, Inc. a Corp. organized under the laws of the State of Ohio, the address of which is 3700 Park 42 Drive ("Consultant").
Suite 190 B
Cincinnati, Ohio 45241-2097

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 -- Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability Insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, ~~naming the City as an additional insured~~, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

NECESSARY
A

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

McGILL SMITH PUNSHON, INC.
[insert Consultant's name]

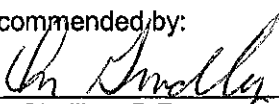
By: 

Printed Name: STEPHEN C. ROAT

Title: PRESIDENT

Date: Jan 24, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adreaz
Assistant City Solicitor

MAR 01 2012

Certified Date: ~~_____~~
Fund/Code: ~~_____~~
Amount: ~~_____~~

CERTIFICATION OF FUNDS NOT REQUIRED

By: R. Zero
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 183 % and a net fee (profit) of 20 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

**MSP Employee Payment Schedule
City of Cincinnati
2012-2015 Contingency Consultant
Contract Submittal Requirements**

Category	Hourly Rate
Accounting Clerk 1	\$ 70.00
Accounting Clerk 2	\$ 75.00
Administrative Assistant	\$ 55.00
Cad Tech 1	\$ 70.00
Cad Tech 2	\$ 75.00
Cad Tech 3	\$ 80.00
Cad Tech 4	\$ 90.00
Contract Administrator	\$ 75.00
Courthouse Researcher	\$ 65.00
Job Captain	\$ 110.00
Marketing Coordinator	\$ 65.00
Principal	\$ 195.00
Professional Engineer	\$ 145.00
Professional Surveyor	\$ 125.00
Project Manager	\$ 170.00
Registered Architect	\$ 170.00
Registered Landscape Architect	\$ 110.00
Survey Crew - Instrument Operator	\$ 65.00
Survey Crew - Rodman	\$ 40.00
Survey Crew Chief	\$ 80.00

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7214
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and KZF DESIGN, INC. a C CORP organized under the laws of the State of OHIO, the address of which is 700 BROADWAY STREET ("Consultant").
CINTL, OH 45202

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name] KZF DESIGN, INC.

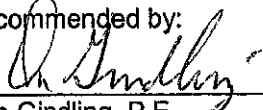
By: 

Printed Name: TIMOTHY SHARP

Title: VICE PRESIDENT

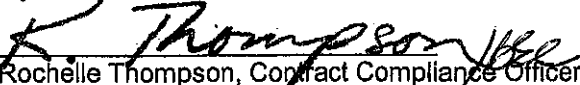
Date: JAN. 25, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

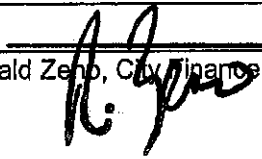
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ENVIRONMENTAL GRAPHIC DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Environmental Graphic Design Services may include any of the following:

Investigations & inspections	Site reconnaissance & photography
Condition studies	Rough sketches and working drawings
Planning & feasibility studies	Coordination with other agencies
Electronic file artwork	Computer Art file preparation
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Architectural, industrial design as related to signage	
Management of fabrication & installation	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
INTERIOR DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Interior Design Services may include any of the following:

- Establish budgets for interior work
- Select interior finishes & coordinate architectural finishes
- Design ceiling and lighting plans
- Create color and finish presentation boards
- Specify interior furniture, provide specifications for furniture packages
- Coordinate furniture installation
- Provide move coordination services
- Architectural design related services

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
MECHANICAL/PLUMBING/FIRE PROTECTION/ELECTRICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Mechanical/Plumbing/Fire Protection/Electrical Engineering Services may include any of the following:

Planning & feasibility studies	Preliminary Engineering
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Engineering and architectural analyses and evaluations	
Design of mechanical, Plumbing, fire protection, and electrical systems	
Second Opinion reports on reuse of adaptation of systems in existing buildings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Rates for 2012-2015

Category	Hourly Labor Fee	Overhead Fee 192.94%	Payroll + Overhead	Profit Fee of 15.0%	Billing Rate
Principal	\$58.50	\$112.87	\$171.37	\$25.71	\$197.00
Jr. Principal	\$49.00	\$94.54	\$143.54	\$21.53	\$165.00
Sr. Professional	\$42.50	\$82.00	\$124.50	\$18.67	\$143.00
Professional	\$38.00	\$73.32	\$111.32	\$16.70	\$128.00
Jr. Professional	\$33.25	\$64.15	\$97.40	\$14.61	\$112.00
Sr. Technician	\$28.00	\$54.02	\$82.02	\$12.30	\$95.00
Technician	\$24.00	\$46.31	\$70.31	\$10.55	\$80.00
Jr. Technician	\$20.00	\$38.59	\$58.59	\$8.79	\$67.00
Clerical	\$19.50	\$37.62	\$57.12	\$8.57	\$65.00

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 192.94% and a net fee (profit) of 15%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

KZF Design Inc.
Itemization of Costs for Overhead
For the Year Ended December 31, 2010

<u>Description</u>	<u>Allowable Costs</u>
INDIRECT COSTS	
Indirect Labor	\$2,856,682
Employee Benefits	\$642,153
Payroll Taxes	\$489,018
Office Expenses	\$730,455
Professional Services	\$83,196
Insurance - Business	\$147,754
Travel and Vehicles	\$5,068
Depreciation Expense	\$8,616
Business Development/Public Relations	\$129,905
Other Expenses	<u>\$512,506</u>
Total Overhead Expenses	\$5,605,353
Direct Labor	\$2,905,333
Overhead Rate	192.94%

55

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7213

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Kolar Design, a S-corp organized under the laws of the State of Ohio, the address of which is 1610 Lincoln Ave ("Consultant").
Ste 443
Cincinnati OH 45204

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "**Project**"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "**Budget**"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.


(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:


- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

Kolar Design, Inc.
[insert Consultant's name]

By: 
Milton Dohoney, Jr., City Manager

By: 

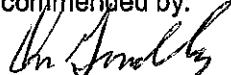
Date: 3/12/, 2012


Printed Name: Kelly Kolar

Title: President

Date: March 5, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adreany
Assistant City Solicitor

MAR 08 2012

Certified Date:

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

By:

R. Zero
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ENVIRONMENTAL GRAPHIC DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Environmental Graphic Design Services may include any of the following:

Investigations & inspections	Site reconnaissance & photography
Condition studies	Rough sketches and working drawings
Planning & feasibility studies	Coordination with other agencies
Electronic file artwork	Computer Art file preparation
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Architectural, industrial design as related to signage	
Management of fabrication & installation	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Position	Hourly fee	150% Overhead	15% Profit	Total Fee
Principal	67.01	100.52	25.13	192.66
Design Manager	53.12	79.68	19.92	152.72
Senior Designer	46.25	69.37	17.34	132.96
Junior Designer	33.19	49.79	12.45	95.43
Production	27.70	41.54	10.39	79.63

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150% and a net fee (profit) of 15%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup



NORTH AMERICA
Call 513 241 4884
Send 513 241 2240
660 Lincoln Avenue #443
Cincinnati Ohio USA 45206

EUROPE
Call 49/0/69 95 11 40 07
Frankfurt Germany

┌ **Projected Overhead Expense Itemization:**

401K Match	\$ 10,668.00
Automobile Expense	\$ 22,571.00
Bank / Credit Charges	\$ 7,440.00
Charitable Contributions	\$ 12,500.00
COGS: Freelance	\$ 40,000.00
COGS: Project Supplies	\$ 10,500.00
COGS: Sub-consultants	\$ 64,500.00
COGS: Travel	\$ 35,000.00
COGS: Fabrication	\$ 20,000.00
Employee Benefits	\$ 33,315.00
Insurance	\$ 26,596.00
Marketing	\$ 18,130.00
Office Expense	\$ 30,453.00
Payroll Expense	\$ 198,250.00
Professional Fees	\$ 48,500.00
Rent	\$ 93,717.00
Repairs & Maintenance	\$ 10,636.00
Taxes	\$ 60,000.00
Technology	\$ 35,688.00
Travel	\$ 18,000.00
	\$ 796,464.00

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Kelly Kolar [k.kolar@kolardesign.net]
Sent: Monday, March 05, 2012 3:36 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea
Subject: Re: Kolar Design, Inc Contingency Contract

Thank you- we look forward to continuing our work.
Thanks,

-Kelly Kolar
Office: 513.241.4884

On Mar 5, 2012, at 12:13 PM, "McVay, Melissa" <Melissa.McVay@cincinnati-oh.gov> wrote:

Ms. Kolar,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

In order to finalize your contract your signature block must be dated. Please "reply all" to confirm that it is acceptable to you that we modify the contract with the date that we receive your response to this e-mail.

Thank you,

Mel McVay

Melissa McVay

City Planner

Department of Transportation & Engineering

City Hall, Room 450

801 Plum Street

Cincinnati, Ohio 45202

513.352.5269 office

513.352.5336 fax

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7212
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Robert Lonnemann Heil, Engineers, a ^{professional services} ~~corporation~~ organized under the laws of the State of NY, the address of which is 1538 Alexandria Pike, #11, PSC Ft. Thomas, NY 41075 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "Work Product"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Kohrs Lonnemann Heil Engineers, PSC
[insert Consultant's name] dba KLH Engineers

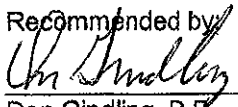
By: 

Printed Name: Charles Parnell

Title: CFO

Date: 1/26/, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adway
Assistant City Solicitor

MAR 01 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF**

Amount: **FUNDS NOT REQUIRED**

By: R. Zero
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
MECHANICAL/PLUMBING/FIRE PROTECTION/ELECTRICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Mechanical/Plumbing/Fire Protection/Electrical Engineering Services may include any of the following:

Planning & feasibility studies	Preliminary Engineering
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Engineering and architectural analyses and evaluations	
Design of mechanical, Plumbing, fire protection, and electrical systems	
Second Opinion reports on reuse of adaptation of systems in existing buildings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Principal Engineer	\$140.76
Market Segment Leader	\$134.91
Communication Technology Specialist	\$90.18
Lighting Designer	\$73.91
Commissioning Agent	\$105.58
Senior Project Engineer - Level IV	\$107.92
Engineer / Designer - Level III	\$73.91
Engineer / Designer - Level II	\$62.17
Designer - Level I	\$52.78
Field Representative	\$58.07
Draftsman / CAD Operator	\$52.78
Administrative Support	\$53.68

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 120 % and a net fee (profit) of 20 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Detailed Itemization of Costs Included in Overhead Calculation

Group Account Number Footer Field 1		Group Account Number Year-to-Date	
		\$	-
701.00	INDIRECT LABOR-PRINCIPAL	\$	423,464
701.01	Other Pay - Healthcare Reimbursement	\$	6,596
702.00	INDIRECT LABOR-EMPLOYEES	\$	1,368,242
702.02	Other Pay - Car	\$	67,192
702.03	Tuition Reimbursement Up To \$5,250	\$	13,436
703.00	JOB COST VARIANCE	\$	(526,632)
704.00	TEMPORARY HELP	\$	59,430
705.01	Consulting Fee - Legal	\$	57,729
705.02	Consulting Fee - Accounting	\$	82,585
705.04	Consulting Fee - Telecommunications	\$	2,915
705.05	Consulting Fee - Employment Srvs	\$	54,092
705.06	Consulting Fee - Other	\$	24,584
706.00	Misc Payroll Expense	\$	7,770
720.01	401K Company Match	\$	50,000
721.00	EMPLOYER'S FICA TAX	\$	474,488
722.00	FEDERAL UNEMPLOYMENT	\$	6,556
723.00	State Unemployment	\$	24,794
723.01	OH Unemployment	\$	10,422
724.01	Workers Compensation - KY	\$	17,666
724.02	Workers Compensation - OH	\$	3,796
725.00	Medical Insurance - Premium	\$	296,339
725.01	Dental Insurance Premiums	\$	55,640
726.00	Medical Claims - Self Funded	\$	410,676
726.01	Medical Claims - Stop Loss Excess	\$	(5,002)
727.00	Life Insurance Premium	\$	17,112
727.01	Life Insurance Premium - Owner	\$	9,252
727.02	Owner Disability Policy	\$	34,939
728.00	Disability Ins Premium - Short Term	\$	17,818
728.01	Disability Ins Premium - Long Term	\$	9,127
730.00	Federal Tax	\$	651
731.00	State Taxes	\$	7,199
731.01	Kentucky Corp Income Tax	\$	7,503
731.02	Kentucky Personal Property Tax	\$	358
732.00	County & City Tax	\$	423
732.01	Campbell County Tax	\$	2,200
732.03	Kenton County Occupational Tax	\$	50
733.00	Taxes - Other	\$	5,962
733.02	Property Taxes	\$	12,127
733.03	Ohio Commercial Activity Tax (CAT)	\$	8,230
734.00	Package Insurance Premium	\$	23,924
735.02	401K FEES	\$	16,062
736.00	Professional Liability Insurance (E&O)	\$	42,188
737.01	Statutory Registration - Firm	\$	6,617
737.02	Statutory Registration - Engineer	\$	19,977

737.03	State Annual Report	\$	1,932
739.00	Finance & Bank Charges	\$	245
739.01	Interest & Finance Charges	\$	934
739.02	Bank Service Charges	\$	7,306
740.00	Rent	\$	358,005
740.01	Rent - Fort Thomas	\$	88,000
740.02	Rent - Dayton Office	\$	24,231
740.03	Rent - Columbus	\$	98,484
741.01	Electric	\$	3,738
742.00	Telephone	\$	35,457
742.01	Telephone Local - KY	\$	2,360
742.02	Telephone Local - OH	\$	4,439
742.05	T1 Lines	\$	39,140
743.01	Office Supplies - KY	\$	56,203
743.03	Computers / Electronics Under 1K	\$	23,427
743.04	Software Under 1K	\$	3,375
744.00	Wireless Comm & Data	\$	105
744.01	Cellular Telephone	\$	65,756
745.00	POSTAGE	\$	1,747
745.01	DELIVERY-FED EXPRESS,ETC	\$	7,369
746.00	Lease & Rental	\$	1,691
746.01	Office Equipment Lease / Rental	\$	125,533
746.02	Automobile Lease / Rental	\$	39,054
746.03	Lease - Queen City Plotter	\$	81,220
747.00	Equipment Repair & Maintenance	\$	2,881
747.02	Auto Repair & Maintenance	\$	6,519
747.03	Equipment Maintenance Contracts	\$	2,925
749.00	Janitorial Services	\$	26,639
749.01	Janitorial - Other Services	\$	4,898
749.02	Janitorial Supplies - Paper, etc	\$	6,975
750.00	Marketing & Advertising Expense	\$	6,557
750.02	Misc Firm Sponsorship	\$	49,367
750.03	Golf Outing Sponsorship	\$	14,895
750.04	Professional Organization Event Sponsor	\$	2,770
750.05	Annual Client Holiday Gift Expense	\$	15,860
760.00	Continuing Education	\$	4,984
760.01	Seminars	\$	6,684
760.02	Tuition / Education	\$	1,423
760.03	Periodicals & Books	\$	10,406
760.04	Organization Memberships & Dues	\$	44,545
760.05	Subscription Services	\$	20,111
760.06	Trade Shows	\$	11,188
761.00	Subscription Services	\$	1,991
761.01	Subscription Svcs - Deltek OSP	\$	25,227
761.02	Subscription Svcs - AutoDesk Annual	\$	50,988
761.03	Subscription Svcs -Microsoft Monthly Fee	\$	2,193
763.00	Printing Expenses	\$	10,986

763.01	Client Plots - Unassigned	\$	20,223
763.02	Graphic Design Services	\$	1,174
764.00	Automobile Reimursable Mileage	\$	8,495
764.01	Automobile - Gas	\$	48,701
764.02	Automobile - Parking	\$	2,307
764.03	Automobile - Misc Expense	\$	3,196
765.00	Meals & Entertainment	\$	37,507
766.00	Travel & Lodging	\$	53,783
767.00	KLH @ 100%	\$	20,148
767.01	KLH Employee Campouts	\$	5,243
767.02	KLH Employee Holiday Party	\$	9,105
767.04	Employee Protective Clothing	\$	4,863
767.05	Employee Relocation Assistance	\$	1,684
792.00	MISC.EXPENSE RECOVERY	\$	(15,517)
799.00	Misc Expense - Must be Reclassified	\$	4,049

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and KLEINGERS & ASSOCIATES, INC., a CORPORATION organized under the laws of the State of OHIO, the address of which is 6305 CENTRE PARK DRIVE WEST CHESTER, OHIO 45069 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

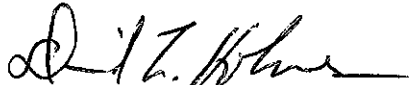
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

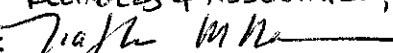
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name]


KLINGERS & ASSOCIATES, INC.
By: 


Printed Name: NATHAN M. MOORE

Title: DIRECTOR

Date: JANUARY 27, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Andrew
Assistant City Solicitor

MAR 01 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF**

Amount: **FUNDS NOT REQUIRED**

By: R. Zero
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TRAFFIC ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Traffic Engineering Services may include any of the following:

Detailed contract plans and specifications	Right-of-way plans
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Preliminary studies & layouts	Evaluation studies & reports
Capacity analysis	Benefit-cost analysis
TSM studies and plans	Geometrics and alignment
Accident analysis	Signalization, signage & pavement marking
Photometrics analysis	Pole & foundation design
Analysis of existing lighting systems	Electrical wiring evaluation & design
Data collection/tabulation/summarization	Traffic counts, surveys, and studies
Parking surveys and studies	Accident records and statistics
Utilities records	Property records
Traffic control inventories	Signal timing, operation & coordination
Lighting equipment inventories	Street lighting design and specifications
Environmental impact studies	
Physical, social & economic data collection, analysis and reports	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

OH Rate = 150.83%
 Profit % = 15.00%

Category	Direct Labor Cost / Hour		Billing Rate* / Hour	
Principal / Director	\$ 44.00	to \$ 61.88	\$ 126.92	to \$ 178.48
Project Manager	\$ 31.39	to \$ 40.95	\$ 90.55	to \$ 118.13
Senior Engineer	\$ 28.39	to \$ 39.47	\$ 81.89	to \$ 113.85
Engineer	\$ 21.64	to \$ 31.74	\$ 62.42	to \$ 91.54
Designer	\$ 25.30	to \$ 32.77	\$ 72.98	to \$ 94.52
Landscape Architect	\$ 21.37	to \$ 39.79	\$ 61.64	to \$ 114.77
Senior Surveyor	\$ 31.25	to \$ 44.96	\$ 90.14	to \$ 129.68
Surveyor	\$ 22.75	to \$ 34.88	\$ 65.62	to \$ 100.62
Survey Crew Chief	\$ 18.00	to \$ 31.90	\$ 51.92	to \$ 92.02
Crew Member / Technician	\$ 13.00	to \$ 19.80	\$ 37.50	to \$ 57.11
Admin. / Clerical	\$ 12.00	to \$ 18.15	\$ 34.61	to \$ 52.35

* Billing Rate is calculated as $\{(Direct Labor \times (1 + Overhead Rate)) \times (1 + Profit Percentage)\}$

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150.83 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7209

Contract No. _____

**Agreement
for Architectural and Engineering Services**

Jacobs Engineering
Group, Inc.

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and JACOBS ENGINEERING GROUP OF OHIO, INC., a CORPORATION organized under the laws of the State of DELAWARE, the address of which is 1020 WAYCROSS RD CINCINNATI, OH 45240 ("Consultant").

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.


(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

Jacobs Engineering Group, Inc.,
[insert Consultant's name] a Delaware Corporation

By: 
Milton Dohoney, Jr., City Manager


By: 


Date: 3/12/, 2012

Printed Name: BRAD SIMMONS

Title: VICE PRESIDENT

Date: JANUARY 19, 2012

Recommended by

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeng, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

PLEASE SEE ATTACHED SHEET FOR EMPLOYEE
PAYMENT SCHEDULE

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 126.9 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

Exhibit B:

**Direct Employee Payment Schedule for
Jacobs Engineering Group of Ohio, Inc**

January 25, 2012

Staff Description	Hourly Salary Range
Admin / Clerical	\$60.00 - \$72.50
CADD / Technician	\$65.00 - \$80.50
Senior Planner	\$150.00 - \$165.00
Planner	\$84.00 - \$99.00
Senior Landscape Architect	\$115.00 - \$130.00
Landscape Architect	\$84.00 - \$99.00
Senior Professional Engineer	\$145.00 - \$160.00
Professional Engineer	\$110.00 - \$125.50
Senior Structural Engineer	\$185.00 - \$200.00
Structural Engineer	\$80.00 - \$95.00
Transportation Planner	\$100.00 - \$125.00
Project Manager	\$150.00 - \$240.00

Ranges of rates include an overhead rate of 126.9% and a net fee of 10%

Annual Increases generally range between 3% and 5% dependent on individual employee reviews

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Schlagbaum, Tammy [Tammy.Schlagbaum@jacobs.com]
Sent: Thursday, February 23, 2012 2:25 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: RE: Jacobs Engineering Group Inc. Contingency Contract

Melissa

Yes amending the contract to Jacobs Engineering Group, Inc is acceptable. I apologize for the extra work on your behalf.

Tammy

Tamara L. Schlagbaum, ASLA | **JACOBS** | Senior Landscape Architect | Urban Design + Planning
513.595.7915 direct | 513.218.0073 cell | 513.595.7939 fax | tammy.schlagbaum@jacobs.com

1880 Waycross Road | Cincinnati, Ohio 45240 USA | Website:www.jacobs.com Jacobs File Exchange: [File Transfer](#)

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Thursday, February 23, 2012 9:59 AM
To: Schlagbaum, Tammy
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: Jacobs Engineering Group Inc. Contingency Contract

Ms. Schlagbaum,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The corporation name is Jacobs Engineering Group, Inc (not Jacobs Engineering Group of Ohio, Inc)

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Thank you for following up regarding the certificate of liability insurance.

Please "reply all" to confirm that this amendment is acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

Yang, Andrea

From: Interior Project Management [ipm@eos.net]
Sent: Thursday, February 23, 2012 1:08 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: RE: Interior Project Management, Inc Contingency Contract

It was instructed not to sign that line when the contracts were submitted. All is okay for me to proceed. Susan Barrett



Susan M. Barrett
President - Interior Designer
Interior Project Management, Inc.
513.281.5510

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Wednesday, February 22, 2012 3:45 PM
To: ipm@eos.net
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: Interior Project Management, Inc Contingency Contract

Ms. Barrett,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered some minor issues with your contract. In order to finalize your contract we will need to make the following amendments:

- The corporation name in the first paragraph should be Interior Project Management, Inc (this is the name registered with the Ohio Secretary of State)
- The entity name should be inserted in the signature block
- The signature block must be dated

If these amendments are acceptable to you, we will make the changes to the existing contract by hand, and proceed with processing the contract.

Thank you for following up on the certificate of liability insurance.

Please "reply all" to confirm that these amendments are acceptable to you.

Thank you,

Mel McVay

Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202

513.352.5269 office
513.352.5336 fax

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7208

Contract No. _____

**Agreement
for Architectural and Engineering Services**

Interior Project
Management, Inc.

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and ~~INTERIOR PROJECT MANAGEMENT, INC.~~ a ~~corporation~~ organized under the laws of the State of OHIO, the address of which is 2142 GILBERT AVE ("Consultant").
45206

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) ~~Professional Liability insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured,~~ (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement. ok
JMS

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

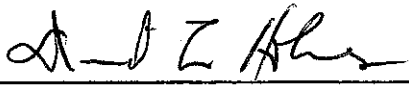
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

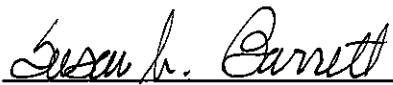
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Interior Project Management, Inc.
[insert Consultant's name] an Ohio Corporation


By: 

Printed Name: SUSAN M. BARRETT

Title: PRESIDENT

Date: February 24, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
INTERIOR DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Interior Design Services may include any of the following:

- Establish budgets for interior work
- Select interior finishes & coordinate architectural finishes
- Design ceiling and lighting plans
- Create color and finish presentation boards
- Specify interior furniture, provide specifications for furniture packages
- Coordinate furniture installation
- Provide move coordination services
- Architectural design related services

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

85⁰⁰ per hour all consultants
PROPOSED TIME FOR PROJECT BASED ON PROJECT SCOPE
ALL OVERHEAD INCLUDED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of N/A % and a net fee (profit) of N/A %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Interior Project Management [ipm@eos.net]
Sent: Friday, February 24, 2012 11:31 AM
To: Yang, Andrea
Subject: RE: Interior Project Management, Inc Contingency Contract

Confirmed, Susan Barrett

From: Yang, Andrea [mailto:Andrea.Yang@cincinnati-oh.gov]
Sent: Friday, February 24, 2012 11:30 AM
To: Interior Project Management; McVay, Melissa
Cc: Brazina, John; Henderson, Andrea
Subject: RE: Interior Project Management, Inc Contingency Contract

Ms Barrett,


Please confirm the date of signature to be inserted as today's date.

Thanks

Andrea

From: Interior Project Management [mailto:ipm@eos.net]
Sent: Thursday, February 23, 2012 1:08 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: RE: Interior Project Management, Inc Contingency Contract

It was instructed not to sign that line when the contracts were submitted. All is okay for me to proceed. Susan Barrett

 **Susan M. Barrett**
President - Interior Designer
Interior Project Management, Inc.
513.281.5510

From: McVay, Melissa [mailto:Melissa.McVay@cincinnati-oh.gov]
Sent: Wednesday, February 22, 2012 3:45 PM
To: ipm@eos.net
Cc: Brazina, John; Yang, Andrea; Henderson, Andrea
Subject: Interior Project Management, Inc Contingency Contract

Ms. Barrett,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered some minor issues with your contract. In order to finalize your contract we will need to make the following amendments:

- The corporation name in the first paragraph should be Interior Project Management, Inc (this is the name registered with the Ohio Secretary of State)
- The entity name should be inserted in the signature block
- The signature block must be dated

If these amendments are acceptable to you, we will make the changes to the existing contract by hand, and proceed with processing the contract.

Thank you for following up on the certificate of liability insurance.

Please "reply all" to confirm that these amendments are acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7207

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Human Nature Inc. a LA Firm organized under the laws of the State of OH, the address of which is 990 St. Paul Place ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) Term. The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) Early Termination. Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

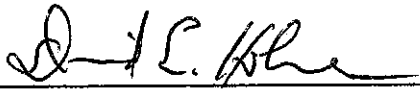
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

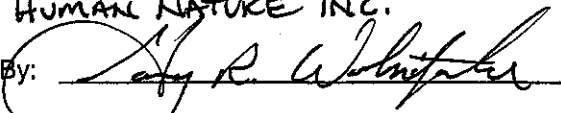
City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name]

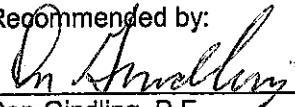
HUMAN NATURE INC.


By: 
Printed Name: GARY R. WOLNITZEK

Title: PRESIDENT - HNL INC.

Date: JAN. 26, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rocheile Thompson, Contract Compliance Officer

Approved as to Form:

A. Sweeney
Assistant City Solicitor

Certified Date: MAR 01 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: R. Zeno
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

*SEE ATTACHED EXHIBIT B
PAYMENT SCHEDULE*

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 142% and a net fee (profit) of 25.9%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

Human Nature, Inc.

2012-2015 CONTINGENCY CONSULTANT CONTRACT SUBMITTAL

Exhibit B

Payment Schedule Human Nature Inc.

Position	Labor Cost	Overhead 142.0%	Profit 25.9%	Hourly Rates
Principal	\$ 53.00	\$ 75.26	\$ 33.22	\$ 161.48
Project Manager	\$ 30.50	\$ 43.31	\$ 19.12	\$ 92.93
Registered Professional	\$ 27.00	\$ 38.34	\$ 16.92	\$ 82.26
GIS Technician	\$ 21.50	\$ 30.53	\$ 13.48	\$ 65.51
Drafting	\$ 21.50	\$ 30.53	\$ 13.48	\$ 65.51
Clerical	\$ 22.70	\$ 32.23	\$ 14.23	\$ 69.16

Included in Computation

Gross Pay	Office expenses
Employer tax contrib.	Fees
Benefits	Taxes
Percent Office time	Professional Licences/Fees
	Rent
	Equipment
	Automobile Expenses
	Insurance
	Depreciation
	Education
	Utilities
	Administration Expenses
	Phone/Communications

Computation based on 2010 Year End Values

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

Contract No. **25X7206**

**Agreement
for Architectural and Engineering Services**

HNTB Ohio, Inc.

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and HNTB Corporation, a Corporation organized under the laws of the State of Ohio, the address of which is 720 E Pete Rose Way, Cincinnati, Ohio 45202 ("**Consultant**").

Recitals:

- A. The City's Department of Transportation & Engineering ("**DOT E**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. **DOT E** serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. **DOT E** also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance **DOT E**'s expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("Fee Schedules"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, ~~naming the City as an additional insured~~, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement. RWT

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "Records and Reports"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "Work Product"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

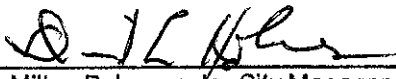
(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

HNTB Ohio, Inc.
[insert Consultant's name]


By: 
Milton Dohoney, Jr., City Manager

By: 
Printed Name: Patricia D. Spence

Date: 3/12/, 2012

Title: Vice President
Date: Feb, 23, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adriana
Assistant City Solicitor

MAR 08 2012

Certified Date:

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

By:

Reginald Zeno
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
AIRPORT ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Airport Engineering Services may include any of the following:

Right-of-way plans	Preliminary plans
Planning and feasibility studies	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

SEE ATTACHED PAYMENT SCHEDULE

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 152.76 % and a net fee (profit) of 12 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

Attachment to Exhibit B

**City of Cincinnati
On-Call Services
HNTB Staff Pay Rates by Billing Positions
Effective January 2012 through June 2012**

Overhead Rate: 152.76%
Profit: 12%

Billing Position	Labor Range	Billing Range	
Principal / Office Leader	\$76.96 to \$81.60	\$217.87 to \$231.00	Campbell, Holden
Technical Advisor	\$66.08 to \$87.52	\$187.07 to \$247.76	Albjerg, Denhardt, Egilmez, Gould, T. Miller, Myers, Peterson, Rampone, Spence
Project Manager	\$52.08 to \$81.04	\$147.43 to \$229.42	Ballard, Campbell, Colon, Borgnini, Egilmez, Gale, Gould, Peterson, Rogge, Stremmel, Wahl, Zehnder
Senior Aviation Engineer	\$49.44 to \$81.04	\$139.96 to \$229.42	Gora, Gould, Tabor, Tompkins
Senior Bridge Engineer	\$50.56 to \$76.96	\$143.13 to \$217.87	McDougall, O'Leary, Thatcher
Staff Bridge Engineer	\$27.44 to \$50.24	\$77.68 to \$143.07	Boltz, Elliott, Haas, Law, Steffl, Robbins
Senior Transportation Design	\$46.40 to \$70.32	\$131.35 to \$199.07	Chism, Colon, Durning, Egilmez, B. Miller, Rhoades, Stremmel, Wahl, Zehnder
Staff Transportation Design	\$27.92 to \$41.40	\$79.04 to \$116.18	Barnes, Caird, Elliott, Johnston, LaBlonde, Lingham, Main, Montoya, Mundle, Regan, Spears, Verburg
Senior Transportation Planning and Traffic	\$54.32 to \$66.08	\$153.78 to \$187.07	M. Miller, T. Miller, Nouri
Staff Transportation Planning and Traffic	\$27.92 to \$45.04	\$79.04 to \$127.50	Adwell, Stuehrenberg, Woernle
Senior Environmental Engineer	\$51.12 to \$87.52	\$153.10 to \$247.76	Augenbergs, Borgnini, Burkhart, Gale, Ku, Peterson, Rogge, Spence, Thais
Staff Environmental Engineer	\$24.96 to \$45.12	\$70.66 to \$127.73	Evans, Hobbs, Hoff, Hurst, Li, Mason, Murphy, Page, Thomas, Toole, Ziino
Senior Urban Designer	\$68.56	\$194.09	Myers

Billing Position	Labor Range	Billing Range	
Staff Urban Designer	\$26.72 to \$26.80	\$75.64 to \$75.87	Daly, Syrus
Senior Construction	\$54.80 to \$67.36	\$155.13 to \$190.69	Johnson, Rogge
Senior Electrical and I&C Engineer	\$55.60 to \$64.08	\$157.40 to \$181.40	Mertes, Nosie, Nurya
Senior CADD	\$31.20 to \$37.60	\$88.32 to \$106.44	Hollingsworth, Holzhausen, Nelson, Roe Stewart, Striegel
Staff CADD	\$22.00 to \$31.20	\$62.28 to \$88.32	Craig, Dock, Greenland, Streigel, Tracena
Clerical / Administration	\$22.16 to \$45.00	\$62.73 to \$127.39	Bush, Caltagirone, Franchville, Huneck, Keyler, Kuehn, Parkhurst,



SCHEDULE OF ACTUAL DESIGN AND
PROJECT OFFICE OVERHEAD RATES

HNTB Corporation
Year Ended December 31, 2010
With Report of Independent Auditors

Ernst & Young LLP

 **ERNST & YOUNG**

HNTB Corporation

Schedule of Actual Design and Project Office Overhead Rates

Year Ended December 31, 2010

Contents

Report of Independent Auditors.....1

Schedule of Actual Design and Project Office Overhead Rates.....2

Notes to Schedule of Actual Design and Project Office Overhead Rates3

Auditor Contact.....7



Ernst & Young LLP
One Kansas City Place
Suite 2500
1200 Main Street
Kansas City, MO 64105-2143
Tel: +1 816 474 5200
Fax: +1 816 480 5555
www.ey.com

Report of Independent Auditors

The Board of Directors
HNTB Corporation

We have audited the accompanying Schedule of Actual Design and Project Office Overhead Rates (the Schedule) of HNTB Corporation (the Company) for the year ended December 31, 2010. This Schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on the Schedule based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule is free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the Schedule, assessing the accounting principles used and significant estimates made by management, and evaluating the overall Schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the Schedule referred to above presents fairly, in all material respects, the actual design and project office overhead rates of the Company for the year ended December 31, 2010, in conformity with U.S. generally accepted accounting principles.

This report is intended solely for the information and use of the Board of Directors and management of HNTB Corporation and for filing with its clients for use in contracts and is not intended to be and should not be used by anyone other than these specified parties.

Ernst & Young LLP

April 29, 2011

HNTB Corporation

Schedule of Actual Design and Project Office Overhead Rates

Year Ended December 31, 2010

	<u>Actual Cost Pool</u>	<u>Project Office</u>	<u>Design Office</u>
Job costs – payroll	\$ 212,142,341	\$ 17,559,899	\$ 194,582,442
Direct payroll	<u>\$ 212,142,341</u> a	<u>\$ 17,559,899</u>	<u>\$ 194,582,442</u>
Salary related			
Paid leaves	\$ 41,343,128	\$ 3,422,142	\$ 37,920,986
Employees' insurance	26,679,784	2,208,396	24,471,388
Payroll taxes	24,311,755	2,012,384	22,299,371
Miscellaneous employee benefits	8,089,621	669,611	7,420,010
Total salary related	<u>100,424,288</u> b	<u>8,312,533</u>	<u>92,111,755</u>
Percent of direct payroll		<u>47.34%</u> c	<u>47.34%</u> c
General overhead costs			
Indirect salaries	68,383,905	5,660,419	62,723,486
Rent and maintenance	29,687,169	542,008	29,145,161
Insurance	12,940,175	1,071,112	11,869,063
Taxes	2,330,258	161,261	2,168,997
General	57,125,771	3,419,773	53,705,998
Bid and proposal/marketing	45,256,782	3,746,091	41,510,691
Firm support services	2,139,886	177,127	1,962,759
Other expense	2,237,323	185,193	2,052,130
Total general overhead costs	<u>220,101,269</u> b	<u>14,962,984</u>	<u>205,138,285</u>
Percent of direct payroll		<u>85.21%</u> c	<u>105.42%</u> c
Total overhead cost pool	<u>\$ 320,525,557</u>	<u>\$ 23,275,517</u>	<u>\$ 297,250,040</u>
Percent of direct payroll		<u>132.55%</u> c	<u>152.76%</u> c

Notes:

- a. Direct payroll costs are for design and project office salaries charged directly to jobs.
- b. Salary-related and general overhead costs as shown conform with U.S. generally accepted accounting principles.
- c. The rates included within this report are for use with contracts where the client permits applying overhead to the premium portion of overtime.

See accompanying notes.

This document contains information HNTB Corporation considers to be confidential and privileged and not subject to disclosure under the Freedom of Information Act and which HNTB Corporation considers as information that cannot be disclosed under the Trade Secret Act.

HNTB Corporation

Notes to Schedule of Actual Design and Project Office Overhead Rates

Year Ended December 31, 2010

1. Organization

HNTB Corporation (the Company) is a wholly owned subsidiary of HNTB Holdings, Ltd., a holding company headquartered in Kansas City, Missouri. The Company has over 70 design offices located in major metropolitan areas throughout the United States. In addition, the Company has various project offices and field offices located throughout the United States, which are primarily established for individual client contracts. The Company is a global engineering firm that provides consulting, engineering, construction, and planning services to public and private sectors that include government (federal, state, and local) and government-related agencies.

2. Summary of Significant Accounting Policies

Basis of Accounting

The financial accounting data underlying the firmwide design and project direct labor, salary-related costs, and general overhead costs as shown in the Schedule of Actual Design and Project Office Overhead Rates (the Schedule) were determined on the accrual basis of accounting and in accordance with U.S. generally accepted accounting principles.

Accounting System

The Company maintains a job-order cost accounting system for the recording and accumulation of costs incurred under its contracts. Each project is assigned a job number such that costs may be segregated and accumulated within the Company's job-order cost accounting system.

Direct and Indirect Cost

The Company defines a direct cost as a cost identified with a particular final cost objective (i.e., a contract or job charge). An indirect cost is identified with two or more final cost objectives and is included in the Company's overhead rate.

Distribution of Labor Costs

The Company distributes labor costs to direct and indirect projects for all employee classifications on an actual cost basis, including overtime premium.

HNTB Corporation

Notes to Schedule of Actual Design and Project Office Overhead Rates (continued)

2. Summary of Significant Accounting Policies (continued)

Other Cost Distribution

For automobiles and trucks that are not dedicated to one project, all costs are charged to the overhead pool when incurred. Monthly mileage logs are maintained and are used to charge mileage to projects as incurred using the Internal Revenue Service allowable mileage rates of \$0.50 per mile, effective January 1, 2010. The overhead pool is credited for the same amount.

Other Direct Costs

The Company allocates its final overhead pool costs on a direct labor basis, and as such, direct costs other than labor are excluded from the Schedule. The Company's principal costs that are excluded include subcontractor and other direct costs such as reprographics and travel. The Company has separate expense accounts for subcontractors and other direct costs that are project related.

The Company does not use contract labor for professional engineering, planning, or construction related services. All labor costs are incurred by the Company's employees, subcontractors, and temporary agencies. Any labor costs incurred by subcontractors or temporary agencies are billed as other direct costs and not included in the Company's direct labor costs.

Paid Overtime

Overtime costs are incurred in meeting certain deadlines or contract requirements (construction projects often require personnel to be on-site for extended hours during the actual construction of projects). If employees are eligible for premium overtime under the Fair Labor Standards Act, they are paid time and one-half (or another premium rate if required by a state labor law). If the premium portion cannot be billed to the project due to contract terms, it remains in the job costs of the project as a nonreimbursable cost item. These costs are not included in the indirect cost pool for overhead.

Most of the Company's professional staff is paid at a straight-time rate for any hours worked in excess of 40 hours per week.

HNTB Corporation

Notes to Schedule of Actual Design and Project Office Overhead Rates (continued)

2. Summary of Significant Accounting Policies (continued)

Uncompensated Overtime

The Company has a few professionals who are not paid for overtime worked. These salaried employees are generally management employees and are paid for 40 hours per week but may work more or less on a weekly basis. All hours worked by these employees are reported on their time cards and charged to the appropriate account. A credit is generated for the hours over 40 and charged to a designated overhead account titled uncompensated overtime. These employees do not charge extensive time to projects.

Employee Benefits

The Company has a defined-contribution 401(k) retirement and savings plan. Amounts paid, either as an employer matching contribution or as a year-end discretionary allocation, are included in the overhead cost pool.

The 401(k) plan employer matching contributions and the year-end discretionary contributions are in the form of 1914 Holding Company (the Company's ultimate parent) stock and are contributed to the Company's employee stock ownership plan. These amounts are included in compensation for each employee and treated as expense in the year in which they are contributed to the plan for each employee.

Sick Leave

The Company expenses sick leave as incurred.

Depreciation

Depreciation expense is the same that is used and included in the Company's audited financial statements prepared in accordance with U.S. generally accepted accounting principles.

HNTB Corporation

Notes to Schedule of Actual Design and Project Office Overhead Rates (continued)

3. Adjustments and Allocations

The actual cost pool column of the Schedule reflects the Company's general ledger costs after certain routine adjustments, intercompany allocations, and intermediate allocations.

The allocated portions of the HNTB Holdings, Ltd. and the Central Business Services cost pool are included in all the cost pools of the Company. The administrative cost pool also includes the allocated portion of HNTB Holdings, Ltd. general and administrative costs. The Company's administrative costs are allocated to the design and project cost pools using established allocation methods consistently applied.

Certain design pool costs are allocated to the field and design project office pools using production labor and supportive services allocation percentages.

Project offices are designated as such when a client commits in advance to providing full-time employees the following services for a period of not less than six contiguous months: auto and equipment rental; office and storage rental; repairs, utilities, and maintenance; computer hardware, software, and maintenance; network communications; communications; office and reproduction supplies; and mailing and shipping expense. The design pool does not allocate these types of facilities and operational incurred costs to the project office in development of the overhead rates as these costs were not incurred in support of the project office activities.

4. Rate Calculations

The overhead rates are calculated by dividing each pool's total firmwide overhead costs by the respective pool's firmwide direct labor amount.

HNTB Corporation

Auditor Contact

Year Ended December 31, 2010

The audit was performed by Ernst & Young LLP.

If you wish to discuss this report with the auditor, please contact HNTB Corporation, Scott Staska, Audit Director, at (816) 527-2895 to provide you the contact information.

Ernst & Young LLP

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 141,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

For more information, please visit www.ey.com

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. This Report has been prepared by Ernst & Young LLP, a client serving member firm located in the United States.

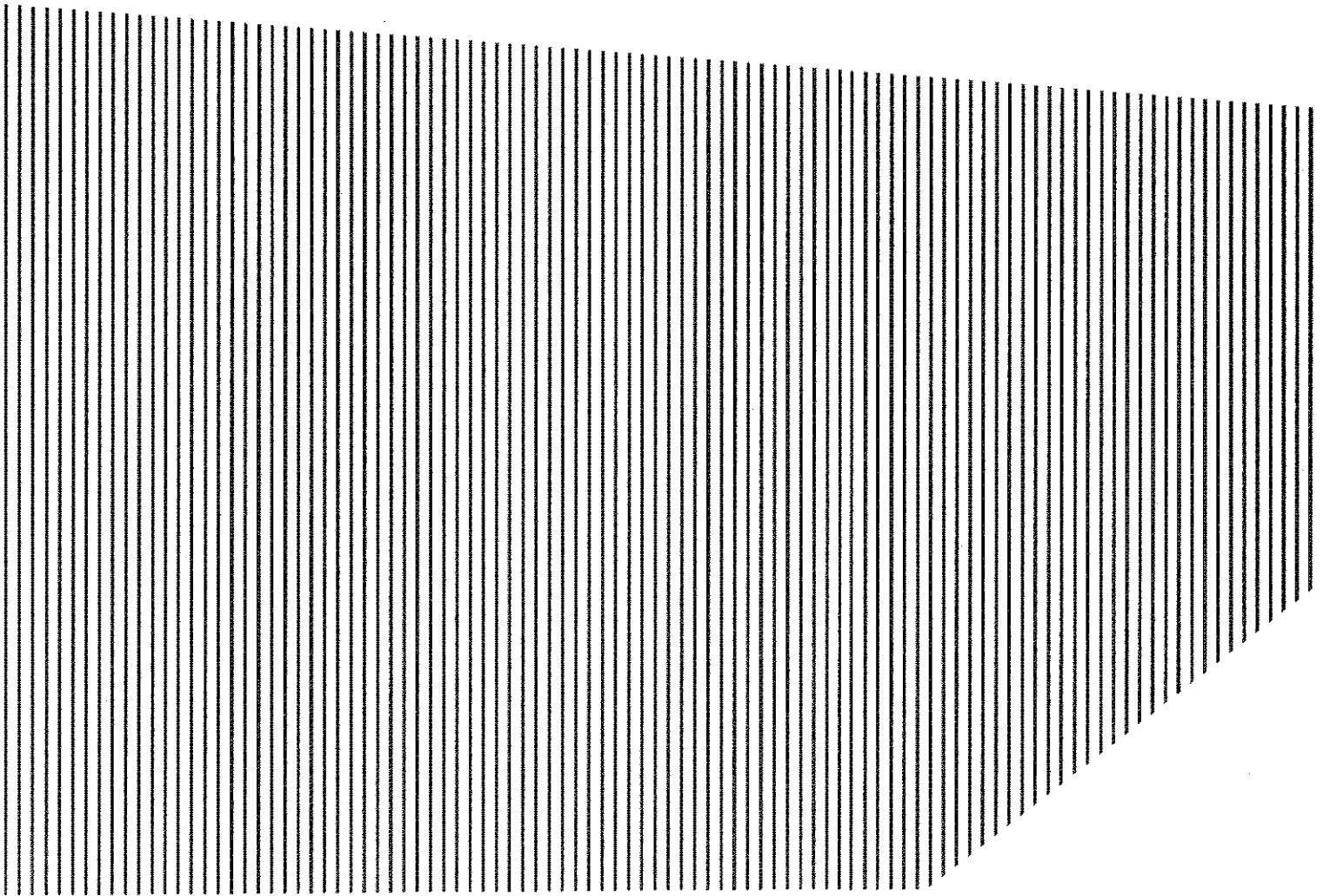


EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Jake Stremmel [jstremmel@HNTB.com]
Sent: Thursday, February 23, 2012 3:09 PM
To: Yang, Andrea; McVay, Melissa
Cc: Brazina, John
Subject: RE: HNTB Contingency Contract
Attachments: 56866 pg 6 of 10 2-23-12 signed.pdf

Andrea – Attached is the revised signature page. I will drop off the originals tomorrow or Monday at your office. I appreciate your help with this.

Jake

From: Yang, Andrea [mailto:Andrea.Yang@cincinnati-oh.gov]
Sent: Thursday, February 23, 2012 11:43 AM
To: Jake Stremmel; McVay, Melissa
Cc: Brazina, John
Subject: RE: HNTB Contingency Contract

Jake,

We will make the changes authorized below. Please follow the email with the original signature page.

Thanks for your help,

Andrea

From: Jake Stremmel [mailto:jstremmel@HNTB.com]
Sent: Thursday, February 23, 2012 11:39 AM
To: Yang, Andrea; McVay, Melissa
Cc: Brazina, John
Subject: RE: HNTB Contingency Contract

Andrea et al,

Sorry for the confusion and the time it has taken me to respond, but I wanted to be sure I answered this correctly.

1. The "Consultant" should be "HNTB Ohio, Inc".
2. The authorized signature will now be Patricia Spence. Mr. Holden is not authorized for HNTB Ohio, Inc.
3. We authorize the City to correct the name and state of organization. The signature page (6 of 10) will need to be revised to reflect Patricia Spence's signature, I would presume. I will send that today by email if that is acceptable.

Thank you

Jake

From: Yang, Andrea [mailto:Andrea.Yang@cincinnati-oh.gov]
Sent: Tuesday, February 21, 2012 1:52 PM
To: Jake Stremmel; McVay, Melissa
Cc: Brazina, John
Subject: RE: HNTB Contingency Contract

Jake,

I confirmed that "HNTB Ohio, Inc" is an active Ohio domestic corporation, however, "HNTB Corporation" is a Delaware corporation. Please (1) advise as to the correct name and state of organization of the entity that is to be party to the contract, (2) confirm that you are the authorized signatory for that entity, and (3) that you authorize the City to correct the name and state of organization in the contract.

Thanks

Andrea

From: Jake Stremmel [<mailto:jstremmel@HNTB.com>]
Sent: Tuesday, February 21, 2012 1:15 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea
Subject: RE: HNTB Contingency Contract

Thanks Melissa. That is strange. I will check into that. "HNTB Ohio Inc." is what I have always used for all contracts with the City and ODOT. I will get back to you in a bit.

Jake

Jake Stremmel, PE

HNTB Corporation

720 East Pete Rose Way, Suite 330
Phone: (513) 421-4682
Cell: (513) 280-0742
www.hntb.com

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Tuesday, February 21, 2012 12:19 PM
To: Jake Stremmel
Cc: Brazina, John; Yang, Andrea
Subject: HNTB Contingency Contract

Mr. Stremmel,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The corporation is organized under the laws of the State of Delaware (not Ohio)

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that this amendment is acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and HDR Engineering, Inc., a ~~corporation~~ organized under the laws of the State of Ohio, the address of which is 9907 Carver Rd, Suite 200 ("Consultant").
↳ Nebraska Cincinnati OH 45242

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, ~~naming the City as an additional insured~~, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

ABW 1/25/12

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

neal agent
ABW 1/25/12

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

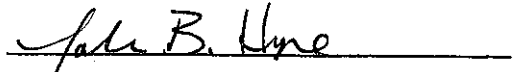
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

HDR Engineering, Inc, a Nebraska
[Insert Consultant's name] Corporation

By: 

Printed Name: John B. Hyme

Title: Vice President

Date: January 25, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adreany
Assistant City Solicitor

MAR 01 2012

Certified Date:

Fund/Code:

Amount:

By:

Reginald Zeno
Reginald Zeno, City Manager

CERTIFICATION OF FUNDS NOT REQUIRED

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
FEDERALLY FUNDED PLANNING AND ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Planning or Engineering Design that have Federal Funds may include any of the following:

Preliminary engineering	Right-of-way plans
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TRAFFIC ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Traffic Engineering Services may include any of the following:

Detailed contract plans and specifications	Right-of-way plans
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Preliminary studies & layouts	Evaluation studies & reports
Capacity analysis	Benefit-cost analysis
TSM studies and plans	Geometrics and alignment
Accident analysis	Signalization, signage & pavement marking
Photometrics analysis	Pole & foundation design
Analysis of existing lighting systems	Electrical wiring evaluation & design
Data collection/tabulation/summarization	Traffic counts, surveys, and studies
Parking surveys and studies	Accident records and statistics
Utilities records	Property records
Traffic control inventories	Signal timing, operation & coordination
Lighting equipment inventories	Street lighting design and specifications
Environmental impact studies	
Physical, social & economic data collection, analysis and reports	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Fee Schedule for: **HDR Engineering, Inc.**
 9875 Carver Road, Suite 200
 Cincinnati, OH 45242
 (513) 984-7500

Title	Pay Range (hourly)	Overhead & Profit	Total Rate Range
Principal/Section Mgr.	\$60.00 - \$99.00	\$107.60 – \$177.55	\$167.60 - \$276.55
P.M./Senior Engineer	\$44.00 - \$72.00	\$78.92 - \$129.13	\$122.92 - \$201.13
Engineer (P.E.)	\$33.00 - \$45.00	\$59.18 - \$80.70	\$92.18 - \$125.70
Engineer (E.I.T.)	\$24.00 - \$34.00	\$45.56 - \$60.98	\$69.56 - \$94.98
Technician/CADD/GIS	\$23.00 - \$32.00	\$41.25 – \$57.39	\$64.25 - \$89.39
Administration/Clerical	\$20.00 - \$30.00	\$35.86 - \$53.80	\$55.86 - \$83.80

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of **163.04%** and a net fee (profit) of **10.0%**. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses – 5% markup
- Outside consultants – 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Hyre, Brad [Brad.Hyre@hdrinc.com]
Sent: Tuesday, February 21, 2012 1:08 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Nyberg, Christian H.
Subject: RE: HDR Contingency Contract

This amendment is acceptable. Thanks for changing.

-Brad

BRAD HYRE
P.E.

HDR Engineering, Inc.
Vice President | Managing Principal

9987 Carver Road | Suite 200 | Cincinnati, OH 45242
513.984.7500 | c: 513.509.7231
brad.hyre@hdrinc.com | hdrinc.com

Follow Us – [Facebook](#) | [Twitter](#) | [YouTube](#)

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Tuesday, February 21, 2012 12:07 PM
To: Hyre, Brad
Cc: Brazina, John; Yang, Andrea
Subject: HDR Contingency Contract

Mr. Hyre,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The corporation is organized under the laws of the State of Nebraska (not Ohio)

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Please “reply all” to confirm that this amendment is acceptable to you.

Thank you,

Mel McVay

Melissa McVay
City Planner
Department of Transportation & Engineering

*City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Gray & Pape, Inc. a corp. organized under the laws of the State of Ohio, the address of which is 1318 Main St, Cincinnati ("Consultant").

OH 45202

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) Term. The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) Early Termination. Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (*Scope of Services*). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

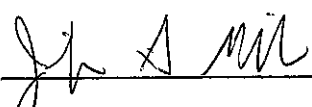
- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

Gray & Pape, Inc.

By: 
Milton Dohoney, Jr., City Manager

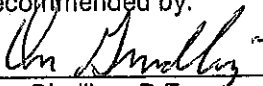
By: 
Printed Name: Jerilyn G. Miller

Date: 3/12/, 2012

Title: Vice President

Date: January 25, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: **FEB 29 2012**
Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**
By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HISTORIC ARCHITECTURE/ARCHEOLOGICAL SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Historic Architecture/Archeological Services may include any of the following:

Inspections & investigations	Subsurface exploration
Historic/Archeological studies	Coordination with other agencies
Planning & feasibility studies	Analysis and testing
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Data recovery	Preparation of SHPO documents
Remediation of historic resources for public projects	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 14.65% and a net fee (profit) of 12%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses -- 5% markup
- Outside consultants -- 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

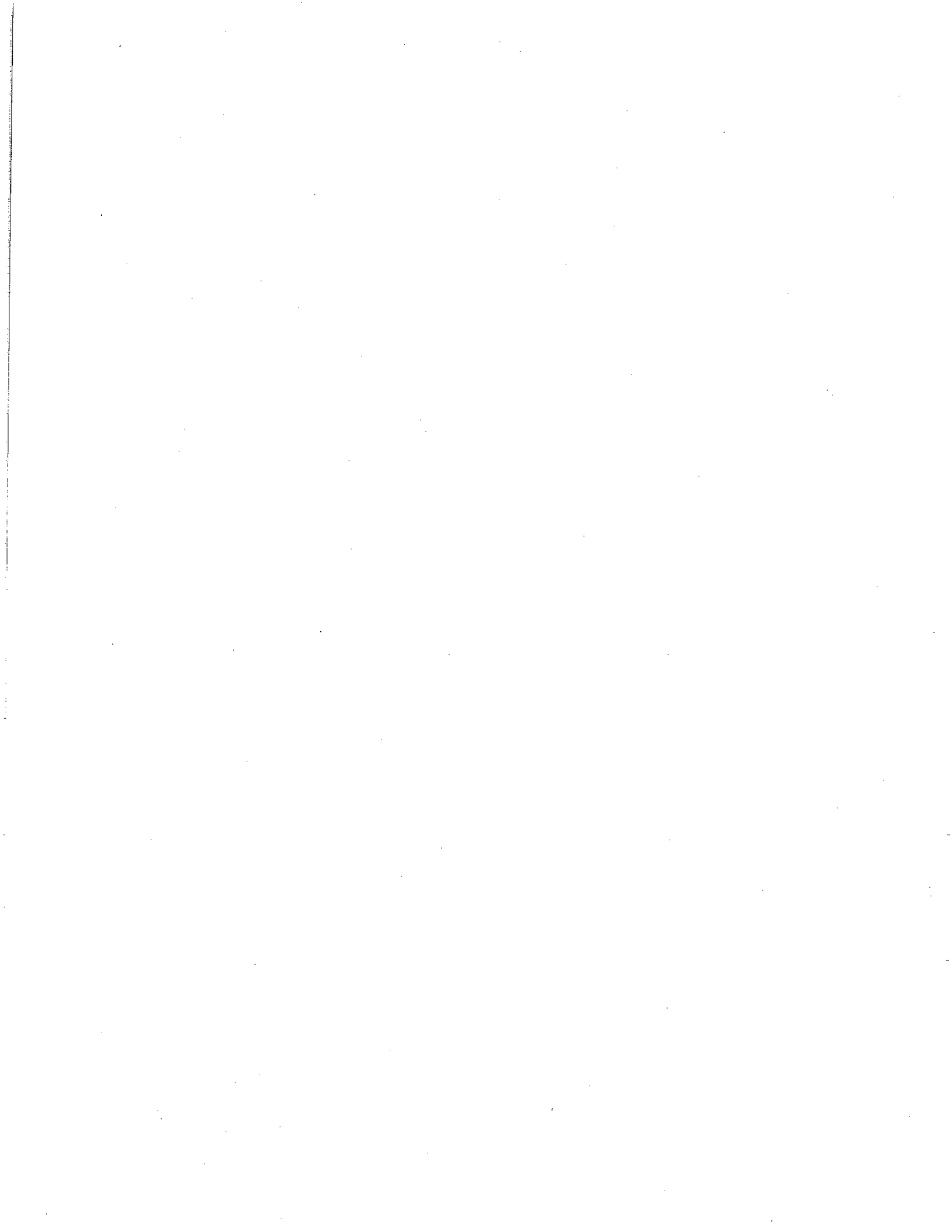
(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT



Gray & Pape, Inc.

Report on Schedule of Overhead

For the year ended December 31, 2010

TABLE OF CONTENTS

PAGE

Independent Auditors' Report1

Schedule of Overhead2

Notes to the Schedule of Overhead.....4

Report on Internal Control Over Financial Reporting and an Compliance and
Other Matters Based on an Audit of Schedule of Overhead Performed in
Accordance with *Government Auditing Standards*6

Bastin & Company, LLC
Certified Public Accountants

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Gray & Pape, Inc.

We have audited the accompanying Schedule of Overhead of Gray & Pape, Inc. for the year ended December 31, 2010. This schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on this schedule based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Overhead is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

The Schedule of Overhead presents the overhead rate computation of Gray & Pape, Inc. for the year ended December 31, 2010, in accordance with the *Federal Acquisition Regulations*, Part 31, and is not intended to be a complete presentation of financial position in conformity with generally accepted accounting principles.

In our opinion, the Schedule of Overhead referred to above presents fairly, in all material respects, the direct labor and overhead expenses of Gray & Pape, Inc. for the year ended December 31, 2010, in conformity with the cost principles of *Federal Acquisition Regulations*, Part 31.

In accordance with *Government Auditing Standards*, we have also issued our report dated July 18, 2011 on our consideration of Gray & Pape, Inc.'s internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Bastin & Company, LLC

Cincinnati, Ohio
July 18, 2011

Gray & Pape, Inc.
Schedule of Overhead
For the year ended December 31, 2010

	<u>Total Costs</u>	<u>Direct and Unallowable Overhead Costs</u>	<u>Actual Overhead Costs</u>	<u>Percent of Direct Labor</u>
Direct Labor	<u>\$2,181,254</u>	<u>\$ -</u>	<u>\$2,181,254</u>	<u>100.00%</u>
Payroll Burden				
Vacation	148,277	-	148,277	
Holiday	88,555	-	88,555	
Sick	60,082	-	60,082	
Comp/Bereavement/Jury Duty	9,005	-	9,005	
Employee Insurance	268,541	31,811 (a)	236,730	
Other Employee Benefits	27,419	24,677 (f)	2,742	
401k Contribution	75,432	-	75,432	
Payroll Taxes	<u>299,098</u>	<u>-</u>	<u>299,098</u>	
Total Payroll Burden	<u>976,409</u>	<u>56,488</u>	<u>919,921</u>	<u>42.18%</u>
General and Administrative				
Indirect Salaries	528,441	-	528,441	
Amortization	8,333	8,333 (b)	-	
Auto Repair	3,407	-	3,407	
Bad Debts	16,452	16,452 (d)	-	
Bank Charges (non-interest)	14,237	-	14,237	
Bonuses	360,510	-	360,510	
Computer	21,782	-	21,782	
Contributions	7,624	7,624 (e)	-	
Curation	2,656	2,656 (a)	-	
Depreciation	45,759	-	45,759	
Dues, Subscriptions, Books	6,825	-	6,825	
Duplication	92,064	85,620 (a)	6,444	
Entertainment	3,386	3,386 (g)	-	
Equipment Rental, net	14,310	13,403 (a)	907	
Freight/Express	21,976	15,367 (a)	6,609	
Insurance (general)	42,591	-	42,591	
Interest	15,001	15,001 (h)	-	
IT consulting	27,116	-	27,116	
Legal/Professional	76,986	-	76,986	
Licenses/Fees	5,201	2,683 (a)	2,518	
Marketing	36,962	33,896 (a) (c)	3,066	

(continued)

Gray & Pape, Inc.
Schedule of Overhead
For the year ended December 31, 2010
(continued)

	<u>Total Costs</u>	<u>Direct and Unallowable Overhead Costs</u>	<u>Actual Overhead Costs</u>	<u>Percent of Direct Labor</u>
Photography	612	612 (a)	-	
Professional Development	25,954	-	25,954	
Professional Service	9,021	-	9,021	
Quarterly Managers Meeting	3,389	-	3,389	
Recruiting	860	-	860	
Repairs/Maintenance	27,685	-	27,685	
Rent	152,950	22,520 (i)	130,430	
Subcontractors	218,306	218,306 (a)	-	
Supplies	64,748	42,886 (a)	21,862	
Taxes	29,442	-	29,442	
Telephone	101,738	1,872 (a)	99,866	
Training	6,073	-	6,073	
Travel	1,007,803	978,667 (a)	29,136	
Utilities	<u>49,040</u>	<u>-</u>	<u>49,040</u>	
 Total General & Administrative	 <u>3,049,240</u>	 <u>1,469,284</u>	 <u>1,579,956</u>	 <u>72.43%</u>
 Total Payroll Burden and General & Administrative	 <u>\$4,025,649</u>	 <u>\$1,525,772</u>	 <u>\$2,499,877</u>	 <u>114.61%</u>
 Cost of money factor (FCCOM) Note 5				 <u>0.04%</u>
 Total overhead rate as a percentage of direct labor				 <u>114.65%</u>

REFERENCES FOR DISALLOWED COSTS

- (a) F.A.R 31.202 Direct costs
- (b) F.A.R 31.205-27 Organization costs
- (c) F.A.R 31.205-1 Public relations and advertising costs
- (d) F.A.R 31.205-3 Bad debts
- (e) F.A.R 31.205-8 Contributions and donations
- (f) F.A.R 31.205-13 Employee morale
- (g) F.A.R 31.205-14 Entertainment costs
- (h) F.A.R 31.205-20 Interest and other financial costs
- (i) F.A.R 31.205-36 (b)(3) Rental costs

The accompanying notes are an integral part of this schedule.

Gray & Pape, Inc.
Notes to Schedule of Overhead
For the year ended December 31, 2010

1. Nature of Business

Gray & Pape, Inc. (Company) provides cultural resources and historical preservation consulting services. The Company performs work for a diversified Midwest and Mid-Atlantic customer base.

2. Significant Accounting Policies

- a. Equipment - Equipment is carried at cost. Betterments and major renewals, which appreciably extend the lives of equipment, are capitalized and repairs and maintenance are charged to expense in the year incurred. When equipment is sold, retired, or otherwise disposed of, the original cost and accumulated depreciation is eliminated from the accounts and any gain or loss is reflected in the determination of net income. Depreciation is computed over the estimated useful lives of the equipment by accelerated methods.
- b. Revenue recognition - The Company recognizes revenue on projects as the direct labor is incurred.

3. Employee Benefit Plan

The Company has a profit-sharing plan covering substantially all regular employees. Contributions to the plan are at the discretion of the Company's Board of Directors and are generally based upon a formula applied to the net profits of the Company. The Company made contributions to the plan of \$75,432 in 2010.

4. Other

The Schedule of Overhead has not been examined by the applicable government authorities and is subject to final determination. Since many types of expenditures are susceptible to varying interpretations of the cost principles contained in the *Federal Acquisition Regulations*, the overhead in the accompanying schedule may be subject to adjustments at a later date upon final determination by the respective government authorities.

5. Cost of Money Factor

Federal Acquisition Regulation 31.205-10 establishes criteria for a Facilities Capital Cost of Money (FCCOM) factor that is an imputed cost determined by applying a cost-of-money rate to facilities capital employed in contract performance. The FCCOM is calculated by using facilities capital data, the overhead allocation base data and the cost-of-money rate based on interest rates specified by the Secretary of the Treasury under Public Law 92-41. For the year ended December 31, 2010, the FCCOM was 0.04 percent based on an allocation base of direct labor, calculated as follows:

Average net book value of facilities capital	\$ 25,792
Weighted FCCOM rate per Public Law 92-41	<u>3.1875%</u>
Cost-of-money amount to be allocated (a)	<u>\$ 822</u>
Overhead allocation base - direct labor (b)	<u>\$2,181,254</u>
FCCOM rate as a percent of direct labor (a) ÷ (b)	<u>0.04%</u>

Bastin & Company, LLC
Certified Public Accountants

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON
AN AUDIT OF FINANCIAL STATEMENTS PERFORMED
IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS***

The Board of Directors
Gray & Pape, Inc.

We have audited the Schedule of Overhead of Gray & Pape, Inc. for the year ended December 31, 2010, and have issued our report thereon dated July 18, 2011, wherein we noted that the Schedule of Overhead presents the overhead rate computation of Gray & Pape, Inc. for the year ended December 31, 2010, in accordance with the *Federal Acquisition Regulations*, Part 31, and is not intended to be a complete presentation of financial position in conformity with accounting principles generally accepted in the United States of America. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Gray & Pape, Inc.'s internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the Schedule of Overhead, but not for the purpose of expressing an opinion on the effectiveness of Gray & Pape, Inc.'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of Gray & Pape, Inc.'s internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's Schedule of Overhead will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Gray & Pape, Inc.'s Schedule of Overhead is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of Schedule of Overhead amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended for the information of management of Gray & Pape, Inc. and applicable governmental agencies and is not intended to be and should not be used by anyone other than these specified parties.

Bastin & Company, LLC

Cincinnati, Ohio
July 18, 2011

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25X7208

Contract No. _____

**Agreement
for Architectural and Engineering Services**

limited liability company
This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and ~~GO P Limited~~ *(Graham Obeneyce & Partners, Ltd.)* a ~~Corporation~~ *limited liability company* organized under the laws of the State of Ohio, the address of which is 644 Linn Street *Suite 936* Cincinnati, Ohio 45203-1438 ("Consultant").

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "Work Product"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

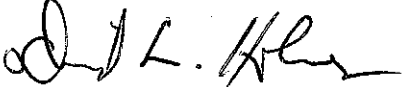
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012


GOP Limited, an Ohio limited liability
[insert Consultant's name] Company

By: 

Printed Name: MICHAEL A. FRANK

Title: PRESIDENT

Date: JAN. 31, 2012

Recommended by: 

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Adreany
Assistant City Solicitor

Certified Date: **FEB 29 2012**
Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**
By: R. Reno
Reginald Reno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
BUILDING STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Building Structures Engineering Services may include any of the following:

Structural inspections	Structural investigations
Building studies	Preliminary Engineering
Planning & feasibility studies	Structural analysis and design of buildings
Condition studies and product evaluation	Cathodic protection design & maintenance
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
 CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

ROLE	SALARY	OVERHEAD	PROFIT	TOTAL FEE
	2012	at 1.71 factor	at 15%	
Senior Principal *	57.50	98.33	23.38	179.21
Principal	38.96	66.62	15.84	121.41
Associate	34.60	59.17	14.06	107.83
Project Engineer	26.19	44.78	10.65	81.62
Design Engineer	20.44	34.95	8.31	63.70
Senior Technician	22.72	38.85	9.24	70.81
Junior Technician	14.00	23.94	5.69	43.63

* salary calculated at 47.5 hrs/wk
 Other salaries calculated at 40 hrs/wk

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 171 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

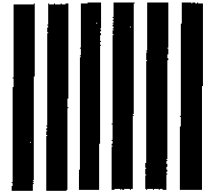
(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT



FEE SCHEDULE

**City of Cincinnati
DOTE Contingency Consultant Program**

2012 – 2015 HOURLY RATES

Sr. Principal	\$179.21
Principal	\$121.41
Associate	\$107.83
Project Engineer	\$81.62
Design Engineer	\$63.70
Senior Technician / Drafter	\$70.81
Junior Technician / Drafter	\$43.63

OVERHEAD COMPUTATION - 2012 Estimated
Actuals' source is Year-End Income Statement

	2010 Actual	2011 Actual	2012 Est.
DIRECT EXPENSES			
Direct Labor Salaries	394,058	395,334	399,500
Total Direct Expenses	\$ 394,058	\$ 395,334	\$ 399,500
INDIRECT EXPENSES			
Indirect Labor Salaries	300,540	279,145	300,500
Employer's IRA match	20,838	7,467	7,000
Employer's 1/2 FICA	43,065	51,783	54,250
Federal Unemployment	784	829	835
State Unemployment	995	197	200
Worker's Compensation	1,540	1,691	1,700
CAT	150	151	151
TN tax	400	400	400
City Income Tax	168	406	406
Federal Income Tax	3,165	3,165	3,165
Employee Insurance	52,563	63,372	68,625
Publications	1,394	1,781	1,781
Professional Registrations	2,065	2,142	2,200
Professional Dues	7,190	8,274	8,274
Office Rent	40,158	28,385	28,332
Office Equipment Lease (Muratec)	1,971	2,368	2,700
Office Supplies	2,295	1,818	1,800
Telephone & Internet Service	11,173	9,576	9,576
telephone Service	170	731	150
Postage / Shipping	866	75	150
Printing / Reproductions	2,541	2,073	2,200
Travel	391	136	150
Repairs & Maintenance	3,453	3,174	3,200
Payroll Service	2,781	2,768	2,800
Contributions	25	1,050	1,000
Computer Maintenance Charges	5,890	5,929	5,900
Computer Supplies & classes	145	500	500
Computer Software/updates	16,717	11,630	12,000
Website	-	2,350	1,500
Marketing	17,278	12,263	14,000
Meetings / Seminars	1,118	1,498	1,400
Internal Marketing (meetings, picnic, etc)	2,183	1,315	1,300
Continuing Education - Staff	1,713	1,677	1,400
Office Refreshments	150	366	200
Bank Service Fees	352	-	-
Write-Offs / Bad Debts	23,345	18,266	15,000
Legal Services	2,267	1,970	1,500
Professional Services	10,062	9,171	9,000
Interest Expense	39,700	39,906	39,906
Professional Liability Insurance	51,779	60,552	61,000
General Liability Insurance	2,157	2,209	2,262
Partners' Equity	12,372	13,164	13,200
Equipment/Furnishings	-	-	-
Line of Credit	-	-	-
Other	-	-	-
Total Indirect Expenses	\$ 687,909	\$ 655,723	\$ 681,613
Overhead Rate = Indirect Expenses / Direct Expenses	175%	166%	171%

Yang, Andrea

From: Mike Frank [MFrank@gopltd.com]
Sent: Tuesday, February 21, 2012 11:31 AM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea; Donna Wirth
Subject: RE: GOP Ltd contingency contract

Ms. McVay - The proposed amendments are acceptable to me...thank you!

Michael A. Frank



A Small Business Enterprise (SBE) Firm
644 Linn Street, Suite 936
Cincinnati, OH. 45203-1738
p: 513.621.7073
f: 513.621.0434
mfrank@gopltd.com
www.gopltd.com

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Tuesday, February 21, 2012 10:26 AM
To: Mike Frank
Cc: Brazina, John; Yang, Andrea
Subject: GOP Ltd contingency contract

Mr. Frank,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered some minor discrepancies between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend your contract as follows:

- The registered name is GOP Limited (not Graham, Obermeyer & Partners, Ltd.)
- The correct filing type is an LLC (not a corporation)
- The entity name must be inserted in the signature block.

If these amendments are acceptable to you, we will make the changes to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that these amendments are acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202*

513.352.5269 office
513.352.5336 fax

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7202
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Glaser Associates, Inc dba a Architectural Firm organized under the laws of the State of Ohio, the address of which is 304 E. Eighth St Glaserworks Cincinnati, OH 45202 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name]

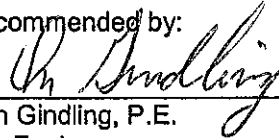

By: _____

Printed Name: MICHAEL H. MALTZKY

Title: MANAGING PRINCIPAL

Date: JAN 27, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Andrew G.
Assistant City Solicitor

FEB 29 2012

Certified Date:

Fund/Code: ~~CERTIFICATION OF FUNDS NOT REQUIRED~~

Amount: _____

By:

Reginald Zero
Reginald Zero, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Schedule of Professional Fees

Principal	\$125.00
Senior Project Manager	\$115.00
Project Manager	\$110.00
Senior Project Architect	\$110.00
Project Architect	\$100.00
Staff Architect 1	\$ 90.00
Staff Architect 2	\$ 85.00
Intern 1	\$ 75.00
Intern 2	\$ 65.00
Administration	\$ 60.00

Overhead includes: Routine Photocopying; In-house Printing; Postage and Delivery Services; Telephone and Cell Phone; Computer Usage

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 5 % and a net fee (profit) of 8 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25X7201
Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and ~~OPEN ARCHITECTS INC.~~ a CORP organized under the laws of the State of OH, the address of which is CINCINNATI, OHIO 45202 ("Consultant").
332 East Eighth Street

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) Term. The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) Early Termination. Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*


Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

[insert Consultant's name] GREEN ARCHITECTS, INC.
an Ohio Corporation

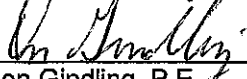
By: 

Printed Name: STEVEN T. KENAT

Title: PRINCIPAL

Date: 1.13, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

Certified Date: FEB 29 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: [Signature]
Reginald Zeno, Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

SEE ATTACHED HOURLY BILLING SCHEDULE

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 15 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup



HOURLY BILLING SCHEDULE

GBBN ARCHITECTS

<u>CLASSIFICATION</u>	<u>BILLING RATE PER HOUR</u>	
PRINCIPAL	\$150.00	- \$250.00
PROJECT MANAGERS	\$145.00	- \$235.00
PROJECT DESIGNER	\$ 105.00	- \$175.00
PROJECT ARCHITECTS	\$ 110.00	- \$150.00
PROJECT DRAFTPERSONS	\$ 65.00	- \$120.00
INTERIOR DESIGNERS	\$ 100.00	- \$130.00
ADMINISTRATIVE	\$ 70.00	- \$90.00

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: SKenat@gbbn.com
Sent: Tuesday, February 21, 2012 4:54 PM
To: McVay, Melissa
Cc: Yang, Andrea; Brazina, John
Subject: Re: GBBN Architects Contingency Contract

Melissa -
Thank you. We will accept the correction to the amended discrepancies.

Steven T. Kenat AIA LEED AP

GBBN Architects, Inc.
332 East Eighth Street
Cincinnati Ohio 45202

e: skenat@gbbn.com
v: 513.241.8700
f: 513.241.8873
c: 513.675.4796
www.gbbn.com



From: "McVay, Melissa" <Melissa.McVay@cincinnati-oh.gov>
To: <skenat@gbbn.com>
Cc: "Brazina, John" <John.Brazina@cincinnati-oh.gov>, "Yang, Andrea" <Andrea.Yang@cincinnati-oh.gov>
Date: 02/21/2012 03:31 PM
Subject: GBBN Architects Contingency Contract

Mr. Kenat,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered some minor discrepancies between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The corporation name should be GBBN Architects, Inc
- The address should be 332 East Eighth Street, Cincinnati, Ohio 45202

If these amendments are acceptable to you, we will make the changes to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that these amendments are acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and DNK Architects, Inc. a firm organized under the laws of the State of OH, the address of which is 2616 Central Pkwy ("Consultant"). Cincinnati, Ohio 45214

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

Exhibit A - *Scope of Services (General)*

Exhibit B - *Fee Schedules*

Exhibit C - *Additional City Requirements*

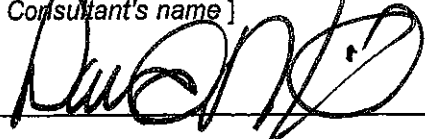
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

DNK Architects, Inc. an Ohio Professional Corporation
[Insert Consultant's name]

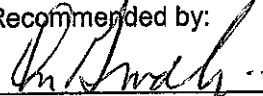
By: 


Printed Name: David N. Kirk, AIA

Title: President

Date: Feb 24, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

FEB 29 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF FUNDS NOT REQUIRED**

Amount: _____

By: _____

[Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See Attached

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 122 % and a net fee (profit) of 20 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

**DNK ARCHITECTS, INC.
CITY OF CINCINNATI
20012 RATES**

PAYMENT SCHEDULE

<u>Labor Category</u>	<u>Base Wage</u>	<u>Overhead \$</u>	<u>Subtotal</u>	<u>Profit \$</u>	<u>Hourly Rate</u>
Principal	74.00	90.28	164.28	32.86	197.14
Project Manager	45.30	55.27	100.57	20.11	120.68
Project Architect	41.50	50.63	92.13	18.43	110.56
Sr. Architect	33.50	40.87	74.37	14.87	89.24
Architect	30.00	36.60	66.60	13.32	79.92
Architectural Intern	29.55	36.05	65.60	13.12	78.72
Planner	43.25	52.77	96.02	19.20	115.22
Landscape Architect	41.50	50.63	92.13	18.43	110.56
Construction Administrator	42.50	51.85	94.35	18.87	113.22
Senior Interior Designer	31.00	37.82	68.82	13.76	82.58
Interior Designer	26.50	32.33	58.83	11.77	70.60
Structural Engineer	41.50	50.63	92.13	18.43	110.56
Graphic Designer	25.00	30.50	55.50	11.10	66.60
Administrative Assistant	20.75	25.32	46.07	9.21	55.28
Clerical/Secretary	19.00	23.18	42.18	8.44	50.62
CADD Operator II	19.00	23.18	42.18	8.44	50.62
CADD Operator I	18.00	21.96	39.96	7.99	47.95
Co-op Intern	15.02	18.32	33.34	6.67	40.01

Overhead % - 122%

Profit % - 20.0%

Years 2 and 3 base rate to be adjusted annually based upon the Consumer Price Index.

Reimbursables:

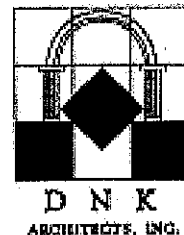
Out-of-pocket expenses for outside reproduction, out of town travel, equipment rental and outside consultant fees incurred on behalf of the project are billed at the rate of 1.05 times actual cost. In-house reproductions of drawings are billed at a rate of \$3.47 per sheet, in-house digital photos are billed at \$1.00 each.



DNK Architects, Inc.
City of Cincinnati
2012 RATES

Overhead Items Include:

Advertising
Auto Lease/Expense
Bank Charges
Computer Services
Computer Time
Continuing Education
County Taxes
Delivery Service
Drawing Materials
Dues and Subscriptions
Equipment lease/rental
Insurance
Interest Expense
Legal
Maintenance Repairs
Meals and Entertainment
Officer Salaries
Office Administration
Office supplies
Other taxes and licenses
Payroll Expenses
Photocopies
Postage
Professional Licenses
Rent
Sundry Expenses
Taxes
Telephone
Travel and Lodging
Unemployment Ins.
Utilities



PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: McVay, Melissa
Sent: Friday, February 24, 2012 3:17 PM
To: Yang, Andrea; Brazina, John
Subject: FW: DNK contingency contract

From: Guinette Kirk [<mailto:gkirk@dnkarchitects.com>]
Sent: Friday, February 24, 2012 1:08 PM
To: McVay, Melissa
Cc: dkirk@dnkarchitects.com
Subject: RE: DNK contingency contract

Yes it is ok to fill in the date.



Guinette Kirk
Vice President
DNK Architects, Inc.
2616 Central Parkway
Cincinnati, Ohio 45214
513.948.4146 ph ext. 105
888.771.2195 toll free
513.679.4712 fx
www.dnkarchitects.com

CONFIDENTIALITY NOTICE:

This message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient(s), please contact the sender by reply email and destroy all copies of the original message.

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Friday, February 24, 2012 12:38 PM
To: Guinette Kirk
Subject: DNK contingency contract

Ms. Kirk,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

Unfortunately, your contract was not dated by the signatory David N. Kirk. Please confirm that it is acceptable for us to fill in an execution date of today.

If this is acceptable to you, we will make the change and proceed with processing the contract.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7198

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and CTL ENGINEERING, INC a corp. organized under the laws of the State of OHIO, the address of which is 2105 Schappelle Lane ("Consultant").
Cincinnati, Ohio 45240-2724

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

CTL Engineering, Inc., an Ohio Corporation
[insert Consultant's name]

By: *Milton Dohoney, Jr.*
Milton Dohoney, Jr., City Manager

By: *Doug R. Batt*
Printed Name: Doug R. Batt

Date: 3/12/, 2012

Title: Branch Manager
Date: Jan. 25, 2012

Recommended by:

Don Gindling
Don Gindling, P.E.
City Engineer

Michael R. Moore
Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochele Thompson, Contract Compliance Officer

Approved as to Form:

d. draly
Assistant City Solicitor

Certified Date: FEB 29 2012

Fund/Code: CERTIFICATION OF

Amount: FUNDS NOT REQUIRED

By: R. Zeno
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
GEOTECHNICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Geotechnical Engineering Services may include any of the following:

Geotechnical inspections & investigations	Subsurface exploration
Geotechnical studies	Preliminary Engineering
Planning & feasibility studies	Geotechnical analysis and design
Condition studies and evaluation	Related reports
Engineering estimates	Environmental documents
Community input exhibits	Interim and final reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Borings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule, DRB 01/27/2012

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 176.04% and a net fee (profit) of ①%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

The stated overhead rate above is per ODOT's Cognizant Review Certificate No. 2010-SPG-070CR, dated 07/22/11 and includes the Cost of Money (2.88%)

① The average net fee profit is about 8%; however it may vary depending on the personnel assigned to perform the service.

CTL ENGINEERING, INC.

STANDARD FEE SCHEDULE

PERSONNEL & MISCELLANEOUS EXPENSES

**CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION AND ENGINEERING**

2012-2015

**CONTINGENCY CONSULTANT CONTRACT
CONTRACT NO. 25X7198**



TABLE OF CONTENTS

Personnel	Page 3
Miscellaneous Expenses	Page 5
General Notes and Conditions	Page 6
Construction Testing and Observation Services	Page 7
Equipment	Page 7
Laboratory Tests	Page 7
Aggregates	Page 7
Portland Cement Concrete	Page 8
Mortar and Grout	Page 9
Concrete Cores	Page 10
Asphalt	Page 10
Concrete Masonry Units	Page 11
Individual Tests for Concrete Masonry Units	Page 11
Individual Tests for Clay or Shale Bricks and Tile	Page 11
Vitrified Sewer Pipe and Concrete Pipes	Page 11
Concrete and Clay Drain Tile – Complete Analysis	Page 12
Fireproofing	Page 12
Materials and Product Testing	Page 13
Mechanical Testing	Page 13
Fastener Testing	Page 13
Metallurgical Laboratory	Page 13
Coating and Plating Evaluations	Page 14
Weld and Braze Testing	Page 14
Nondestructive Testing, Examination and Inspection	Page 15
Chemistry and Environmental Testing Laboratory	Page 16
Solid Waste	Page 16
Toxicity Characteristic Leaching Procedure (TCLP)	Page 17
Organic Analysis	Page 17
Water and Waste Water	Page 18
Soils	Page 19
Coal and Solid Fuels	Page 20
Oils, Liquid Fuels, and Related Hydrocarbons	Page 21
Metal and Alloy Analysis	Page 22
Concrete and Cement	Page 23
Limestone	Page 23
Geotechnical Drilling and Sampling	Page 25
Mobilization and Demobilization	Page 25
Drilling and Sampling	Page 25
Environmental Drilling and Sampling	Page 27
Mobilization and Demobilization	Page 27
Drilling and Sampling (Level D)	Page 27
Drilling and Sampling (Level C)	Page 28
Level C or Level D	Page 29
Equipment	Page 30
Analytical Cost	Page 30
Laboratory Soil Testing	Page 32
Roofing Services	Page 34
Equipment	Page 34
Laboratory Services	Page 34



PERSONNEL

Principal Engineer	\$240.00/hour
Veh. Acc. Recon Engr.	\$200.00/hour
Mechanical Engineer	\$190.00/hour
Metallurgical Engineer	\$190.00/hour
Product Testing Engineer	\$190.00/hour
Geotechnical Engineer.....	\$160.00/hour
Project Architect.....	\$150.00/hour
Registered Roof Consultant.....	\$145.00/hour
Senior Project Manager	\$145.00/hour
Senior Environmental Scientist	\$145.00/hour
Professional Engineer	\$145.00/hour
Industrial Hygienist	\$125.00/hour
Senior Chemist	\$125.00/hour
Senior Roof Technician.....	\$120.00/hour
Senior Wetlands Scientist.....	\$120.00/hour
Project Manager.....	\$120.00/hour
Environmental Scientist II.....	\$110.00/hour
Certified Project Geologist	\$110.00/hour
Metallographer	\$110.00/hour
Registered Roof Observer.....	\$100.00/hour
Senior Consultant	\$98.00/hour
Project Engineer	\$98.00/hour
Certified Lead Inspector	\$98.00/hour
Senior Certified Asbestos Insp	\$98.00/hour
Cert. Welding Inspector.....	\$89.00/hour
Nondestructive Testing Technic	\$89.00/hour
GPR Technician.....	\$89.00/hour
Impact Echo Technician	\$89.00/hour
Roofing Technician	\$89.00/hour



Structural Steel Tech	\$89.00/hour
Biologist	\$89.00/hour
Geologist.....	\$89.00/hour
Field Manager - Construction.....	\$89.00/hour
Lab Manager.....	\$89.00/hour
Environmental Scientist I	\$89.00/hour
Wetlands Scientist I.....	\$89.00/hour
Senior Staff Engineer.....	\$89.00/hour
Certified Asbestos Inspector/PI	\$80.00/hour
Machinist.....	\$80.00/hour
Automotive Mechanic	\$76.00/hour
CAD Draftsman.....	\$75.00/hour
Surveyor	\$75.00/hour
Air Sampling Technician.....	\$63.00/hour
ACM Lab Analyst	\$63.00/hour
Technician – Construction.....	\$54.00/hour
Administrative/Secretarial	\$47.00/hour

Note: Our Technicians perform the necessary inspection and testing to provide quality control for the project under the guidance of our engineering staff. Should problems arise beyond the scope of the Technician, they will be resolved by an Engineer or Manager. The field data is reviewed and the reports are prepared by an Engineer. Fees for personnel services are invoiced on an hourly basis (portal to portal), in accordance with rates shown below. Overtime does not apply to Engineers and Managers. There will be a (4) hour minimum charge for all field technician work.



MISCELLANEOUS EXPENSES

Overtime

Saturday and excess of 8 hours/day Time & 1/2

Sunday and Holidays Double time

Mileage \$0.70/mile

Subsistence and Travel Expenses Cost + 15%

Direct Expenses incurred on behalf of client
(materials, test supplies, shipping, etc.) Cost + 15%

Evidence / Sample Storage (no charge for 1st month)

Less than 3cu ft. \$115.00/year

Skid \$230.00/year

Vehicle \$58.00/month

Reprints (Black & White) \$1.15/each

Reprints (Color) \$2.90/each

Electronically Scanned on CD in PDF Format \$145.00/report

Color Plot Printing \$8.00/sq. ft.

Black Line Plot Printing \$0.77/sq. ft.



CONSTRUCTION TESTING AND OBSERVATION SERVICES

EQUIPMENT

Nuclear Densometer for Soil Moisture-Density or Bituminous Density Testing ASTM D2922, ASTM D2950.....	\$46.00/day
Windsor Probe Equipment.....	\$58.00/day
Windsor Probe Test Section.....	\$90.00/each
Windsor Pin Equipment	\$58.00/day
Pins.....	\$40.00/each
Individual Probes.....	\$30.00/probe
Concrete Vapor Emission Test Kit.....	\$35.00/kit
Floor Flatness Gauge - Random Traffic	\$170.00/day
Standard Asphalt Testing Equipment	\$35.00/day
Concrete Maturity Sensor (4 ft. leads).....	\$75.00 each
Coring Equipment	
Coring Gun, Generator	\$175.00/day
Diamond Bit (4").....	\$0.60/inch
Ground Penetrating Radar Test Equipment.....	\$290.00/day
Reinforcing Steel Locator Gauge.....	\$175.00/day
Impact Echo.....	\$125.00/day
James Bond Tester.....	\$115.00/day
Structural Steel Inspection Equipment	\$58.00/day

LABORATORY TESTS

NOTE: All Tests are Flat Rate Unless Otherwise Specified

AGGREGATES:

Gradation, ASTM C 136	\$123.00/each
Ledge Rock.....	\$88.00/hour
Percent Finer than #200 Sieve, ASTM C 117.....	\$88.00/each
Los Angeles Abrasion, ASTM C 131 or C 135	\$190.00/each
Sodium Sulfate Soundness, ASTM C 88	
5 Fractions or Less.....	\$318.00/each
6 to 10 Fractions	\$550.00/each
11 to 15 Fractions.....	\$610.00/each
Ledge Rock.....	\$440.00/each
Ledge Rock Preparation.....	\$88.00/hour
Specific Gravity and Absorption, ASTM C 127, C 128	\$84.00/each
Deleterious Substances (Pick Test), ODOT S 1029	\$345.00/each

Shale in crushed aggregate, W.V., MP703.00.27	\$230.00/each
Fractured Pieces (gravel)	\$210.00/each
Fizz Test (Set of 5)	\$58.00/each
Lightweight Particles, ASTM C 123	
Fine Aggregate	\$345.00/each
Coarse Aggregate	\$400.00/each
Organic Impurities, ASTM C 40	\$52.00/each
Clay Lumps, ASTM C 142, ODOT S 1017	\$83.00/each
Petrographic Analysis (Fine Agg)	\$ Quote on Request
Petrographic Analysis (Coarse Agg)	\$ Quote on Request
Petrographic ASR	\$ Quote on Request
Dry Rodded Unit Weight, ASTM C 29	\$63.00/each
Flat and/or Elongated Pieces, USACE CRD C 119, ASTM D 4791	\$100.00/each
Sand Equivalent Value, ASTM D 2419	\$235.00/each
Sand Uncompacted Void Content, ASTM C 1252	\$92.00/each
As Received Moisture Content, ASTM C 566	\$32.00/each
ASTM D 1864	\$58.00/each
Filter Sand, Effective Size & Uniformity Coefficient	\$190.00/each
Potential Alkali-Silica Reactivity, ASTM C 289	\$805.00/each
Fly Ash Loss on Ignition, ASTM C 311	\$35.00/each
Rock Cores Compression & Unit Weight	\$175.00/each
Rock Cores Schmidt Rebound Hardness	\$230.00/each
Rock Cores Tensile Strength	\$126.00/each
Rock Cores Tensile Strength & Unit Weight	\$145.00/each
Petrographic Analysis (Rock) ASTM D 4992, ASTM C 295	\$ Quote on Request
<u>PORTLAND CEMENT CONCRETE:</u>	
Mix Design and Trial Batch (Not Including Aggregate/Cylinder Tests), ACI 211, 301	\$460.00/batch
Verification Batch	\$320.00/batch
Aggregate Correction Factor, ASTM C 231	\$63.00/each
Standard Compression Strength Cylinder (Includes Mold), ASTM C 39	\$16.00/each
Cylinder Molds - 6" (Box of 20), ASTM C 470	\$71.00/box
Cylinder Molds - 4" (Box of 36), ASTM C 470	\$71.00/box



Concrete Beam, Modulus of Rupture (Center Point or 3rd Point Loading), ASTM C 293, C 78.....	\$54.00/each
Youngs Modulus of Elasticity, ASTM C 469.....	\$175.00/each
Splitting Tensile Strength, ASTM C 496.....	\$145.00/each
Setting Time, ASTM C 403.....	\$520.00/batch
.....	\$88.00/hour
Unit Weight (Cylinders Air Dry), ASTM C 567.....	\$86.00/each
Cylinder Weight, As Received.....	\$6.00/each
Petrographic Analysis (Air Voids), ASTM C 457.....	\$755.00/each
Rush.....	\$980.00/each
Petrographic Analysis (Complete) ASTM C 856.....	\$1,725.00/each
Rush.....	\$2,115.00/each
Petrographic Analysis (Fly Ash) Qualitative.....	\$660.00/each
Sonic Pulse Velocity, ASTM C 597.....	\$130.00/hour
Creep Test, ASTM D 512.....	Quoted Upon Request
Rapid Chloride Permeability, AASHTO T 277.....	\$215.00/each
Chloride Content, AASHTO T 260.....	\$115.00/each
Cement Content, ASTM C 1084.....	\$370.00/each
Restrained Expansion Test, ASTM C 878.....	\$460.00/set
Drying Shrinkage (Length Change), ASTM C 157.....	\$400.00/set of 3
Freeze Thaw (300 Cycles), ASTM C 666.....	\$1,820.00/set of 3
Scaling Resistance (100 Cycles / 3 Samples), ASTM C 672.....	\$2,300.00/each
PC Mix Design QC/QA (with RC & D5).....	\$ As per Proposal
PC Mix Design QC/QA (3 Point Curve).....	\$ As per Proposal
Mortar Bar Expansion (ASTM C-1260)	
Fine.....	\$710.00/each
Course.....	\$780.00/each
Thermal Expansion (ASTMM C531) set of 3.....	\$345.00/set
<u>MORTAR AND GROUT:</u>	
Compressive Strength Cube.....	\$21.00/each
Compressive Strength Grout Prism (Includes Preparation).....	\$61.00/each



CONCRETE CORES:

Compressive Strength (and unit weight), ASTM C 42.....	\$75.00/each
In-House Coring.....	\$94.00/each
Length Measurement Non-Critical.....	\$30.00/each
Length Measurement ASTM C 174.....	\$70.00/each
Core Extractions.....	\$200.00/each
Unit Weight.....	\$30.00/each
Absorption, ASTM C 497 or AASHTO T 33, ASTM C 642	
5 Hour Boil (Method A).....	\$140.00/each
24 Hour Soak and 5 Hour Boil (Method A).....	\$175.00/each

ASPHALT:

Mix Design, Marshall Method, Asphalt Institute MS-2	
4" Pills.....	\$2,300.00/each
6" Pills.....	\$2,890.00/each
Mix Verification.....	\$1,270.00/each
Density (Marshall Specimen or Cores from Field, Uncoated), ASTM D 2726/3549.....	\$46.00/each
Stability and Flow, ASTM D 1559.....	\$40.00/each
Preparation of Marshall Specimens (Set of 3) from Truck Sample, ASTM D 1559.....	\$115.00/set
Extraction (Centrifuge) for AC Content (Method A), ASTM D 2172.....	\$150.00/each
Extraction (Reflux) for AC Content (Method B), ASTM D 2172.....	\$175.00/each
Gradation of Extracted Mix, AASHTO T 30.....	\$70.00/each
Grading, ASTM 5444.....	\$46.00/each
Dust Correction, ASTM D 2172.....	\$30.00/each
Extraction (Centrifuge), Gradation & Dust Test (Method A), ASTM D 2172.....	\$180.00/each
Extraction (Reflux), Gradation & Dust Test (Method B), ASTM D 2172.....	\$215.00/each
Rice Maximum Theoretical Density, ASTM D 2041.....	\$126.00/each
Thickness Measurement of Core, (ASTM D 2726/3549).....	\$46.00/each
Sigma Y Test (Split Tensile Strength), ASTM C 496.....	\$58.00/each
Asphalt Release Agent, (ODOT).....	\$220.00/each
Asphalt Penetration (77°F), ASTM D 5.....	\$115.00/each
Fiber Content.....	\$58.00/each



CONCRETE MASONRY UNITS (SET OF 6):

Complete Analysis, ASTM C 90, C 55, C 140	\$575.00/set
Compressive Strength	
Absorption and Unit Weight	
Moisture Content	
Minimum Face Shell and Web Thickness	
Variation in Dimensions and Visual Inspection	
Fire Rating	

INDIVIDUAL TESTS FOR CONCRETE MASONRY UNITS:

Compression, Gross ASTM C 140	\$75.00/each
Masonry Unit Prism (8" or 12"), ASTM C 1314-02.....	\$295.00/each
Absorption and Unit Weight.....	\$63.00/each
Dimensional Analysis.....	\$52.00/each
Fire Rating (Set of 3)	\$230.00/each
Moisture as Received.....	\$30.00/each
Linear Drying Shrinkage (Set of 3), ASTM C 426.....	\$870.00/set

INDIVIDUAL TESTS FOR CLAY OR SHALE BRICKS AND TILE:

Compressive Strength, ASTM C 67	\$52.00/each
Compressive Strength Prism.....	\$126.00/each
Modulus of Rupture or Transverse Breaking Strength, ASTM C 67	\$230.00/set
Absorption (24 Hour Soak Slow Boil Including Saturation Coefficient), ASTM C 67	\$230.00/set
Initial Rate of Absorption, ASTM C 67	\$34.50/each
Freezing, Thawing (50 Cycles) (Set of 5), ASTM C 67	\$1,725.00/each
<i>Note: Maximum of 3 Sets; No Additional Charge if Cycled At Same Time</i>	
Freezing, Thawing (50 Continuous Cycles)	\$2,500.00/each
Efflorescence (Set of 10), ASTM C 67.....	\$110.00/each
Crazing Test by Thermal Shock Method.....	\$105.00/hour
Moh's Hardness	\$35.00/each

VITRIFIED SEWER PIPE AND CONCRETE PIPES:

Compressive Strength, ASTM C 4	
Up to 12" Diameter.....	\$86.00/each
Above 12".....	Quoted Upon Request
Acid Resistance Test, ASTM C 301	\$320.00/each



Absorption (5 Hour Boil), ASTM C 67	\$92.00/each
Dimensions, ASTM C 67	
Up to 15" Diameter.....	\$30.00/each
Over 15"	\$35.00/each
Inspection and Testing at Plant.....	\$105.00/hour

CONCRETE AND CLAY DRAIN TILE - COMPLETE ANALYSIS:

Compressive Strength and Absorption, ASTM C 4, C 498 and C 412	
12" Length, 8" Diameter, Set of 5	\$230.00/set
24" Length, 8"-12" Diameter, Set of 5	\$290.00/set
24" Length, 14"-16" Diameter.....	\$290.00/set
>18" Diameter	Quoted Upon Request

FIREPROOFING:

Density (Dry-Back & Dimensions), ASTM E 605	\$41.00/each
Density (Dry-Back & Bead Displacement), Method D	\$80.00/each
Fireproofing Bond Test (Cohesion/Adhesion) ASTM E 736	\$35.00/each
Spray-applied Fireproofing Inspection Equipment.....	\$23.00/day

MATERIALS AND PRODUCT TESTING DEPARTMENT

MECHANICAL TESTING

Tensile Test	\$35.00/each
Yield Strength, Ultimate Tensile Strength, Elongation, and Report	
Tensile Test - Cast Iron Test Bars (includes machining)	
ASTM A 48 Grey Iron, Type A or B	\$63.00/each
Ductile Cast Iron	\$70.00/each
Guided Bend Test	\$12.50/each
Load Testing	\$80.00/hour
Pressure Gauge Calibration (10,000 psi maximum).....	\$58.00/each
Hydrostatic Pressure Testing	\$80.00/hour
Skidmore-Wilhelm Bolt Tension Tester Calibration	\$86.00/each

FASTENER TESTING**

Breaking Strength.....	\$40.00/each
Wedge Breaking Strength.....	\$40.00/each
Proof Load.....	\$52.00/each
Core Hardness	\$40.00/each

**Minimum bolt length for breaking strength, wedge breaking strength and proof load testing is 0.75" plus two bolt diameters.

METALLURGICAL LABORATORY

Failure Analysis.....	\$190.00/hour
Metallographic Examination (includes normal sample preparation)	
First sample	\$110.00/each
Each additional sample.....	\$86.00/each
Microhardness Testing 10 readings (plus mount).....	\$105.00/each
Non-destructive Metallographic Replication (replication tape).....	\$190.00/hour
Oxalic Acid Etch Test of S.S. Alloys, (ASTM A262,A - includes preparation)	
First sample	\$175.00
Each additional sample.....	\$86.00
Scanning Electron Microscopy (SEM).....	\$300.00/hour
Rockwell and Brinell Hardness Sample preparation (if required).....	\$110.00/hour



Hardness and report.....\$110.00/hour

COATING AND PLATING EVALUATIONS

Coating Thickness (ASTM B487 - Microscopic Exam), (includes normal prep. & mount)

First Sample.....\$175.00/each
 Each Additional Sample.....\$110.00/each

Coating Thickness (ASTM B499 - Magnetic Method)

First Sample.....\$110.00/each
 Each Additional Sample.....\$58.00/each

Galvanize Coating Weight (ASTM A90)

First sample.....\$110.00/each
 Each additional sample.....\$58.00/each

Preece Test (ASTM A 239)

First sample.....\$110.00/each
 Each additional sample.....\$58.00/each

Salt Spray Corrosion Testing (ASTM B117)

Set-up.....\$75.00
 Testing.....\$1.00/hour
 Minimum charge.....\$115.00
 Photographs of Test Specimens.....\$46.00/day

Pencil Hardness.....\$46.00/each

Tape Adhesion Test (ASTM D 3359).....\$58.00/each

Temperature/Humidity Cabinet Testing.....\$115.00

Testing.....\$2.30/hour
 Minimum charge.....\$230.00

WELD AND BRAZE TESTING

Prepared Weld Samples

Welding nipples, matched sets, SA-53, Gr. B

2" IPS Sch 40.....\$26.50/each
 2" IPS Sch 80.....\$31.00/each
 2" IPS Sch 160.....\$32.00/each
 6" IPS Sch 40.....\$54.00/each
 6" IPS Sch 80.....\$58.00/each
 2" IPS Sch xx.....\$35.00/each

Plate Sets

3/8" AWS with B.U.....\$70.00/each
 1" AWS with B.U.....\$92.00/each
 1/2" Fillet Weld.....\$28.00/each

Witnessing

Witness.....\$75.00/hour
 Mileage.....\$0.70/mile

Sample Preparation

Carbon Steel Coupons - Bend Specimens Only

2" IPS Sch 40.....\$60.50/each
 2" IPS Sch 80.....\$63.00/each
 2" IPS Sch xx.....\$72.00/each



6" IPS Sch 40	\$72.00/each
6" IPS Sch 80	\$77.50/each
3/8" AWS with B/U	\$66.00/each
1" AWS with B/U.....	\$110.00/set
Tensile specimens; preparation	\$86.00/set
Other machining and preparation	\$75.00/hour
Braze Specimen Evaluation	
Braze Coverage (per tube).....	\$30.00/each
Tensile test.....	\$70.00/set
Mechanical Testing	
Tensile.....	\$35.00/each
Guided Bend.....	\$13.00/each
Fillet Weld.....	\$63.00/each
Nick Break.....	\$26.00/each
Service Tee.....	\$13.00/each
Preparation of Forms	
AWS Performance Test.....	\$35.00/each
AWS (WPS - Pre-Qualified).....	\$35.00/each
ASME Performance Test (QW-484).....	\$35.00/each
ASME (WPS).....	\$80.00/each
ASME (OHIO) Pressure Piping-Welding/Brazing.....	\$115.00/each

NONDESTRUCTIVE TESTING, EXAMINATION AND INSPECTION

Ultrasonic Thickness Testing	\$88.00/hour
Magnetic Particle Testing.....	\$88.00/hour
Liquid Penetrant Testing	\$88.00/hour
Visual Inspection.....	\$88.00/hour



CHEMISTRY AND ENVIRONMENTAL TESTING LABORATORY

SOLID WASTES

BTEX Solvent Scan (Method 8020).....	\$86.00/each
BTU	\$46.00/each
Corrosivity (pH)	\$12.50/each
Cyanide, Reactive.....	\$46.00/each
Cyanide, Total	\$46.00/each
Digestion (EPA Method 3050)	\$23.00/each
Flash Point (Pensky-Martens).....	\$46.00/each
Ignitability	\$46.00/each
Lead in Paint (ASTM D 3335)	\$46.00/each
Loss on Ignition	\$30.00/each
Metals, Total, RCRA (8)	\$195.00/each
Moisture.....	\$17.00/each
Nitrogen, Total	\$61.00/each
Oil and Grease	\$46.00/each
Paint Filter Test	\$9.00/each
pH	\$13.00/each
Priority Pollutant Metals (13)	\$290.00/each
Reactivity (Cyanide & Sulfide)	\$86.00/each
Sulfides, Reactive	\$46.00/each
Sulfides, Total (Acid Soluble).....	\$52.00/each
Total Organic Carbon (T.O.C.)	\$70.00/each
Total Petroleum Hydrocarbons (GRO, Method 5030/8015)	\$86.00/each
Total Petroleum Hydrocarbons (DRO, Methods 3550/8015).....	\$86.00/each
Volatile Organics - GC (Methods 8010 & 8020).....	\$175.00/each
Volatile Organics - GC/MS (Method 8240)	\$190.00/each
All 129 Priority Pollutants	\$1,270.00/each

TOXICITY CHARACTERISTIC LEACHING PROCEDURE (TCLP)

Extractions	
Non-volatile Extraction	\$92.00/each
Zero Headspace Extraction (ZHE)	\$160.00/each
Oily Waste Surcharge.....	\$58.00/each
RCRA Metals	\$140.00/each
Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, Silver	
RCRA Metals, each	\$17.00/each
Volatiles.....	\$175.00/each
Semi-volatiles	
Base/Neutral Acids (BNA) Combination	\$345.00/each
Pesticides	\$215.00/each
BNA Combination and Pesticides	\$445.00/each
Herbicides.....	\$200.00/each
BNA Combination, Pesticides and Herbicides	\$520.00/each
Total TCLP	\$1,080.00/each
Physical Parameters (pH, Flash Point and Paint Filter).....	\$46.00/each
Reactivity (Sulfide and Cyanide).....	\$92.00/each
Full List TCLP (Complete Hazardous Waste Characterization).....	\$1,220.00/each

ORGANIC ANALYSIS

Acid Extractable Organic Compounds (Method 625 or 8270C)	\$175.00/each
Base/Neutral and Acids (BNA) Combination (Method 625 or 8270C).....	\$345.00/each
Base/Neutral Extractable Organic Compounds (Method 625 or 8270C)	\$260.00/each
Herbicides (Method 8150/8270).....	\$225.00/each
Organic Compounds - Identification and "Fingerprint".....	\$200.00/each
PCB's in Oil & Wipes (Method 8082)	\$105.00/each
PCB's in Soil and Water (Method 8082 & 608)	\$140.00/each
Pesticides (Method 8081)	\$175.00/each
Pesticides/PCB (Method 8080).....	\$215.00/each
Polynuclear Aromatic Hydrocarbons (Method 8100).....	\$200.00/each
Semi-volatiles (BNA Combo - Method 8270 or 625).....	\$400.00/each
Total Toxic Organics	\$890.00/each
Total Petroleum Hydrocarbons (GRO, Method 5030/8015B).....	\$86.00/each



Total Petroleum Hydrocarbons (DRO, Method 3550/8015B).....	\$86.00/each
Volatile Organics - GC (Methods 8010 & 8020).....	\$175.00/each
Volatile Organics - GC/MS (Method 624 or 8260B)	\$190.00/each
Volatile Organics in Air (Method 8260B).....	\$200.00/each
<u>WATER AND WASTE WATER</u>	
Acidity (Method 3210B)	\$17.00/each
Alkalinity (Method 2320B)	\$17.00/each
B.O.D. (5 day)	\$40.00/each
B.T.E.X. (Method 624).....	\$86.00/each
B.T.E.X. -M.T.B.E (Method 624).....	\$110.00/each
Chlorides.....	\$30.00/each
Chlorine.....	\$21.00/each
Chromium, Hexavalent.....	\$46.00/each
Chemical Oxygen Demand (C.O.D).....	\$35.00/each
Coliform, Total	\$30.00/each
Conductivity	\$9.00/each
Cyanide, Total	\$46.00/each
Digestion.....	\$11.50/each
Dissolved Oxygen.....	\$11.50 /each
Fluorides.....	\$17.00/each
Freezing Point.....	\$86.00/each
Hardness	\$36.00/each
Iron, Total	\$24.00/each
Iron, Suspended	\$24.00/each
Iron, Dissolved.....	\$24.00/each
Lead	\$24.00/each
MBAS (Surfactants - Method 425.1).....	\$40.00/each
Metals, Total, RCRA (8) - Water	\$175.00/each
Nitrates	\$23.00/each



Nitrites	\$23.00/each
Nitrogen (TKN).....	\$35.00/each
Nitrogen (NH3 probe)	\$23.00/each
Oil and Grease	\$46.00/each
pH	\$9.00/each
Phenols	\$46.00/each
Phosphates	\$23.00/each
Priority Pollutant Metals (13).....	\$290.00/each
Solids, Total.....	\$17.00/each
Solids, Suspended.....	\$21.00/each
Solids, Dissolved	\$21.00/each
Sulfates	\$23.00/each
Sulfides	\$23.00/each
Sulfites	\$23.00/each
Total Organic Carbon (TOC - Method 9060).....	\$46.00/each
Total Organic Halogen (TOX - Method 9020A).....	\$120.00/each
Turbidity.....	\$17.00/each
Volatile Organics (Methods 601 & 602)	\$175.00/each
Volatile Organics (Method 524 & 624).....	\$200.00/each

SOILS

Actual Potential Acidity	\$58.00/each
BTEX Solvent Scan (EPA Method 8020)	\$86.00/each
Calcium Carbonate Deficiency (Neutralization potential & Sulfur).....	\$86.00/each
Conductivity (ASTM D 1125).....	\$23.00/each
Chloride (AASHTO T 291).....	\$58.00/each
Fraction Organic Carbon (ASTM D2974).....	\$70.00/each
Lead Total (EPA 7420).....	\$36.00/each
Maximum Potential Acidity	\$40.00/each
Metals, Total, RCRA (8) - Solids	\$195.00/each



Neutralization Potential	\$58.00/each
pH	\$14.00/each
Polynuclear Aromatic Hydrocarbons (Method 8100).....	\$200.00/each
Priority Pollutant Metals (13) - Solids.....	\$290.00/each
Pyritic Sulfur	\$52.00/each
Redox Potential (ASTM D 1498).....	\$58.00/each
Sulfides (EPA 376.1).....	\$58.00/each
Sulfates (AASHTO T 290).....	\$115.00/each
Total Lead.....	\$36.00/each
Total Organic Carbon (TOC).....	\$105.00/each
Total Organic Halogen (TOX - Method 9022).....	\$80.00/each
Total Sulfur.....	\$34.50/each
Volatile Organic Compounds - GC/MS (Method 8260B).....	\$190.00/each

COAL AND SOLID FUELS

Ash	\$17.00/each
Ash Fusion.....	\$46.00/each
BTU	\$46.00/each
Carbon	\$31.00/each
Chlorine	\$75.00/each
Float/Sink Test.....	\$40.00/each
Free Swelling Index.....	\$23.00/each
Mineral Analysis of Ash, each mineral	\$17.00/each
Moisture.....	\$40.00/each
Proximate Analysis.....	\$86.00/each
Moisture, Volatile Matter, Fixed Carbon, Ash, Sulfur, BTU	
Pyritic Sulfur	\$52.00/each
Sample Preparation.....	\$17.00/each
Short Proximate Analysis.....	\$63.00/each
Moisture, Ash, Sulfur, BTU	
Sieve Analysis	\$30.00/each
Specific Gravity.....	\$40.00/each



Sulfur	\$40.00/each
Sulfur Forms	\$115.00/each
Pyritic, Sulfate, Organic, Total Sulfur	
Ultimate Analysis	\$155.00/each
Moisture, Ash, Sulfur, Carbon, Hydrogen, Nitrogen, Oxygen	
Ultimate and Proximate Analysis	\$210.00/each
Volatile Matter.....	\$30.00/each

OILS, LIQUID FUELS, AND RELATED HYDROCARBONS

Ash	\$17.00/each
BTU (organic)	\$46.00/each
BTU (inorganic)	\$86.00/each
Cetane Index	\$70.00/each
Chlorine	\$58.00/each
Cloud Point.....	\$30.00/each
Distillation Temperature.....	\$86.00/each
Ethylene Glycol in Oil (ASTM D 2982)	\$30.00/each
Ethylene Glycol in Water	\$86.00/each
Flash Point (COC)	\$46.00/each
Flash Point (Pensky-Martens).....	\$46.00/each
Gas Chromatography Scan	\$200.00/each
Gravity	\$20.00/each
Lead in Gasoline (ASTM D 3237)	\$40.00/each
Metallic Elements, each.....	\$17.00/each
PCB Content (Method 8080).....	\$110.00/each
Pour Point	\$34.50/each
Sugar in Petroleum Samples (qualitative)	\$58.00/each
Suspended Solids.....	\$23.00/each
Sulfur (detection limit: 0.5%)	\$58.00/each
Total Acid Number.....	\$30.00/each
Total Base Number.....	\$30.00/each



Viscosity (Kinematic).....	\$58.00/each
Water (Distillation).....	\$53.00/each
Water and Residue (centrifuge).....	\$53.00/each

METAL AND ALLOY ANALYSIS

Sample Preparation (drillings, when required).....	\$13.00/each
Sample Digestion.....	\$13.00/each
Aluminum (Al).....	\$13.00/each
Antimony (Sb).....	\$13.00/each
Arsenic (As).....	\$23.00/each
Barium (Ba).....	\$13.00/each
Beryllium (Be).....	\$13.00/each
Bismuth (Bi).....	\$13.00/each
Boron (B).....	\$13.00/each
Cadmium (Cd).....	\$13.00/each
Calcium (Ca).....	\$13.00/each
Carbon (C).....	\$14.00/each
Chromium (Cr).....	\$13.00/each
Chromium (Hexavalent).....	\$46.00/each
Cobalt (Co).....	\$13.00/each
Copper (Cu).....	\$13.00/each
Gold (Au).....	\$24.00/each
Iron (Fe).....	\$13.00/each
Lead (Pb).....	\$13.00/each
Magnesium (Mg).....	\$13.00/each
Manganese (Mn).....	\$13.00/each
Mercury (Hg).....	\$46.00/each
Molybdenum (Mo).....	\$13.00/each
Nickel (Ni).....	\$13.00/each



Niobium (Nb)	\$13.00/each
Phosphorus (P).....	\$23.00/each
Potassium (K)	\$13.00/each
Selenium (Se).....	\$23.00/each
Silicon (Si).....	\$13.00/each
Silver (Ag).....	\$24.00/each
Sodium (Na)	\$13.00/each
Strontium (Sr).....	\$13.00/each
Sulfur (S)	\$14.00/each
Thallium (Tl)	\$13.00/each
Tin (Sn)	\$13.00/each
Titanium (Ti)	\$13.00/each
Tantalum (Ta).....	\$13.00/each
Vanadium (V).....	\$13.00/each
Zinc (Zn).....	\$13.00/each

Graphite Furnace Atomic Absorption - Add \$11.50 per element surcharge
 (trace element analysis)

CONCRETE AND CEMENT

Sample Preparation.....	\$30.00/each
Total Sulfur Trioxide (AASHTO T-105).....	\$58.00/each
Water Soluble Chlorides (AASHTO T-260)	\$115.00/each
Acid Soluble Chlorides (AASHTO T-260)	\$115.00/each
Total Sulfates.....	\$58.00/each
Acid Soluble Sulfates	\$58.00/each
Cement Content (ASTM C114 and C1084).....	\$400.00/each
Density of Hydraulic Cement (ASTM C188).....	\$30.00/each
Alkali-Silica Reactivity (ASTM C289).....	\$805.00/each

LIMESTONE

Sample Preparation.....	\$63.00/hour
Oxide Analysis	
Ignition Loss	



Silicon Dioxide	
Iron Oxide	
Aluminum Oxide	
Calcium Oxide	
Magnesium Oxide	
Total Sulfur	
First Sample.....	\$400.00/each
Each Additional Sample.....	\$345.00/each
pH	\$13.00/each
Loss on Ignition.....	\$30.00/each
Acid Base Accounting	
a. Total Sulfur	\$58.00/each
b. Neutralization Potential.....	\$58.00/each
Carbonate Analysis (CaCO ₃ & MgCO ₃).....	\$63.00/each
Rapid Sugar Test	\$175.00/each
Slaking Rate.....	\$290.00/each
Insoluble Residue (ASTM D3042 pH=4).....	\$115.00/each
Insoluble Residue (ASTM D3042).....	\$115.00/each

GEOTECHNICAL DRILLING AND SAMPLING

MOBILIZATION AND DEMOBILIZATION

Truck Mounted Drill Rig	\$4.90/mile
Track/All Terrain Vehicle Mounted Drill Rig	\$7.00/mile
Barge Mounted Drill Rig	As Quoted
Skid Mounted Drill Rig	\$6.30/mile
Tripod Drilling Equipment	\$2.90/mile
Water Truck	\$2.90/mile
Support Truck	\$0.70/mile

DRILLING AND SAMPLING

Soil Drilling and Sampling* (ASTM D1586):

From 0 to 25 feet	\$18.50/foot
From 25 to 50 feet	\$21.00/foot
From 50 to 80 feet	\$22.50/foot
From 80 to 140 feet	\$24.75/foot
In excess of 140 feet	As Quoted

**Include sampling at 0.5 foot, 2.5 feet, 5.0 feet, 8.5 feet, and every 5 feet thereafter using a truck mounted drilling rig. Drilling fee for projects requiring other than a truck mounted drilling rig will be provided upon request.*

Continuous Soil sampling (ASTM D1586)	As Quoted
Additional 2-inch Split Spoon (ASTM D1586)	\$15.00/each
Additional 3-inch Split Spoon (ASTM D1586)	\$19.00/each
Auger Drilling in Soil (No Sampling)	\$14.50/foot
Hand Augering	\$21.00/foot
Shelby Tube (ASTM D1587)	\$115.00/each
Bag Sample	\$98.00/each

Rock Coring (ASTM D2113):

NX size core	
From 0 to 50 feet	\$60.00/foot
From 50 to 100 feet	\$65.50/foot
In excess of 100 feet	As Quoted
4-inch size core	
From 0 to 50 feet	\$63.00/foot
From 50 to 100 feet	\$75.00/foot
In excess of 140 feet	As Quoted

Drilling in Rock (Reaming):

4"	\$25.00/foot
6"	\$30.00/foot
8"	\$37.00/foot



Hard Drilling in Rock or Boulders	\$25.00/foot
Asphalt Coring	
6" or less.....	\$70.00/core
In excess of 6"	\$11.50/inch
Concrete Coring:	
7" or less.....	\$115.00/core
In excess of 7"	\$16.70/inch
Piezometer Installation and Boring Backfill:	
Materials.....	Cost + 15%
Labor and Equipment to Install and Remove	Hourly Rates
Drilling Day Rate	\$1,725.00/day
Special Field Services.....	\$225.00/hour
Stand-by Time	\$225.00/hour
Per Diem (2 person crew).....	\$300.00/minimum
Or	Cost + 15%
Traffic Control.....	As Quoted
Dozer Rental in Conjunction with Drilling Operations	Cost + 15%
Core Boxes	Cost + 15%
Glass Jars	Cost + 15%
Seismograph Survey (Engineer and two helpers).....	\$1,725.00/day
Electric Resistivity Survey (Engineer and two helpers)	\$1,725.00/day

NOTE: The above fees include furnishing all Soil/Rock Test Boring Records and/or Well Records. These records include visual classification of soil/rock, Standard Penetration Test results, and soil and/or rock samples secured in glass jars or core boxes. Groundwater observations will be recorded during drilling, at completion of drilling, and at the maximum time interval possible before the rig leaves the project site.

ENVIRONMENTAL DRILLING AND SAMPLING

MOBILIZATION AND DEMOBILIZATION

Truck Mounted Drill Rig	\$4.90/mile
Track Mounted Drill Rig	\$7.00/mile
Barge Mounted Drill Rig	As Quoted
Skid Mounted Drill Rig	\$6.00/mile
Tripod Drilling Equipment	\$2.90/mile
Water Truck	\$2.90/mile
Support Truck	\$0.70/mile

DRILLING AND SAMPLING (LEVEL D)

Drilling Including Split Spoon Sampling 2.5 foot intervals (ASTM D1586):

From 0 to 50 Feet

4.0" O.D. Solid Flight Auger	\$19.00/foot
3.25" I.D. Hollow Stem	\$21.00/foot
4.25" I.D. Hollow Stem	\$23.50/foot
6.25" I.D. Hollow Stem	\$24.75/foot
8.25" I.D. Hollow Stem	\$27.00/foot

Drilling Including Split Spoon Sampling at 5 foot intervals (ASTM D1586):

From 0 to 50 Feet

4.0" O.D. Solid Flight Auger	\$18.50/foot
3.25" I.D. Hollow Stem	\$19.50/foot
4.25" I.D. Hollow Stem	\$21.00/foot
6.25" I.D. Hollow Stem	\$22.00/foot
8.25" I.D. Hollow Stem	\$24.00/foot

Drilling Including Split Spoon Sampling Continuously (ASTM D1586):

From 0 to 50 Feet

4.0" O.D. Solid Flight Auger	\$20.00/foot
3.25" I.D. Hollow Stem	\$21.00/foot
4.25" I.D. Hollow Stem	\$22.50/foot
6.25" I.D. Hollow Stem	\$24.00/foot
8.25" I.D. Hollow Stem	\$29.00/foot

From 50 to 300 Feet As Quoted

Additional 2" Split Spoon Sample (ASTM D1586) \$15.00/each

Additional 3" Split Spoon Sample (ASTM D1586) \$19.00/each

Shelby Tube (ASTM D1587) \$115.00/each

Hydropunch Sample \$360.00/each

Top Soil Depth Investigation (determine avg. depth of top soil)..... \$345.00/each

Rock Coring (ASTM D2113):

NX size core

From 0 to 50 feet	\$62.00/foot
From 50 to 100 feet	\$70.00/foot
In excess of 100 feet	As Quoted



4-inch size core	
From 0 to 50 feet	\$64.50/foot
From 50 to 100 feet	\$76.00/foot
In excess of 140 feet.....	As Quoted
 Drilling in Rock (Reaming):	
4"	\$28.00/foot
6"	\$29.00/foot
8"	\$37.50/foot
 Asphalt Coring:	
6" or less	\$70.00/core
In excess of 6"	\$11.50/inch
 Concrete Coring:	
7-inch or less	\$115.00/core
In excess of 7-inches	\$16.70/inch
Decontamination.....	\$225.00/hour
Well Construction.....	\$225.00/hour
Well Development.....	\$225.00/hour
Standby	\$225.00/hour
 Grouting with Cement-Bentonite Mix or Bentonite Chips:	
4" Hole	\$6.30/foot
6" Hole	\$9.00/foot
8" Hole	\$11.20/foot

DRILLING AND SAMPLING (LEVEL C)

Drilling Including Split Spoon Sampling 2.5 foot intervals (ASTM D1586):

From 0 to 50 Feet	
4.0" O.D. Solid Flight Auger.....	\$21.00/foot
3.25" I.D. Hollow Stem	\$23.00/foot
4.25" I.D. Hollow Stem	\$24.00/foot
6.25" I.D. Hollow Stem	\$26.00/foot
8.25" I.D. Hollow Stem	\$31.50/foot

Drilling Including Split Spoon Sampling Continuously (ASTM D1586):

From 0 to 50 Feet (2.50 foot intervals)	
4.0" O.D. Solid Flight Auger.....	\$26.50/foot
3.25" I.D. Hollow Stem	\$24.00/foot
4.25" I.D. Hollow Stem	\$25.00/foot
6.25" I.D. Hollow Stem	\$27.00/foot
8.25" I.D. Hollow Stem	\$34.00/foot

 From 50 to 300 Feet

As Quoted

Additional 2" Split Spoon Sample (ASTM D1586)	\$16.70/each
Additional 3" Split Spoon Sample (ASTM D1586)	\$22.00/each
Shelby Tube (ASTM D1587)	\$115.00/each
Hydropunch Sample	\$425.00/each



Rock Coring (ASTM D2113):

NX size core	
From 0 to 50 feet	\$76.00/foot
From 50 to 100 feet	\$84.00/foot
In excess of 100 feet.....	As Quoted
4-inch size core	
From 0 to 50 feet	\$79.50/foot
From 50 to 100 feet	\$94.00/foot
In excess of 100 feet.....	As Quoted

Drilling in Rock (Reaming):

4"	\$30.00/foot
6"	\$32.75/foot
8"	\$43.00/foot

Asphalt Coring (to max of 6")	\$78.00/core
Asphalt Coring in excess of 6"	\$13.25/inch

Concrete Coring:

7-inch or less	\$115.00/core
In excess of 7-inches	\$17.75/inch

Decontamination.....\$235.00/hour

Well Construction.....\$235.00/hour

Well Development.....\$235.00/hour

Standby\$235.00/hour

Grouting with Cement-Bentonite Mix or Bentonite Chips:

4" Hole	\$7.00/foot
6" Hole	\$9.75/foot
8" Hole	\$11.75/foot

LEVEL C or LEVEL D

Water Truck (1000 Gal.)\$115.00/hour

Water Truck (250 Gal.)\$86.00/hour

Steam Cleaner and Generator \$220.00/day

Concrete Saw..... \$145.00/day

Per Diem (2 person crew).....\$300.00/minimum
 Or Cost + 15%

Drums (DOT Approved) Cost + 15%

Dozer Rental in Conjunction with Drilling Operations Cost + 15%

Core Boxes Cost + 15%

Glass Jars Cost + 15%



EQUIPMENT

Photoionization Detector.....	\$115.00/day
Organic Vapor Analyzer.....	\$170.00/day
Combustible Gas Meter/ LEL Meter.....	\$145.00/day
PH/Conductivity/Temp Meter.....	\$52.00/day
AMS Hand Auger.....	\$46.00/day
AMS Soil Core Sampler.....	\$46.00/day
Water Level Indicator (only).....	\$35.00/day
Water Level Indicator and Separate Phase Meter.....	\$105.00/day
Water Pump for Monitoring Well Sampling.....	\$52.00/day
Water Quality Meter.....	\$145.00/day
Generator/Steamer for Decontamination.....	\$200.00/day
Disposable Bailer for Monitoring Well Sampling.....	\$9.00/each
XRF Rental for LBP.....	\$290.00/day
Peristaltic Vacuum Pump.....	\$52.00/day
Indoor Air Quality Meter (Q-trak) rental.....	\$145.00/day
Dust Check Meter Rental.....	\$145.00/day
Electric Resistivity Meter (Nisson & Geocheck).....	\$115.00/day
Asbestos Air Monitoring Pump Rental.....	\$52.00/day
Air/Mold Sampling Pump.....	\$35.00/day
Moisture Check Meter.....	\$30.00/day
Respirator Cartridges (pair).....	\$14.00/pair
Sheet Plastic (Roll 20'x100').....	Cost + 15%
Equipment Purchase / Rental from outside source.....	Cost + 15%
Tyvek Coveralls.....	\$14.00/each
Trimble GPS-Handheld.....	\$175.00/day

ANALYTICAL COSTS

Asbestos Analysis using Polarized Light Microscopy(PLM) 5-7 day turnaround.....	\$17.00/sample
Asbestos Analysis for NOB Samples using PLM 5-7 day turnaround.....	\$32.00/sample



Asbestos Analysis using Point Count (400 points) 5-7 day turnaround.	\$63.00/sample
Asbestos Analysis using Transmission Electron Microscopy (TEM) 5-7 day turnaround.	\$126.00/sample
Asbestos Analysis of Air Monitoring Cassette Using Phase Contrast Microscopy (same day)	\$17.00/sample
Asbestos Analysis of Air Monitoring Cassette Using Phase Contrast Microscopy (24 hours)	\$11.50/sample
Lead-based Paint Chip Analysis 5-7 day turnaround.....	\$35.00/sample

* Call for rush turnaround as surcharge ranges from 50% to 100%.

LABORATORY SOIL TESTING

Split Spoon Samples 1.375" O.D., tested for Natural Moisture Content, Density, Hand Penetrometer and/or Unconfined Compression	\$16.00/sample
Visual Identification	\$7.50/sample
Grain Size Analysis (ASTM C136 or D422):	
Sieve Analysis (dry)	\$41.00/each
Sieve Analysis (wash)	\$47.00/each
Sieve Analysis and Short Hydrometer	\$75.00/each
Sieve Analysis and Long Hydrometer	\$77.00/each
Atterberg Limits (ASTM D4318):	
Plastic Limit	\$40.00/each
Liquid Limit	\$41.00/each
Specific Gravity (ASTM D854):	\$67.00/each
Moisture Content (ASTM D2216):	\$11.50/each
Density	\$30.00/each
Hand Penetrometer	\$9.00/each
Unconfined Compression (ASTM D2166):	
Split Spoon (less than 5 samples)	\$28.00/each
(more than 5 samples)	\$19.50/each
Shelby Tube, Ultimate Value	\$65.50/each
Shelby Tube with Stress-Strain Curve	\$98.00/each
Consolidation (ASTM D2435 & D854):	
With Time Curves & Specific Gravity	\$575.00/each
Without Time Curves	\$400.00/each
Permeability:	
Constant Head (Granular Soils) (ASTM D2434):	\$240.00/each
Falling Head (Cohesive Soils) (ASTM D5084)	\$385.00/each
*Direct Shear Strength (AASHTO T236)	\$445.00/test
*Triaxial Shear Strength:	
Unconsolidated, Undrained (ASTM D2850)	\$380.00/test
Consolidated, Undrained (ASTM D4767)	\$860.00/test
Consolidated, Drained	\$1,010.00/test
*Each test includes 3 points.	
Loss on Ignition (ASTM D2974)	\$17.00/each
Resistivity (ASTM G57)	\$180.00/each
Swell (ASTM D4546)	\$415.00/each
Quick Swell	\$225.00/each

Thermal Resistivity (IEEE Standard 442-1981):	
Single Measurement	\$445.00/each
Dry Out Curve	\$845.00/each
Sample Preparation	\$70.00/hour
Shrinkage (ASTM D4943 with wax).....	\$240.00/each
Moisture Density Relation Proctor:	
Standard Proctor (ASTM D698).....	\$225.00/each
Modified Proctor (ASTM D1557).....	\$240.00/each
One Point Proctor	\$86.00/each
California Bearing Ratio (CBR):	
One Point.....	\$155.00/each
Three Point (ASTM D-1883, AASHTO T-143).....	\$390.00/each
Six Point (ASTM D-1883, AASHTO T-143).....	\$770.00/each
Relative Density (ASTM D4253, D4254).....	\$240.00/each
Compressive Strength (Rock)	\$200.00/each
Schmidt Hammer (Hardness)	\$290.00/each
Slake Durability (ASTM D4644)	\$320.00/each

ROOFING SERVICES

EQUIPMENT

Capacitance Scanner.....	\$80.00/day
Infrared Unit and Videotape (Model #91 ISI) (minimum charge).....	\$690.00/day
Nuclear Densitometer for Moisture Density (Troxler #3216).....	\$345.00/day
Thermographer and Helper.....	\$210.00/hour

LABORATORY SERVICES

Analysis of Built-up Roofing Cuts (ASTM D2829)..... (Add \$35.00 for Coal Tar Pitch Extraction)	\$320.00/each
Qualitative only	\$110.00/each
Analysis of Built-Up Roofing Cuts (ASTM D2829)..... Additional charge for Coat Tar Pitch Extraction (Qualitative Only).....	\$185.00/each \$ 46.00/each
Analysis of New Built-Up Roof (ASTM D3617).....	\$200.00/each
Softening Point of Asphalt (ASTM D3617).....	\$98.00/each.
Fastener Pullout Testing	Cost + 15%
Fee based on site location, type and number of fasteners	
Hardness of Built-Up Aggregate (ASTM D1864).....	\$70.00/each
Hardness of Built-Up Roofing Aggregate (ASTM D1865).....	\$98.00/each
Moisture in Built-Up Roofing Aggregate (ASTM D1864)	\$86.00/each
Moisture Content of Insulation/Membrane.....	\$115.00/each
Water in Bituminous Materials by Distillation (ASTM D95)	\$105.00/each
Softening Point of Asphalt (ASTM D3617).....	\$115.00/each
Sieve Analysis of Built-Up Roofing Aggregate (ASTM D1863).....	\$98.00/each
Test Method for Compressive Properties of Rigid Insulation (ASTM D-1621-73)	\$92.00/each
Test Method for apparent Density of Rigid Cellular Insulation	\$86.00/each

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7197
Contract No. _____

**Agreement
for Architectural and Engineering Services**

Cole + Russell Architects, Inc. dba

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and CR architecture + design a ~~corporation~~ organized under the laws of the State of OHIO, the address of which is 600 Vine Street, Suite 2210 ("Consultant").
Cincinnati, OH 45202

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Cole + Russell Architects, Inc. dba
[Insert Consultant's name]
CR architecture + design, an Ohio Corporation

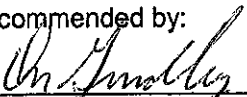
By: 

Printed Name: David R. Johnson, AIA

Title: Chief Operations Officer

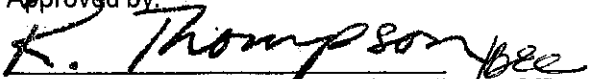
Date: January 27, 2012

Recommended by:

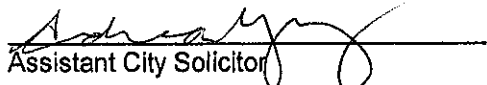

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

Certified Date: **FEB 29 2012**

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

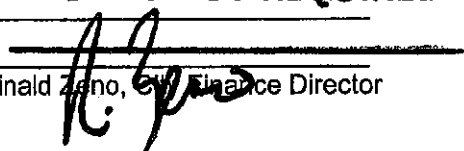
By: 
Reginald Zeno, Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 150 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

EXHIBIT B: COMPENSATION**Payment Schedule**

	Direct Salary Expense (DSE)	Overhead @ 150% of DSE	Net fee profit 15%	Hourly rate
Coordinator	20.87	31.30	7.83	60.00
Administrator	24.35	36.52	9.13	70.00
Intern 1	20.87	31.30	7.83	60.00
Intern 2	31.30	46.95	11.74	90.00
Designer 1	26.09	39.13	9.78	75.00
Designer 2	31.30	46.95	11.74	90.00
Architect 1	31.30	46.95	11.74	90.00
Architect 2	38.26	57.39	14.35	110.00
Leader 1	34.78	52.17	13.04	100.00
Leader 2	41.74	62.60	15.65	120.00
Leader 3	48.69	73.04	18.26	140.00
Principal 1	48.69	73.04	18.26	140.00
Principal 2	52.17	78.26	19.56	150.00
Managing Principal	60.87	91.30	22.82	175.00

Breakdown of Overhead Costs

Payroll taxes
Fringe benefits
Indirect labor
Technology
Rent
Liability Insurance
General Insurance
Outside services (legal, accounting, etc.)
Professional expenses (training, registrations)
Office equipment
Office supplies
Telephone
Postage and delivery
Travel and entertainment
Depreciation and amortization
Miscellaneous
Marketing
Other income (expense)

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Mark Shoemaker [m.shoemaker@cr-architects.com]
Sent: Tuesday, February 21, 2012 4:37 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea
Subject: RE: CR Architecture + Design Contingency Contract

That is acceptable. Thank you for picking that up – sorry for the inconvenience.

Mark D. Shoemaker A.I.A. LEED AP
CR architecture + design

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Tuesday, February 21, 2012 3:24 PM
To: Mark Shoemaker
Cc: Brazina, John; Yang, Andrea
Subject: CR Architecture + Design Contingency Contract

Mr. Shoemaker,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The consultant should be listed as Cole + Russell Architects, Inc., DBA CR Architecture + Design, an Ohio corporation

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Please “reply all” to confirm that this amendment is acceptable to you.

Thank you,

Mel McVay

*Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street
Cincinnati, Ohio 45202
513.352.5269 office
513.352.5336 fax*

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Champlin/Haupt Architects, Inc. a Corp. organized under the laws of the State of Ohio, the address of which is 424 E 4th Street ("Consultant").
Suite 4
Cincinnati, Ohio 45202-3375

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

CHAMPAIN HAUPT ARCHITECTS, INC.
[insert Consultant's name]


By: 


Printed Name: MICHAEL J. BATTOCLETTE

Title: PRINCIPAL

Date: 1.23, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

Schwarz
Assistant City Solicitor

Certified Date: FEB 29 2012

Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED

By: R. Zeno
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
INTERIOR DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Interior Design Services may include any of the following:

- Establish budgets for interior work
- Select interior finishes & coordinate architectural finishes
- Design ceiling and lighting plans
- Create color and finish presentation boards
- Specify interior furniture, provide specifications for furniture packages
- Coordinate furniture installation
- Provide move coordination services
- Architectural design related services

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

"SEE ATTACHED PAYMENT SCHEDULE"

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 205 % and a net fee (profit) of 10 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT



CITY OF CINCINNATI A/E CONTRACT 4-1-12 TO 3-31-12

STANDARD TERMS, CONDITIONS AND RATES:

January 2012

These Terms, Conditions, and Rates become a part of this Proposal unless specifically modified in writing otherwise.

Terms and Conditions:

Billing / Payments:

Invoices will be submitted monthly and are due when rendered. Invoices shall be considered PAST DUE if not paid within 30 days after the invoice date. A service charge may be charged at 1.5% (or the legal rate) per month on the unpaid balance. In the event that an account or any portion remains unpaid 120 days after billing, the Client shall pay amount past due with interest and cost of collection, including reasonable attorneys' fees. If the Client fails to make payments when due or otherwise is in breach of this Agreement, Champlin Architecture (Champlin) may suspend performance or services upon five (5) calendar days notice to the Client. Champlin shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension.

Document Ownership:

All documents produced by Champlin under this agreement, including electronic files, are and shall remain the property of Champlin and may not be used by this Client for any other purpose other than this Project without the written consent of Champlin. Any such use or reuse shall be at the sole risk of Client who shall defend, indemnify and hold Champlin and its consultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to Champlin and its consultants.

Risk Allocation:

In recognition of the relative risks, rewards, and benefits of the project to both the Client and Champlin, the risks shall be allocated so that the Client agrees, to the fullest extent permitted by law, to limit the liability of Champlin and its Consultants to the Client and all construction Contractors and Sub-Contractors on the project for any and all claims, losses, costs, damages of any kind or claims expenses from any causes, so that the total aggregate liability of Champlin and its Consultants shall not exceed \$50,000 or our total professional fee for services rendered on this project, which ever is greater. Such claims and causes include, but are not limited to negligence, professional errors, or omissions, strict liability, and breach of contractor warranty.

Fiduciary Responsibility:

Champlin and its Consultants do not owe or assume any fiduciary responsibility toward the Client or the Owner.

Certificates of Insurance:

Champlin has the following insurance coverage available:

- Professional Liability Insurance at \$1 million each claim and \$1 million aggregate.
- Project Professional Liability Insurance or special project coverage may be arranged (if commercially available) for an extra fee, billed directly to the Client, plus an extra for the difference in deductible amounts.
- General Liability Insurance at \$1 million each occurrence and \$2 million aggregate with \$2 million umbrella coverage.

Indemnification:

The Client shall indemnify and hold harmless Champlin, including its Consultants and all of its personnel against any and all claims, damages, losses and expenses (including reasonable attorneys' fees) arising out of or resulting from the performance of these services, provided that the cause is due in whole or in part to a negligent act or omission of the Client; anyone directly or indirectly employed by the Client (except Champlin) or anyone for whose acts any of them may be liable. The Client/Owner further agrees to include similar language to hold Champlin, etc., harmless in any and all construction contracts between the Owner and the Contractor(s) as a result of the construction, means, methods, workmanship, protection, and/or sequencing arising in an associated process.

Mold:

Champlin, including its Consultants, during the process of the project shall exercise normal industry standards of skill and care based upon similar local projects. The Client/Owner agrees to release, indemnify, defend, and hold harmless Champlin, its Consultants, and associated personnel against any and all claims, costs, liabilities, and damages (including reasonable attorneys' expenses) arising from the existence and/or hazards of mold as a result of construction, use, maintenance, operations, and/or occupation of the project.

Design without Construction Administration:

Should it be agreed to and understood that Champlin and its Consultants are not to include construction administration and field observation as part of its basic service package, then these services shall be provided by the Client or its other designees. The Client agrees to indemnify, defend, and hold harmless Champlin, its Consultants, and all associated personnel against any and all claims, damages, losses, costs, and expenses (including reasonable attorneys' expenses) to the full extent permitted by the law for all responsibilities of interpretations of contract documents and construction

THINK CREATE REALIZE

Champlin/Haupt Architects, Inc.
Overhead Calculation Costs

Indirect Costs

Salaries-Staff and Principal
Salaries (Sick, Holiday, Vacation)
Temporary Employees
FICA (Employer's Share)
Worker's Compensation
Unemployment Tax (Fed/State)
Cafeteria Plan
Medical Insurance
Life Insurance
Profit Sharing Contribution
Educational Seminars/Expenses
Professional Registration/Dues
New Hire Expense
Office Parking
Profit Sharing Expenses
Consultants
Rent
Electric
Telephone
Postage/Delivery
Printed Material (bks, mag, nwp)
Office Supplies/Expenses
Office New Hire Expense
Office Maintenance & Repairs
Equipment Maintenance
Computer Upgrades & Repairs
Equipment Rental
Legal & Accounting
Payroll
Professional Liability Insurance
Insurance (Gen Liab/Equip)
Ohio Franchise Tax
Cinti/Hamilton County Tax
Ohio CAT Tax
Ohio Corporation Tax
Ohio Use Tax
Kentucky Corporation Tax
Misc. Community Taxes
Indiana Corporation Tax
Depreciation
Insurance-Disability
Auto Mileage & Parking
Travel & Expenses
Promotional Expenses (ads, etc.)
Client Events-ads/donations
Client Events-golf/dinners
Trade Shows
Promotional Mterial
Contributions
Office Meeting Expenses
Promotional Food/Entertainment
Client Promotion-gifts/donations

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and **CDS Associates, Inc.**, a corporation organized under the laws of the State of Ohio, the address of which is 11120 Kenwood Road Cincinnati, OH 45242 ("Consultant").

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. DEFAULT.

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. NOTICES.

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) City's Right to Inspect and Audit. During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. CERTIFICATION AS TO NON-DEBARMENT.

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. INDEPENDENT CONTRACTOR.

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. OWNERSHIP AND PROTECTION OF PROPERTY.

(A) Work Product. All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) Protected Information. Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) Confidentiality. Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. GENERAL PROVISIONS.

(A) Assignment & Subcontracting. Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

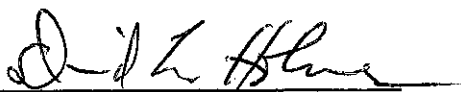
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

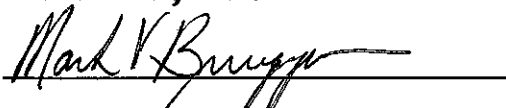
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

CDS ASSOCIATES, INC.

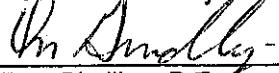
By: 

Printed Name: Mark V. Brueggemann, P.E.

Title: Principal

Date: 1-19, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

FEB 29 2012

Certified Date:

~~CERTIFICATION OF~~

Fund/Code:

~~FUNDS NOT REQUIRED~~

Amount: _____

By: _____

[Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Engineering Services may include any of the following:

Right-of-way plans	Preliminary engineering
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
TRAFFIC ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Traffic Engineering Services may include any of the following:

Detailed contract plans and specifications	Right-of-way plans
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Preliminary studies & layouts	Evaluation studies & reports
Capacity analysis	Benefit-cost analysis
TSM studies and plans	Geometrics and alignment
Accident analysis	Signalization, signage & pavement marking
Photometrics analysis	Pole & foundation design
Analysis of existing lighting systems	Electrical wiring evaluation & design
Data collection/tabulation/summarization	Traffic counts, surveys, and studies
Parking surveys and studies	Accident records and statistics
Utilities records	Property records
Traffic control inventories	Signal timing, operation & coordination
Lighting equipment inventories	Street lighting design and specifications
Environmental impact studies	
Physical, social & economic data collection, analysis and reports	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

<u>PROFESSIONAL CLASSIFICATION*</u>	<u>SALARY</u>
Project Director	\$ 150/HR
Senior Project Manager	\$ 130/HR
Senior Professional Staff	\$ 105/HR
Graduate Engineer / Architect / Designer	\$ 85/HR
Technician	\$ 60/HR
Professional Surveyor	\$ 85/HR
Survey Crew	\$ 115/HR
Administrative Support	\$ 45/HR

* Professional classifications apply to both our engineering and architectural staffs.

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 200**% and a net fee (profit) of 11%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

** CDS' actual "FAR" overhead rate is 241.78%; however, for this Contract, we are using an overhead rate of 200% for calculating out salary schedule.

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT



OHIO DEPARTMENT OF TRANSPORTATION
 CENTRAL OFFICE - 1980 WEST BROAD STREET - COLUMBUS, OH 43223
 JOHN R. KASICH, GOVERNOR - JERRY WRAY, DIRECTOR

Indirect Cost Inspection Certificate No. 2010-AW-012R

Company..... CDS Associates, Inc.
 Based on Actual Costs Submitted for Year..... 2010
 Effective Date (Approval Date)..... Wednesday, August 03, 2011
 Approved Contracting Status..... UNLIMITED (eligible for cost-plus contracts)

The Ohio Department of Transportation (ODOT) Office of Audits has completed an inspection of the above Company's cost submission, as discussed below. *A copy of this certificate must be included with all new project proposals and on any requests for modifications to existing contracts.*

Approved Rates. ODOT hereby approves the following rates:

Corporate Overhead	241.78% (6.17% decrease)
Facilities Capital Cost of Money	0.50% (as submitted)

Application and Updates. The approved rates shown above apply to contracts that are partially or fully reimbursed using the Actual Costs Plus a Net Fee (cost-plus) method. The approved rates should be used for billings and cost proposals on contracts funded by the State of Ohio and/or Federal sources, including projects for ODOT and Ohio Local Public Agencies (LPAs). The above rates are based on the most recent cost information the Company submitted to ODOT. As more current cost information becomes available, it must be submitted to the ODOT Office of Audits, within six months after the close of the Company's fiscal year.

For detailed submittal requirements, please see <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/Consultants.aspx>.

Note: All companies must submit the required financial package annually. Failure to comply may result in loss of ODOT prequalification.¹

Inspection Procedures. The procedures applied in this inspection did not constitute an audit or review in compliance with the Government Auditing Standards issued by the U.S. Government Accountability Office (GAO). ODOT's inspection was limited to the application of a set of basic analytical procedures and the examination of certain cost items with a high inherent risk of misstatement. ODOT reserves the right to conduct a full review or audit at a later date, if warranted. This could include an overhead audit and/or a project audit.

The point of contact regarding this inspection is:

Angela Whitmoyer
 Ohio Department of Transportation
 Department of Finance and Forecasting, Office of External Audits
 1980 West Broad Street
 Columbus, Ohio 43223
 Phone: (614) 644-8113
 Email: Angela.Whitmoyer@dot.state.oh.us

Approved by:

Scot P. Gormley, Audit Manager

¹ **Note:** The ODOT Office of Consultant Services makes all determinations regarding engineering prequalification. Consultants are responsible for renewing engineering prequalification every two years, and this process is independent of cost submissions made to the ODOT Office of Audits. For details regarding prequalification requirements, see <http://www.dot.state.oh.us/Divisions/ProdMgt/Consultant/Pages/default.aspx>.

2010 OVERHEAD RATE

ODOT

Account Number	Account Description	Total Amount	Direct Costs	Unallowable Costs	Eligible Amount
701.00.01&702	General Salary Cost	1,529,646.66		30,254.00 (a)	1,499,392.66
741	Auto Registration & Insurance	7,725.17		2,381.23 (o)	5,343.94
639	Bad Debts	23,998.89		23,998.89 (b)	0.00
742	Bank Fees	5,454.01			5,454.01
705	Bonus	7,500.00			7,500.00
743	Building Maintenance	76,071.62			76,071.62
744	Contributions	135.00		135.00 (c)	0.00
745	Depreciation	101,138.00		48,729.92 (n)(o)	52,408.08
733	Dues & Subscriptions	19,762.51		1,892.00 (l)	17,870.51
734	Employee Welfare	26,233.16		26,233.16 (d)	0.00
629 / 755	Entertainment	6,891.10		6,891.10 (e)	0.00
731.03	ESOP Dividend	64,957.00		64,957.00 (f)	0.00
522/524/746/758	Gas/Oil/Mileage/Parking	64,643.08	19,174.16 (m)	17,298.89 (o)	28,170.03
747	Insurance - Business	118,495.88			118,495.88
732	Insurance-Group Health/Life	446,983.73			446,983.73
724	Insurance - Workman's Comp	6,900.18			6,900.18
748	Interest	12,798.21		12,798.21 (g)	0.00
749	Investment Services	5,998.00			5,998.00
526 / 626 / 763	Lease/Rental	54,917.83	4,553.08 (m)	2,706.00 (o)	47,658.75
627 / 751	Legal/Accounting - General	25,795.99	19,113.73	(m)	6,682.26
751.01	Legal/Accounting - ESOP	31,543.50			31,543.50
752	Library/Reference	1,343.38			1,343.38
528 / 735	License/Permits	18,599.54	4,781.25	(m)	13,818.29
753	Maintenance Contracts	59,914.09			59,914.09
754	Marketing	20,630.51		20,630.51 (h)	0.00
529 / 756	Meeting & Conferences	3,777.55	243.71	(m)	3,533.84
757	Miscellaneous	497.14			497.14
515 / 615 / 757.5	Outside Professional	1,557,417.04	1,456,420.24	(m)	100,996.80
759	Payroll Services	4,864.66			4,864.66
731 / 731.01	Pension/ESOP & 401(k)	50,000.00		50,000.00 (i)	0.00
530/534/760/766	Postage & UPS	21,128.55	8,830.20	(m)	12,298.35
532/532.02/632/761	Printing	94,624.86	54,991.71 (m)	(k)	39,633.15
762	Rent	530,835.00		174,652.00 (j)	356,183.00
764	Repairs - Maintenance	11,898.10		2,695.15 (o)	9,202.95
736	Scholarships	1,100.00		1,100.00 (d)	0.00
535 / 737	Seminars	29,327.43	395.00	(m)	28,932.43
765	Services - Misc	8,292.96			8,292.96
767	Software	5,676.90			5,676.90
768	Supplies - Drafting	5,305.34			5,305.34
533 / 769	Supplies - Office	20,633.82	435.10	(m)	20,198.72
721	Tax - FICA/Employer	211,286.50			211,286.50
771	Tax - State & Local	15,006.33			15,006.33
722	Tax - Unemployment	12,768.19			12,768.19
770	Tax - Sales & Use	6,077.08			6,077.08
536 / 772	Telephone	55,770.05	3,874.55	(m)	51,895.50
521 / 773.1	Travel & Lodging	33,899.13	23,331.17	(m)	10,567.96
774	Utilities	63,853.05			63,853.05
791 / 792 / 795	Credit for Internal Allocations	(55,263.85)			(55,263.85)
	Totals	5,426,852.87	1,596,143.90	487,353.06	3,343,355.91
	Total Eligible:	3,343,355.91			
	Direct Salary Cost:	1,382,818.85			
				Overhead Rate: 2.418	

FAR Reference and Notes

- (a) See ODOT Circular No. 2 (attached)
- (b) 31.205-3 Bad Debts - Unallowable
- (c) 31.205-8 Contributions - Unallowable
- (d) 31.205-13 Employee Benefits - Unallowable
- (e) 31.205-14 Entertainment Cost - Unallowable
- (f) 31.205-6(2) Dividends - Unallowable
- (g) 31.205-20 Interest - Unallowable
- (h) 31.205-1 Public Relations & Advertising - Unallowable
- (i) ESOP Contribution 50,000 - Unallowable
- (j) 31.205-17 Idle Facilities - Unallowable (see attached calculation)
- (l) 31.205-22 Lobbying Cost - Unallowable
- (m) 31.202 Excluded Direct Project Cost (both billable & non-billable)
- (n) 31.205-11 Accelerated Depreciation - Unallowable
- (o) 31.205-6(m2) Personal Auto Usage - Unallowable

Note: Total Amount less Direct Cost and Unallowable Cost equals Eligible Amount

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "**City**"), and Burgess & Niple, Inc. a Corp. organized under the laws of the State of OH, the address of which is 312 Plum St., 12th Flr ("**Consultant**").
Cincinnati, OH 45202

Recitals:

- A. The City's Department of Transportation & Engineering ("**DOTE**") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however,* that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and ~~\$2,000,000~~ for all Projects combined.

BYD
SchNB \$ 6,000,000

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$10,000,000, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the negligent acts, errors or omissions of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.


(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

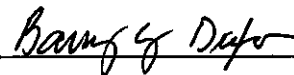
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Burgess & Niple, Inc.
[insert Consultant's name]

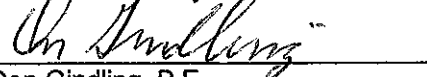
By: 

Printed Name: Barry Y. Dixon

Title: Exec. Vice Pres.

Date: Jan. 26, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

[Signature]
Assistant City Solicitor

MAR 01 2012

Certified Date: _____

Fund/Code: **CERTIFICATION OF**
Amount: **FUNDS NOT REQUIRED**

By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
HIGHWAY STRUCTURES ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Highway Structures Engineering Services may include any of the following:

Highway structures construction inspections	Reviewing shop drawings
Highway structures construction management	Responding to RFIs
Highway structures investigations	Railroad Coordination
Highway structures studies	Preliminary Engineering
Planning & feasibility studies	Highway structural analysis and design
Condition studies and product evaluation	painting & maintenance plans & studies
Corrosion engineering studies	Right-of-way plans
Construction cost estimates	Right-of-Way Plats and legal descriptions
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Environmental documents
As-built drawings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
MECHANICAL/PLUMBING/FIRE PROTECTION/ELECTRICAL ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Mechanical/Plumbing/Fire Protection/Electrical Engineering Services may include any of the following:

Planning & feasibility studies	Preliminary Engineering
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Engineering and architectural analyses and evaluations	
Design of mechanical, Plumbing, fire protection, and electrical systems	
Second Opinion reports on reuse of adaptation of systems in existing buildings	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
FEDERALLY FUNDED PLANNING AND ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Planning or Engineering Design that have Federal Funds may include any of the following:

Preliminary engineering	Right-of-way plans
Investigations & inspections	Site reconnaissance & photography
Planning & feasibility studies	Coordination with other agencies
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Condition studies	Shop drawing review
Preparation of change orders	As-built drawings

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 189 % and a net fee (profit) of 15 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

Burgess Niple, Inc.
2012 - 2015 Hourly Billing Rates

Classification	2012 Bill Rate	2013 Bill Rate	2014 Bill Rate	2015 Bill Rate
Accounting Assistant	\$92.91	\$96.16	\$99.53	\$103.01
Administrative Assistant or Clerk	\$92.47	\$95.24	\$98.57	\$102.02
Architect I	\$88.63	\$91.29	\$94.49	\$97.79
Architect II	\$99.31	\$102.29	\$105.87	\$109.58
Architect III	\$120.71	\$124.33	\$128.68	\$133.18
Architect IV	\$133.55	\$137.55	\$142.37	\$147.35
Architect V	\$154.94	\$159.59	\$165.17	\$170.96
Architect VI	\$190.88	\$196.61	\$203.49	\$210.61
Architect VII	\$197.73	\$203.66	\$210.79	\$218.17
Architectural Designer I	\$99.31	\$102.29	\$105.87	\$109.58
Architectural Designer II	\$107.87	\$113.26	\$117.23	\$121.33
Architectural Designer III	\$137.82	\$144.72	\$149.78	\$155.02
BIM Specialist	\$211.01	\$221.56	\$229.32	\$237.34
CADD Operator I	\$84.35	\$88.57	\$91.67	\$94.88
CADD Operator II	\$103.59	\$108.77	\$112.58	\$116.52
CADD Operator III	\$107.02	\$112.37	\$116.30	\$120.37
CADD Operator IV	\$122.42	\$128.54	\$133.04	\$137.70
Cartographer I	\$83.05	\$87.21	\$90.26	\$93.42
Cartographer II	\$94.62	\$99.35	\$102.83	\$106.43
Cartographer III	\$116.43	\$122.25	\$126.53	\$130.96
Construction Cost Estimator	\$113.86	\$119.55	\$123.74	\$128.07
Contract Administrator	\$141.69	\$148.78	\$153.98	\$159.37
Co-op	\$80.49	\$84.51	\$87.47	\$90.53
Designer I	\$115.16	\$120.92	\$125.15	\$129.53
Designer II	\$138.68	\$145.61	\$150.71	\$155.99
Engineer I	\$102.74	\$107.87	\$111.65	\$115.56
Engineer II	\$114.72	\$120.45	\$124.67	\$129.03
Engineer III	\$129.27	\$135.73	\$140.48	\$145.40
Engineer IV	\$146.38	\$153.70	\$159.08	\$164.65
Engineer V	\$169.93	\$178.43	\$184.68	\$191.14
Engineer VI	\$204.59	\$214.81	\$222.33	\$230.11
Engineer VII	\$217.41	\$228.28	\$236.27	\$244.54
Engr Aide I	\$76.65	\$80.48	\$83.30	\$86.22
Engr Aide II	\$95.03	\$99.79	\$103.28	\$106.89
Engr Aide III	\$107.87	\$113.26	\$117.23	\$121.33
Engr Aide IV	\$131.42	\$137.99	\$142.82	\$147.82
Environmental Scientist I	\$84.35	\$88.57	\$91.67	\$94.88
Environmental Scientist II	\$97.19	\$102.05	\$105.62	\$109.32
Environmental Scientist III	\$112.15	\$117.76	\$121.88	\$126.14
Environmental Scientist IV	\$137.82	\$144.72	\$149.78	\$155.02
Environmental Scientist V	\$163.50	\$171.67	\$177.68	\$183.90
Environmental Technician I	\$71.07	\$74.63	\$77.24	\$79.94
Environmental Technician II	\$89.04	\$93.50	\$96.77	\$100.15
Environmental Technician III	\$103.59	\$108.77	\$112.58	\$116.52

Burgess Niple, Inc.
2012 - 2015 Hourly Billing Rates

Classification	2012 Bill Rate	2013 Bill Rate	2014 Bill Rate	2015 Bill Rate
Field Technician I	\$70.66	\$74.19	\$76.79	\$79.48
Field Technician II	\$77.92	\$81.81	\$84.68	\$87.64
Field Technician III	\$92.91	\$97.56	\$100.97	\$104.51
Field Technician IV	\$99.31	\$104.28	\$107.93	\$111.71
Geologist I	\$86.48	\$90.80	\$93.98	\$97.27
Geologist II	\$99.31	\$104.28	\$107.93	\$111.71
Geologist III	\$113.01	\$118.66	\$122.81	\$127.11
Geologist IV	\$136.11	\$142.92	\$147.92	\$153.10
Geologist V	\$172.06	\$180.66	\$186.98	\$193.53
Geologist VI	\$197.73	\$207.62	\$214.88	\$222.40
GIS Specialist I	\$84.35	\$88.57	\$91.67	\$94.88
GIS Specialist II	\$101.47	\$106.54	\$110.27	\$114.13
GIS Specialist III	\$120.71	\$126.74	\$131.18	\$135.77
GIS Specialist IV	\$139.98	\$146.98	\$152.12	\$157.45
Graphic Designer	\$127.14	\$133.50	\$138.17	\$143.01
Interior Designer I	\$84.35	\$88.57	\$91.67	\$94.88
Interior Designer II	\$99.31	\$104.28	\$107.93	\$111.71
Interior Designer III	\$116.43	\$122.25	\$126.53	\$130.96
Landscape Architect I	\$82.20	\$86.31	\$89.33	\$92.45
Landscape Architect II	\$99.31	\$104.28	\$107.93	\$111.71
Landscape Architect III	\$127.14	\$133.50	\$138.17	\$143.01
Landscape Architect IV	\$161.38	\$169.44	\$175.38	\$181.51
Owner 1	\$241.38	\$253.44	\$262.32	\$271.50
Owner 2	\$261.92	\$275.01	\$284.64	\$294.60
Owner 3	\$320.11	\$336.12	\$347.88	\$360.06
PC Support Analyst	\$116.02	\$121.82	\$126.08	\$130.50
Planner I	\$95.03	\$99.79	\$103.28	\$106.89
Planner II	\$120.71	\$126.74	\$131.18	\$135.77
Planner III	\$172.50	\$181.13	\$187.47	\$194.03
Planner IV	\$193.90	\$203.59	\$210.72	\$218.09
Print Clerk	\$90.76	\$95.29	\$98.63	\$102.08
Proj Representative I	\$80.07	\$84.08	\$87.02	\$90.07
Proj Representative II	\$97.19	\$102.05	\$105.62	\$109.32
Proj Representative III	\$112.15	\$117.76	\$121.88	\$126.14
Proposal Coordinator	\$107.87	\$113.26	\$117.23	\$121.33
RCDD Specialist	\$139.54	\$146.51	\$151.64	\$156.95
Secretary I	\$69.36	\$72.83	\$75.38	\$78.02
Secretary II	\$78.77	\$82.71	\$85.61	\$88.60
Secretary/Administrative Assistant	\$86.48	\$90.80	\$93.98	\$97.27
Survey Director	\$147.68	\$155.07	\$160.49	\$166.11
Survey Instrument Operator I	\$75.80	\$79.59	\$82.37	\$85.25
Survey Instrument Operator II	\$84.35	\$88.57	\$91.67	\$94.88
Survey Manager	\$147.68	\$155.07	\$160.49	\$166.11
Survey Party Chief I	\$88.63	\$93.06	\$96.32	\$99.69

Burgess Niple, Inc.
2012 - 2015 Hourly Billing Rates

Classification	2012 Bill Rate	2013 Bill Rate	2014 Bill Rate	2015 Bill Rate
Survey Party Chief II	\$99.31	\$104.28	\$107.93	\$111.71
Survey Party Chief III	\$107.87	\$113.26	\$117.23	\$121.33
Survey Technician I	\$74.49	\$78.22	\$80.96	\$83.79
Survey Technician II	\$83.05	\$87.21	\$90.26	\$93.42
Survey Technician III	\$98.46	\$103.38	\$107.00	\$110.74
Survey Technician IV	\$116.43	\$122.25	\$126.53	\$130.96
Surveyor, Registered	\$142.10	\$149.21	\$154.43	\$159.84
Technical Project Manager	\$147.24	\$154.60	\$160.01	\$165.61
Sr. Technical Project Manager	\$168.63	\$177.06	\$183.26	\$189.68

NOTE: Billing Rates include direct salary, overhead, technology charge and profit.

Rates for overtime work, only where pre-approved by the City Engineer, shall be at 1.5 times the listed rates.

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Burgess & Niple Projected Overhead Expenditures

***** CONFIDENTIAL NOT FOR DISTRIBUTION *****

<u>Expense Category</u>	<u>Projected 2012</u>
<u>Direct Payroll Items</u>	
Social Security / Medicare	2,777,000
Unemployment Taxes	190,000
Workers' Compensation	196,000
Retirement	900,000
Other Employee Benefits	855,000
Group Insurance	3,250,000
Paid Time Off	3,947,000
Total Direct Overhead	12,115,000
<u>Indirect Overhead Items</u>	
Professional Liability Insurance	600,000
Other Insurance	210,000
Depreciation/Amortization	1,138,000
Company Vehicle Maintenance	350,000
General Office Salaries	7,200,000
General Office Expense	1,545,000
New Business Salaries	5,800,000
New Business Expense	1,350,000
Rent, Utilities, Maintenance	3,617,000
Office, Field, Copier Supplies	890,000
Accounting, Legal Services	500,000
Taxes	1,200,000
Interest	350,000
Miscellaneous	65,000
Total Indirect Overhead	24,815,000
<u>Direct Labor</u>	
Total Direct Labor	19,540,000
<u>Overhead Rates</u>	
Direct Overhead Rate	62.00%
Indirect Overhead Rate	127.00%
Total Overhead Rate	189.00%

Computer/Technology

Labor	1,200,000
Expenses	1,400,000
Communication Costs	760,000
Computer Depreciation	1,070,000
Total Computer/Technology	4,430,000
Total Labor Hours	985,000
Computer/Technology Rate per hour	4.50

Note: Burgess & Niple typically recovers the cost of computers, CADD, telecommunications and other related costs in a "Technology Charge". This charge is projected to be \$4.50 for 2012 and is applied to all direct project, new business, and general office hours. Since the City of Cincinnati does not consider this charge to be eligible for reimbursement, the "Technology Charge" has been included in the hourly billing rate for each classification.

Yang, Andrea

From: Dixon, Barry [barry.dixon@burgessniple.com]
Sent: Tuesday, February 28, 2012 8:06 AM
To: Brazina, John
Cc: Brunot, Jonathan; Yang, Andrea; McVay, Melissa
Subject: RE: B&N contingency contract

John, the amendment to increase the maximum compensation is acceptable to B&N . We look forward to receiving our executed copy of the contract. Thanks for all your assistance. Sincerely, Barry Y Dixon PE , Exec. Vice Pres. , Burgess & Niple, Inc.

From: Brazina, John [mailto:John.Brazina@cincinnati-oh.gov]
Sent: Tuesday, February 28, 2012 8:01 AM
To: Dixon, Barry
Cc: Brunot, Jonathan; Yang, Andrea; McVay, Melissa
Subject: B&N contingency contract

Mr. Dixon,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

After speaking to Jon Brunot, I increased the maximum compensation to \$8,000,000 for all projects combined.

Please "reply all" with any questions or comments, and to confirm that the amendment is acceptable to you.

Thanks,
John

Note:
These electronic documents are provided by Burgess & Niple (B&N) as a convenience to our clients. The official document is available as a manually signed, initialed, or sealed hard copy. If there is a discrepancy between electronic files and the hard copies, the hard copies shall prevail.
It is our professional opinion that this electronic information provides information current as of the date of its release. Any use of this information is at the sole risk and liability of the user. The user is responsible for updating information to reflect any changes in the information following the preparation date of this transmittal. The delivery of this information in electronic format is for the benefit of the owner for whom the services have been performed. Nothing in the transfer should be construed to provide any right to third parties to rely on the information provided, or that the use of this information implies the review and approval of Burgess & Niple.

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Brandstetter/Carroll, Inc a Corp organized under the laws of the State of OH the address of which is 308 E 8th St, Cincinnati, OH ("Consultant"). 45202

Recitals:

- A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.
- B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.
- C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.
- D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.
- E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.
- F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.
- G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("Term") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "Expiration Date"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

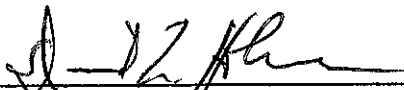
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

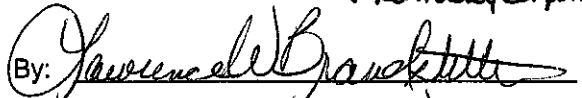
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

BRANDSTETTER/CARROLL Inc.
[insert Consultant's name] a Kentucky Corporation

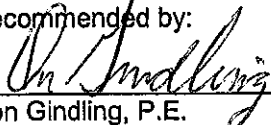
By: 

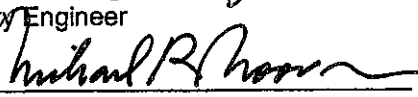
Printed Name: LAWRENCE W. BRANDSTETTER

Title: PRESIDENT

Date: 1/16, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

A. [Signature]
Assistant City Solicitor

Certified Date: MAR 01 2012
Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED
By: [Signature]
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
ARCHITECTURE SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Architecture Services may include any of the following:

Investigations & Inspections	Planning, feasibility, & conditions studies
Environmental Documents	Site Analysis
Building & Zoning code review & Analysis	Building reuse feasibility studies
New building feasibility studies	Schematic design
Renderings & Perspectives	Design development
Working drawings/contract plans	Specifications
Cost estimates	Related reports and design
Attend public meetings	Construction management
Utility Coordination	Structural design and engineering
Coordination with other agencies	As-built drawings
Historic conservation services	Streetscape & building lighting
Interior design	Photography
Office structure organization	Inventory of furniture systems
3-D digital modeling	Interactive media content for web sites

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

Please see attached Payment Schedule

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 108 % and a net fee (profit) of 12 %. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

<u>Employee</u>	Hourly Cost
Benjamin E. Brandstetter	37.05
Bruce G. Brandstetter	50.63
Dan Schaefer	48.00
David J. Lorei	34.66
David J. Stenger	25.25
Edward N. McDermott	33.28
Greg A. Bryant	22.11
James E. Bedel	23.28
Jeffrey T Strobl	29.17
L.C. Greer III	20.16
Lauren M Sylvester	12.00
Mary J Caudill	14.40
Michael W. Bedel	25.00
Robert W. Stegeman	16.50

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	2011	Direct	Disallowed	Proposed
	Debit	Costs	Costs	Co Wide
600 · Compensation Expenses:601 · DirectSalaries and Wages	1,878,525.00	-	-	1,878,525.00
600-Compensation-Indirect Salaries and Wages	415,289.82	-	293,489.00	1 121,800.82
600 · Compensation Expenses:603 · Employee Bonuses	81,514.00	0	0.00	81,514.00
600 · Compensation Expenses:605 · Employer FICA	175,880.02	0.00		175,880.02
600 · Compensation Expenses:606 · Federal Unemployment Insurance	2,690.50	0.00		2,690.50
600 · Compensation Expenses:608 · State Unemployment Insurance	4,516.49	0.00		4,516.49
600 · Compensation Expenses:610 · Workmans Compensation Ins.-KY	10,320.64	0.00		10,320.64
600 · Compensation Expenses:611 · Workmans Compensation Ins.-OH	6,845.56	0.00		6,845.56
620 · Employee Benefits	-584.87	0.00		-584.87
620 · Employee Benefits:621 · 401(k) Company Match	46,201.06	0.00		46,201.06
620 · Employee Benefits:624 · Health Insurance-Lex	175,733.39	0.00		175,733.39
620 · Employee Benefits:625 · Health Insurance-Cinn.	57,703.87	0.00		57,703.87
620 · Employee Benefits:627 · Dental Insurance-Lex	15,723.55	0.00		15,723.55
620 · Employee Benefits:628 · Dental Insurance-Cinn.	5,067.61	0.00		5,067.61
620 · Employee Benefits:630 · Employee Life Insurance	4,252.97	0.00		4,252.97
620 · Employee Benefits:631 · Officer Life Insurance	51,971.50	0.00	51,971.50	2 0.00
620 · Employee Benefits:633 · CSV Increase-employee Life Ins.	-43,172.09	0.00	-43,172.09	2 0.00
620 · Employee Benefits:635 · CSV Increase-Officer Life Ins.	4,449.99	0.00	4,449.99	2 0.00
620 · Employee Benefits:638 · Long Term Disability Insurance	5,466.69	0.00		5,466.69
620 · Employee Benefits:640 · Short Term Disability Insurance	7,030.46	0.00		7,030.46
620 · Employee Benefits:645 · Long Term Care Insurance	2,125.56	0.00		2,125.56
620 · Employee Benefits:650 · Health and Sports Club Dues-Lex	29,978.57	0.00	29,978.57	3 0.00
620 · Employee Benefits:652 · Health and Sports Club Dues-Cin	6,118.59	0.00	6,118.59	3 0.00
660 · Professional Expenses	734.80	0.00		734.80
660 · Professional Expenses:661 · Professional Development	445.00	0.00		445.00
660 · Professional Expenses:665 · Continuing Education	1,884.93	0.00		1,884.93
660 · Professional Expenses:669 · Professional Dues and Lic.	17,885.65	0.00		17,885.65
660 · Professional Expenses:674 · Publications	25.00	0.00		25.00
660 · Professional Expenses:679 · Conventions	150.00	0.00		150.00
660 · Professional Expenses:684 · Travel	90,214.10	0.00		90,214.10
660 · Professional Expenses:685 · Aircraft Charter	2,987.09	0.00	2,987.09	4 0.00
660 · Professional Expenses:690 · Meals and Entertainment	58,896.35	0.00	58,896.35	5 0.00
660 · Professional Expenses:695 · Misc Prof Exp.	2,473.87	0.00		2,473.87

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	2011		Direct Costs	Disallowed Costs	Proposed Co Wide
	Debit				
700 · Insurance:701 · Professional Liability	85,409.42		0.00		85,409.42
700 · Insurance:703 · General Liability Insurance	2,019.92		0.00		2,019.92
700 · Insurance:704 · Misc Insurance	91.17		0.00		91.17
710 · Auto Expenses:711 · Auto Gas and Oil	57,858.82		0.00	5,785.88	52,072.94
710 · Auto Expenses:714 · Auto Repairs	17,810.18		0.00	1,781.02	16,029.16
710 · Auto Expenses:718 · Auto Insurance	14,123.90		0.00	1,412.39	12,711.51
710 · Auto Expenses:720 · Auto Taxes and Registration	1,884.36		0.00	188.44	1,695.92
710 · Auto Expenses:724 · Misc. Auto Expenses	54.32		0.00	5.43	48.89
710 · Auto Expenses:727 · Auto Leases	5,880.83		0.00	588.08	5,292.75
710 · Auto Expenses:728 · Car Rental	8,924.28		0.00		8,924.28
710 · Auto Expenses:730 · Auto Mileage Paid	16,872.61		0.00		16,872.61
740 · Marketing:741 · Advertising-lex	4,554.42		0.00	4554.42	0.00
740 · Marketing:743 · Advertising-Cinn.	400.10		0.00	400.1	0.00
740 · Marketing:744 · Public Relations	3,363.66		0.00	3363.66	0.00
740 · Marketing:745 · Printing	2,063.82		0.00		2,063.82
740 · Marketing:746 · Clients Gifts. Etc	2,047.84		2,047.84		0.00
740 · Marketing:747 · Supplies	9,214.84		0.00		9,214.84
740 · Marketing:748 · Entertainment and Meals	391.51		391.51		0.00
740 · Marketing:749 · Conventions	10,669.78		0.00		10,669.78
740 · Marketing:750 · Travel Expenses	1,363.26		0.00		1,363.26
740 · Marketing:751 · Dues	3,950.00		0.00		3,950.00
740 · Marketing:752 · Postage, Delivery, etc	2,619.54		0.00		2,619.54
760 · Occupancy Expenses:761 · Rent-Lex	89,832.00		0.00		89,832.00
760 · Occupancy Expenses:763 · Rent-Cinn.	57,417.96		0.00		57,417.96
760 · Occupancy Expenses:764 · Parking	14,512.83		0.00		14,512.83
760 · Occupancy Expenses:766 · Repairs and Maintenance	10,554.43		0.00		10,554.43
760 · Occupancy Expenses:769 · Janitorial	8,234.00		0.00		8,234.00
760 · Occupancy Expenses:773 · Utilities	4,411.94		0.00		4,411.94
760 · Occupancy Expenses:776 · Condo Expenses	3,294.76			3,294.76	0.00
760 · Occupancy Expenses:776 · Condo Expenses:777 · New Condo Expenses_LWB	38,678.81			38,678.81	0.00
760 · Occupancy Expenses:776 · Condo Expenses:778 · New Condo Exp-MEC/BGB	28,596.50			28,596.50	0.00
760 · Occupancy Expenses:776 · Condo Expenses:779 · Covington Condo	3,638.66			3,638.66	0.00
780 · Computer Expenses:781 · Computer Expenses	13,271.15		0.00		13,271.15
780 · Computer Expenses:785 · Software Licenses/ Maint. Agree	26,056.33		0.00		26,056.33

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	2011		Direct Costs	Disallowed Costs	Proposed Co Wide	
	Debit					
800 · Office Expenses	2,144.79		0.00		2,144.79	
800 · Office Expenses:801 · Office Supplies	43,801.05		0.00		43,801.05	
800 · Office Expenses:804 · Office Refreshments	2,577.60		0.00		2,577.60	
800 · Office Expenses:807 · Delivery:805 · Delivery-World Wide	3,221.30		0.00		3,221.30	
800 · Office Expenses:807 · Delivery:806 · Pinpoint Logistics	471.48		0.00		471.48	
800 · Office Expenses:807 · Delivery:808 · Federal Express	8,274.73		0.00		8,274.73	
800 · Office Expenses:807 · Delivery:810 · UPS	11,740.24		0.00		11,740.24	
800 · Office Expenses:807 · Delivery:819 · Delivery Expenses-other	1,892.00		0.00		1,892.00	
800 · Office Expenses:811 · Offsite Records Storage	13,740.52		0.00		13,740.52	
800 · Office Expenses:816 · Subscriptions	1,281.36		0.00		1,281.36	
800 · Office Expenses:825 · Accounting	16,061.60		0.00		16,061.60	
800 · Office Expenses:827 · Legal	25,299.00		0.00		25,299.00	
800 · Office Expenses:830 · Printing	383.19		0.00		383.19	
800 · Office Expenses:835 · Bank Service Charges	6,836.92		0.00		6,836.92	
800 · Office Expenses:840 · Telephone	502.82		0.00		502.82	
800 · Office Expenses:844 · Mobile Phones	32,180.32		0.00		32,180.32	
800 · Office Expenses:848 · Contributions	5,286.35		0.00	5286.35	7	0.00
800 · Office Expenses:851 · Penalties	7,479.67		0.00	7479.67	8	0.00
800 · Office Expenses:853 · Late Fees	409.97		0.00	409.97	9	0.00
800 · Office Expenses:854 · Employee Functions	3,393.71		0.00	3393.71	12	0.00
800 · Office Expenses:855 · Property Taxes	190.49		0.00			190.49
800 · Office Expenses:856 · Office Meals and Entertainment	129.23		0.00	129.23	13	0.00
800 · Office Expenses:857 · Misc. Expense	49,915.99		0.00			49,915.99
800 · Office Expenses:858 · Brokerage Fees	5,582.71		0.00			5,582.71
800 · Office Expenses:860 · Misc Office Expenses	2,588.30		0.00			2,588.30
800 · Office Expenses:862 · Equipment Repairs	2,655.79		0.00			2,655.79
800 · Office Expenses:865 · Depreciation Expense	97,061.77		0.00			97,061.77
800 · Office Expenses:869 · Bad Debt Expense	23,640.22		0.00	23640.22	14	0.00
800 · Office Expenses:893 · Taxes and Licenses	3,909.33		0.00			3,909.33
800 · Office Expenses:894 · Sales and Usage tax	17.55		0.00			17.55
870 · Office Equipment Expenses:871 · Smoothstone Communications-Lex	33,239.88		0.00			33,239.88
870 · Office Equipment Expenses:871.1 · Smoothstone Communications-Cinn	19,702.67		0.00			19,702.67
870 · Office Equipment Expenses:873 · Pitney Bowes-Lex Mailing Machin	5,713.05		0.00			5,713.05
870 · Office Equipment Expenses:873.1 · Pitney Bowes Mailing Mach-Cinn	1,348.24		0.00			1,348.24

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	2011 Debit	Direct Costs	Disallowed Costs	Proposed Co Wide
870 · Office Equipment Expenses:878 · De Lage Landen Cannon-Cinn	5,251.30	0.00		5,251.30
870 · Office Equipment Expenses:880 · De Lage Landen/Imagistics-Lex	9,194.66	0.00		9,194.66
870 · Office Equipment Expenses:882 · Citicorp-HP workstations etc	5,707.93	0.00		5,707.93
870 · Office Equipment Expenses:884 · Citicapital-plotter	831.41	0.00		831.41
870 · Office Equipment Expenses:888 · Konica Copier	43,006.83	0.00		43,006.83
870 · Office Equipment Expenses:888 · Konica Copier:888a · Konica Usage Charges	13,520.75	0.00		13,520.75
870 · Office Equipment Expenses:889 · Copier Usage Charges	14,533.66	0.00		14,533.66
870 · Office Equipment Expenses:891 · Office Mach Taxes,fees & insur	3,205.41	0.00		3,205.41
TOTAL	2,318,814.41	2,439.35	537,346.30	1,779,028.76

References

- 1 Uncompensated overtime-determined under salary variance method
- 2 Officer life insurance is disallowed FAR 31.205-19(e)(2)(v)
- 3 Memberships in sports and country clubs disallowed FAR 31.205-14
- 4 Personal travel disallowed
- 5 Cost for entertainment are disallowed FAR 31.205-14 and 31.205-51
- 6 Expense for personal condos are disallowed-distribution of profits
- 7 Contributions are disallowed-FAR 31.205-8 and 31.205-13(b)
- 8 Penalties are disallowed FAR 31.205-15(a)
- 9 Late fees/interest are disallowed FAR 31.205-20
- 10 Cost for general marketing materials are disallowed FAR 31.205-1
- 11 Personal use (10%) of auto expense disallowed FAR 31.205-6(m)(2)
- 12 Employee functions disallowed FAR FAR 31.205-13(b)
- 13 Meals for employees not in overnight travel disallowed
- 14 Bad debts disallowed FAR 31.205-3

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	% of
	Direct Labor
600 · Compensation Expenses:601 · DirectSalaries and Wages	100.00%
600-Compensation-Indirect Salaries and Wages	6.48%
600 · Compensation Expenses:603 · Employee Bonuses	4.34%
600 · Compensation Expenses:605 · Employer FICA	9.36%
600 · Compensation Expenses:608 · Federal Unemployment Insurance	0.14%
600 · Compensation Expenses:608 · State Unemployment Insurance	0.24%
600 · Compensation Expenses:610 · Workmans Compensation Ins.-KY	0.55%
600 · Compensation Expenses:611 · Workmans Compensation Ins.-OH	0.36%
620 · Employee Benefits	-0.03%
620 · Employee Benefits:621 · 401(k) Company Match	2.46%
620 · Employee Benefits:624 · Health Insurance-Lex	9.35%
620 · Employee Benefits:625 · Health Insurance-Cinn.	3.07%
620 · Employee Benefits:627 · Dental Insurance-Lex	0.84%
620 · Employee Benefits:628 · Dental Insurance-Cinn.	0.27%
620 · Employee Benefits:630 · Employee Life Insurance	0.23%
620 · Employee Benefits:631 · Officer Life Insurance	0.00%
620 · Employee Benefits:633 · CSV Increase-employee Life Ins.	0.00%
620 · Employee Benefits:635 · CSV Increase-Officer Life Ins.	0.00%
620 · Employee Benefits:638 · Long Term Disability Insurance	0.29%
620 · Employee Benefits:640 · Short Term Disability Insurance	0.37%
620 · Employee Benefits:645 · Long Term Care Insurance	0.11%
620 · Employee Benefits:650 · Health and Sports Club Dues-Lex	0.00%
620 · Employee Benefits:652 · Health and Sports Club Dues-Cin	0.00%
660 · Professional Expenses	0.04%
660 · Professional Expenses:661 · Professional Development	0.02%
660 · Professional Expenses:665 · Continuing Education	0.10%
660 · Professional Expenses:669 · Professional Dues and Lic.	0.95%
660 · Professional Expenses:674 · Publications	0.00%
660 · Professional Expenses:679 · Conventions	0.01%
660 · Professional Expenses:684 · Travel	4.80%
660 · Professional Expenses:685 · Aircraft Charter	0.00%
660 · Professional Expenses:690 · Meals and Entertainment	0.00%
660 · Professional Expenses:695 · Misc Prof Exp.	0.13%

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	% of
	Direct Labor
700 · Insurance:701 · Professional Liability	4.55%
700 · Insurance:703 · General Liability Insurance	0.11%
700 · Insurance:704 · Misc Insurance	0.00%
710 · Auto Expenses:711 · Auto Gas and Oil	2.77%
710 · Auto Expenses:714 · Auto Repairs	0.85%
710 · Auto Expenses:718 · Auto Insurance	0.68%
710 · Auto Expenses:720 · Auto Taxes and Registration	0.09%
710 · Auto Expenses:724 · Misc. Auto Expenses	0.00%
710 · Auto Expenses:727 · Auto Leases	0.28%
710 · Auto Expenses:728 · Car Rental	0.48%
710 · Auto Expenses:730 · Auto Mileage Paid	0.90%
740 · Marketing:741 · Advertising-lex	0.00%
740 · Marketing:743 · Advertising-Cinn.	0.00%
740 · Marketing:744 · Public Relations	0.00%
740 · Marketing:745 · Printing	0.11%
740 · Marketing:746 · Clients Gifts. Etc	0.00%
740 · Marketing:747 · Supplies	0.49%
740 · Marketing:748 · Entertainment and Meals	0.00%
740 · Marketing:749 · Conventions	0.57%
740 · Marketing:750 · Travel Expenses	0.07%
740 · Marketing:751 · Dues	0.21%
740 · Marketing:752 · Postage, Delivery, etc	0.14%
760 · Occupancy Expenses:761 · Rent-Lex	4.78%
760 · Occupancy Expenses:763 · Rent-Cinn.	3.06%
760 · Occupancy Expenses:764 · Parking	0.77%
760 · Occupancy Expenses:766 · Repairs and Maintenance	0.56%
760 · Occupancy Expenses:769 · Janitorial	0.44%
760 · Occupancy Expenses:773 · Utilities	0.23%
760 · Occupancy Expenses:776 · Condo Expenses	0.00%
760 · Occupancy Expenses:776 · Condo Expenses:777 · New Condo Expenses_LWB	0.00%
760 · Occupancy Expenses:776 · Condo Expenses:778 · New Condo Exp-MEC/BGB	0.00%
760 · Occupancy Expenses:776 · Condo Expenses:779 · Covington Condo	0.00%
780 · Computer Expenses:781 · Computer Expenses	0.71%
780 · Computer Expenses:785 · Software Licenses/ Maint. Agree	1.39%

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	% of
	Direct Labor
800 · Office Expenses	0.11%
800 · Office Expenses:801 · Office Supplies	2.33%
800 · Office Expenses:804 · Office Refreshments	0.14%
800 · Office Expenses:807 · Delivery:805 · Delivery-World Wide	0.17%
800 · Office Expenses:807 · Delivery:806 · Pinpoint Logistics	0.03%
800 · Office Expenses:807 · Delivery:808 · Federal Express	0.44%
800 · Office Expenses:807 · Delivery:810 · UPS	0.62%
800 · Office Expenses:807 · Delivery:819 · Delivery Expenses-other	0.10%
800 · Office Expenses:811 · Offsite Records Storage	0.73%
800 · Office Expenses:816 · Subscriptions	0.07%
800 · Office Expenses:825 · Accounting	0.86%
800 · Office Expenses:827 · Legal	1.35%
800 · Office Expenses:830 · Printing	0.02%
800 · Office Expenses:835 · Bank Service Charges	0.36%
800 · Office Expenses:840 · Telephone	0.03%
800 · Office Expenses:844 · Mobile Phones	1.71%
800 · Office Expenses:848 · Contributions	0.00%
800 · Office Expenses:851 · Penalties	0.00%
800 · Office Expenses:853 · Late Fees	0.00%
800 · Office Expenses:854 · Employee Functions	0.00%
800 · Office Expenses:855 · Property Taxes	0.01%
800 · Office Expenses:856 · Office Meals and Entertainment	0.00%
800 · Office Expenses:857 · Misc. Expense	2.66%
800 · Office Expenses:858 · Brokerage Fees	0.30%
800 · Office Expenses:860 · Misc Office Expenses	0.14%
800 · Office Expenses:862 · Equipment Repairs	0.14%
800 · Office Expenses:865 · Depreciation Expense	5.17%
800 · Office Expenses:869 · Bad Debt Expense	0.00%
800 · Office Expenses:893 · Taxes and Licenses	0.21%
800 · Office Expenses:894 · Sales and Usage tax	0.00%
870 · Office Equipment Expenses:871 · Smoothstone Communications-Lex	1.77%
870 · Office Equipment Expenses:871.1 · Smoothstone Communications-Cinn	1.05%
870 · Office Equipment Expenses:873 · Pitney Bowes-Lex Mailing Machin	0.30%
870 · Office Equipment Expenses:873.1 · Pitney Bowes Mailing Mach-Cinn	0.07%

BRANDSTETTER CARROLL, INC.
OVERHEAD COST CALCULATION

	% of
Direct Labor	
870 · Office Equipment Expenses:878 · De Lage Landen Cannon-Cinn	0.28%
870 · Office Equipment Expenses:880 · De Lage Landen/Imagistics-Lex	0.49%
870 · Office Equipment Expenses:882 · Citicorp-HP workstations etc	0.30%
870 · Office Equipment Expenses:884 · Citicorp-plotter	0.04%
870 · Office Equipment Expenses:888 · Konica Copier	2.29%
870 · Office Equipment Expenses:888a · Konica Copier:888a · Konica Usage Charges	0.72%
870 · Office Equipment Expenses:889 · Copier Usage Charges	0.77%
870 · Office Equipment Expenses:891 · Office Mach Taxes,fees & insur	0.17%
TOTAL	94.70%

- 870 · Office Equipment Expenses:878 · De Lage Landen Cannon-Cinn
- 870 · Office Equipment Expenses:880 · De Lage Landen/Imagistics-Lex
- 870 · Office Equipment Expenses:882 · Citicorp-HP workstations etc
- 870 · Office Equipment Expenses:884 · Citicorp-plotter
- 870 · Office Equipment Expenses:888 · Konica Copier
- 870 · Office Equipment Expenses:888a · Konica Copier:888a · Konica Usage Charges
- 870 · Office Equipment Expenses:889 · Copier Usage Charges
- 870 · Office Equipment Expenses:891 · Office Mach Taxes,fees & insur

TOTAL

References

- 1 Uncompensated overtime-determined under salary variance method
- 2 Officer life insurance is disallowed FAR 31.205-19(e)(2)(v)
- 3 Memberships in sports and country clubs disallowed FAR 31.205-14
- 4 Personal travel disallowed
- 5 Cost for entertainment are disallowed FAR 31.205-14 and 31.205-51
- 6 Expense for personal condos are disallowed-distribution of profits
- 7 Contributions are disallowed-FAR 31.205-8 and 31.205-13(b)
- 8 Penalties are disallowed FAR 31.205-15(a)
- 9 Late fees/interest are disallowed FAR 31.205-20
- 10 Cost for general marketing materials are disallowed FAR 31.205-1
- 11 Personal use (10%) of auto expense disallowed FAR 31.205-6(m)(2)
- 12 Employee functions disallowed FAR FAR 31.205-13(b)
- 13 Meals for employees not in overnight travel disallowed
- 14 Bad debts disallowed FAR 31.205-3

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: David Beck [dbeck@brandstettercarroll.com]
Sent: Thursday, February 23, 2012 12:30 PM
To: McVay, Melissa
Cc: Larry Brandstetter; Brazina, John; Yang, Andrea
Subject: Re: Brandstetter Carroll Ohio Registration

Ok

Sent from my iPhone

On Feb 23, 2012, at 11:40 AM, "McVay, Melissa" <Melissa.McVay@cincinnati-oh.gov> wrote:

> Thank you. Searching with the terms "Brandstetter" and "Brandstetter Carroll" (which is written on the contract) do not pull up this search result.
>
> We will need to modify the contract to reflect the exact wording with which you filed with the Ohio Secretary of State (Brandstetter/Carroll, Inc.).
>
> Please "reply all" to confirm that this is acceptable.
>
> Thank you,
>
> Mel McVay
>
>
> From: David Beck [mailto:dbeck@brandstettercarroll.com]
> Sent: Thursday, February 23, 2012 10:54 AM
> To: McVay, Melissa
> Subject: Brandstetter Carroll Ohio Registration
>
> [cid:image001.png@01CCF21F.D8A260D0]
> <image001.png>

Yang, Andrea

From: Larry Brandstetter [lbrandstetter@brandstettercarroll.com]
Sent: Thursday, February 23, 2012 11:53 AM
To: McVay, Melissa; dbeck@brandstettercarroll.com
Cc: Brazina, John; Yang, Andrea
Subject: RE: Brandstetter Carroll Ohio Registration

Ok

Sent from my Verizon Wireless Phone

-----Original message-----

From: "McVay, Melissa" <Melissa.McVay@cincinnati-oh.gov>
To: David Beck <dbeck@brandstettercarroll.com>, Larry Brandstetter <lbrandstetter@brandstettercarroll.com>
Cc: "Brazina, John" <John.Brazina@cincinnati-oh.gov>, "Yang, Andrea" <Andrea.Yang@cincinnati-oh.gov>
Sent: Thu, Feb 23, 2012 16:40:28 GMT+00:00
Subject: RE: Brandstetter Carroll Ohio Registration

Thank you. Searching with the terms "Brandstetter" and "Brandstetter Carroll" (which is written on the contract) do not pull up this search result.

We will need to modify the contract to reflect the exact wording with which you filed with the Ohio Secretary of State (Brandstetter/Carroll, Inc.).

Please "reply all" to confirm that this is acceptable.

Thank you,

Mel McVay

From: David Beck [mailto:dbeck@brandstettercarroll.com]
Sent: Thursday, February 23, 2012 10:54 AM
To: McVay, Melissa
Subject: Brandstetter Carroll Ohio Registration

Jon Husted Ohio Secretary of State

[Jon Husted & the Agency](#) | [Elections & Voting](#) | [Campaign Finance](#) | [Legislation & Ballot Issues](#) | [Businesses](#) | [F](#)

Business Services

General Information

Business Search

UCC Search

Trade Mark / Service Mark S

Corporate Search

- [Business Name](#)
- [Business Name - Exact](#)
- [Number Search](#)
- [Agent/Contact Name](#)
- [Prior Business Name](#)
- [Church Name](#)

Business Search by Number

Entity Number	Business Name	Type	Original Filing Date	E D
828757	BRANDSTETTER/CARROLL, INC.	FOREIGN CORPORATION	09/29/1992	-

1 - 1

[Download Business Search Results](#) | [Print](#)

Total Number of filings found :1

[New Search](#)

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25X7191

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Cincinnati, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Atkins North America, Inc., a Corp. organized under the laws of the State of Ohio, the address of which is 7300 Turfway Road Suite 400 Florence, Kentucky 41042-1378 *Florida* ("Consultant").

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("**Fee Schedules**"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a Notice to Proceed, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

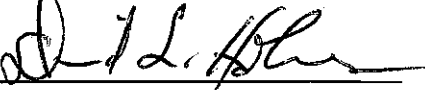
(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

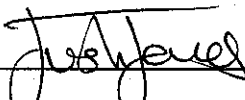
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "**Effective Date**").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

Atkins North America, Inc., *a Florida Corporation*

By: 
Printed Name: Justin P. Jones, P.E.

Title: Sr. Vice President

Date: 1/25/, 2012

Recommended by:


Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:

R. Thompson
Rochelle Thompson, Contract Compliance Officer

Approved as to Form:

A. Deary
Assistant City Solicitor

FEB 29 2012

Certified Date: _____
Fund/Code: **CERTIFICATION OF**
FUNDS NOT REQUIRED
Amount: _____

By: _____
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
AIRPORT ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Airport Engineering Services may include any of the following:

Right-of-way plans	Preliminary plans
Planning and feasibility studies	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT 8: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

See attached payment schedule.

See Independent Auditor's Report for Overhead Rate.

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of _____% and a net fee (profit) of _____%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT

Yang, Andrea

From: Bonecutter, Jeff W [Jeff.Bonecutter@atkinsglobal.com]
Sent: Tuesday, February 21, 2012 5:01 PM
To: McVay, Melissa
Cc: Brazina, John; Yang, Andrea
Subject: RE: Atkins North America, Inc. Contingency Contract

Melissa,
Yes the amendment is acceptable.
Thank you.

Regards,
Jeff

Jeffrey W. Bonecutter, P.E.
Group Manager, Aviation Services

ATKINS

7300 Turfway Road, Suite 530, Florence, KY, 41042 | Tel: +1 (859) 371 9051 (ext.4331229) | Fax: +1 (859) 371 5980 | Cell: +1 (513) 310 3949 | Email: jeff.bonecutter@atkinsglobal.com | Web: www.atkinsglobal.com/northamerica www.atkinsglobal.com

From: McVay, Melissa [<mailto:Melissa.McVay@cincinnati-oh.gov>]
Sent: Tuesday, February 21, 2012 3:59 PM
To: Bonecutter, Jeff W
Cc: Brazina, John; Yang, Andrea
Subject: Atkins North America, Inc. Contingency Contract

Mr. Bonecutter,

Thank you for submitting a contingency contract for architectural and engineering services with the City of Cincinnati.

We have discovered a minor discrepancy between the information listed in your contract and the information on file with the Ohio Secretary of State. In order to finalize your contract we will need to amend the first paragraph as follows:

- The corporation is organized under the laws of the State of Florida (not Ohio)

If this amendment is acceptable to you, we will make the change to the existing contract by hand, and proceed with processing the contract.

Please "reply all" to confirm that this amendment is acceptable to you.

Thank you,

Mel McVay

Melissa McVay
City Planner
Department of Transportation & Engineering
City Hall, Room 450
801 Plum Street

Cincinnati, Ohio 45202

513.352.5269 office

513.352.5336 fax

This message has been checked for all known viruses by MessageLabs.

This electronic mail communication may contain privileged, confidential, and/or proprietary information which is the property of The Atkins North America Corporation, WS Atkins plc or one of its affiliates. If you are not the intended recipient or an authorized agent of the intended recipient please delete this communication and notify the sender that you have received it in error. A list of wholly owned Atkins Group companies can be found at <http://www.atkinglobal.com/site-services/group-company-registration-details>

Consider the environment. Please don't print this email unless you really need to.

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION & ENGINEERING

25x7238

Contract No. _____

**Agreement
for Architectural and Engineering Services**

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202; Attention: DOTE (the "City"), and Woolpert, Inc, a Corporation organized under the laws of the State of Ohio, the address of which is 9987 Carver Road ("Consultant").

Suite 450
Cincinnati, Ohio 45242-5552

Recitals:

A. The City's Department of Transportation & Engineering ("DOTE") desires to implement its funded Capital Improvement Program during the years 2012 through 2015 and does not have a sufficient staff of permanent employees to complete the Program.

B. DOTE serves as an engineering and/or architectural consultant to various City agencies to design and/or coordinate the operation of Capital Improvement Programs of these other agencies, including construction management services on an as-needed basis.

C. DOTE also functions in close cooperation with the Hamilton County Engineer and provides engineering services in accordance with City/County agreements.

D. From time to time the City requires architectural and engineering services in various disciplines to enhance DOTE's expertise in connection with specific City duties and projects, including without limitation new construction, rehabilitation, or additions such as buildings, bridges, roadways, and airport facilities.

E. Consultant employs skilled, competent and experienced professional engineers and/or architects and related personnel and has equipment to perform these necessary services.

F. Consultant has been selected to provide services to the City, on an as-needed basis, in accordance with the City Manager's Administrative Regulation No. 23, dated February 3, 1997.

G. Consultant's services are professional and noncompetitive in nature.

NOW THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **TERM.**

(A) **Term.** The term ("**Term**") of this Agreement shall commence on April 1, 2012 and, unless sooner terminated as herein provided, shall expire on March 31, 2015 (the "**Expiration Date**"); provided, however, that if the City assigns work to Consultant under this Agreement prior to the Expiration Date but the work is not completed until after the Expiration Date, the Term shall continue until such time as the work has been completed.

(B) **Early Termination.** Notwithstanding the Expiration Date specified above, the City may terminate this Agreement, for any reason or no reason, by giving Consultant no less than thirty (30) days prior written notice thereof. Upon the termination of this Agreement, Consultant shall promptly deliver to the City all finished and unfinished Work

Product (as defined in section 11 below). Upon the termination of this Agreement, the City shall compensate Consultant for all work satisfactorily completed through the effective date of the termination.

2. SERVICES.

(A) Scope of Services (General). A list of the general types of architectural and/or engineering services that Consultant is willing and able to provide to the City under this Agreement is attached hereto as Exhibit A (Scope of Services). The parties acknowledge that, throughout the Term, the City may ask Consultant to provide some, all, or none of the services described on Exhibit A. Consultant acknowledges and agrees that the City shall have no obligation to assign any work to Consultant under this Agreement.

(B) Specific Projects; Notice to Proceed. From time to time and on an as-needed basis, the City shall assign work to Consultant under this Agreement for specific projects (each, a "Project"), as follows: (i) the City shall send to Consultant a scope of work for the Project; (ii) Consultant shall prepare and send to the City a proposed budget for the Project, based upon anticipated hours and rates, which shall specify a "not to exceed" dollar amount; (iii) if and when the City and Consultant mutually approve the budget (as so approved, the "Budget"), the City shall certify the funds for the Project through the City's Finance Department, and (iv) the City shall issue a *Notice to Proceed*, instructing Consultant to proceed with the work.

(C) Standards. Consultant shall perform all work in a satisfactory, timely and proper manner as determined by the City and in accordance with applicable and accepted professional and industry standards.

3. COMPENSATION.

(A) Compensation.

(i) Fee Schedules. For each Project, the City shall pay Consultant in accordance with the fee schedules attached as Exhibit B hereto ("Fee Schedules"). In the event it becomes necessary to amend the Fee Schedules due solely to regulatory changes or technological innovations that may cause changes in the cost of services provided under this Agreement, Consultant shall submit a written proposal to the City requesting a change in the Fee Schedules, which proposed changes may be approved or denied by the City in its sole discretion. If the proposed changes are approved by the City, this Agreement shall be amended for the purpose of substituting the Fee Schedules attached hereto as Exhibit B with the revised Fee Schedules. Consultant shall not be entitled to any compensation for any work unless such work is provided for in an approved Budget and described in a *Notice to Proceed*.

(ii) Overtime. Any overtime rates shown on Exhibit B shall be paid for work that is performed on weekends, holidays recognized by the City, and between the hours of 6:00 P.M. and 4:00 A.M.; *provided, however*, that Consultant shall not be paid for any overtime unless the overtime has been pre-approved by the City Engineer.

(iii) Maximum Compensation. The parties presently anticipate that the compensation to Consultant under this Agreement will exceed \$25,000. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the compensation payable to Consultant under this Agreement exceed \$500,000 per Project, and \$2,000,000 for all Projects combined.

(iv) Additional Services. If the City requests Consultant to provide services that are not provided for in an approved Budget or described in a *Notice to Proceed*, and if Consultant agrees to provide such services, the City shall pay for such services at Consultant's applicable rate(s) as shown on the Fee Schedules, plus 115% of the cost of materials.

(v) Field Technicians. The City acknowledges that Consultant may charge a minimum of two (2) hours for field technicians working on-call.

(vi) Reimbursable Expenses. Subject to pre-approval by the City Engineer, which may be granted or denied by the City Engineer in his sole discretion, the City shall reimburse Consultant for:

- (a) cost of travel outside the Cincinnati Metropolitan Statistical Area;
- (b) cost of equipment rental plus a 5% markup;
- (c) any other out-of-pocket expenses incurred by Consultant in connection with a Project that were not anticipated at the time the Budget for the Project was prepared and approved.

(B) Method of Payment. During each Project, Consultant shall request payment for completed work by submitting a requisition for payment using City Form No. 37 – Claim Voucher/Invoice. In requesting payment for a particular service, Consultant shall reference the specific line item in the Budget. Consultant shall provide the City with copies of invoices and such other supporting documentation and information as the City may reasonably request to substantiate Consultant's request for payment.

4. COMPLIANCE WITH APPLICABLE LAWS.

Consultant shall obtain and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to each Project, including without limitation those set forth on Exhibit C (Additional City Requirements) hereto.

5. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term of this Agreement, Consultant shall maintain the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, with excess/umbrella coverage of \$2,000,000, naming the City as an additional insured, (ii) Professional Liability Insurance (aka errors and omissions) in the amount of not less than \$1,000,000, \$2,000,000 aggregate, naming the City as an additional insured, (iii) worker's compensation insurance in such amount as required by law, (iv) any and all insurance as may be required by Consultant's lenders, and (v) such other insurance as may be reasonably required by the City's Office of Risk Management. Consultant's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Consultant shall provide an acceptable certificate of insurance to the City, evidencing the liability insurance described above, upon Consultant's execution of this Agreement.

(B) Waiver of Subrogation. Consultant hereby waives all claims and rights of recovery, and on behalf of Consultant's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all injuries, damages or losses that are covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Consultant, even if such injury, loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Consultant shall at all times protect itself against such injuries, losses and damages by maintaining adequate insurance. Consultant shall cause its insurance policies, as applicable, to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Consultant shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Consultant, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Consultant in connection with each Project, including without limitation those arising from personal injuries or property damage.

6. **DEFAULT.**

If Consultant violates any provision of this Agreement and fails to correct such violation to the satisfaction of the City within ten (10) days after receiving written notice thereof from the City, the City may (i) undertake such action as the City deems appropriate to correct or otherwise address such violation, whereupon Consultant shall pay all costs incurred by the City in doing so within ten (10) days after the City's written demand, (ii) terminate this Agreement by giving no less than five (5) days written notice thereof to Consultant, and (iii) exercise any other right or remedy available to the City at law or in equity. All rights of the City under this Agreement are cumulative. Consultant shall pay, upon the City's demand, all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City in connection with a default of Consultant under this Agreement, including without limitation costs incurred in enforcing or terminating this Agreement following a default. If at the time of termination Consultant is entitled to compensation from the City for work satisfactorily completed, the City may deduct the amount of the City's costs and damages from its payment to Consultant. The City's waiver of any breach by Consultant of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

7. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt. If Consultant sends a notice to the City alleging that the City is in default under this Agreement, Consultant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

8. **REPORTING REQUIREMENTS.**

(A) **Submission of Records and Reports; Records Retention.** Consultant shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Consultant, each Project, or this Agreement, including without limitation audited financial statements, bank statements, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (the records and reports required under this paragraph to be submitted by Consultant to the City being referred to herein collectively as "**Records and Reports**"). Consultant shall retain its Records and Reports for a minimum of three (3) years following the completion of each Project.

(B) **City's Right to Inspect and Audit.** During each Project, Consultant shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Consultant's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Consultant to the City, Consultant shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. **CERTIFICATION AS TO NON-DEBARMENT.**

Consultant certifies that neither it nor any of its shareholders, officers, members or partners are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transactions covered by this Agreement. If during the Term Consultant or any of its shareholders, officers, members or partners become debarred or suspended, the same shall constitute a default under this Agreement, whereupon this Agreement shall automatically terminate and Consultant shall return any and all funds that it received from the City prior to the effective date of such debarment or suspension, without limitation of the City's other rights and remedies.

10. **INDEPENDENT CONTRACTOR.**

Consultant shall perform all work under this Agreement as an independent contractor and not as an officer, agent, servant, or employee of the City. Consultant shall have the exclusive right to control the details of all work performed hereunder and all persons performing such work, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and Consultant. No person performing any of the work hereunder shall be deemed to be an officer, agent or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

11. **OWNERSHIP AND PROTECTION OF PROPERTY.**

(A) **Work Product.** All architectural and engineering drawings, working papers, reports, and other materials produced by Consultant for the City under this Agreement, including without limitation all computer software and applications developed by or for Consultant in connection with any Project (collectively, "**Work Product**"), shall be deemed to have been paid for by the City and shall become the property of the City as and when created. Consultant shall promptly deliver all items of Work Product to the City as and when requested by the City throughout the Term, and at the end of the Term, at no additional charge to the City.

(B) **Protected Information.** Unless expressly agreed to by the City in writing, Consultant shall not seek any patents or trademarks with respect to any Work Product, nor shall Consultant assert ownership or protection of any Work Product on the basis that it contains trade secrets or other proprietary information or that it constitutes so-called "intellectual property" under applicable law.

(C) **Confidentiality.** Consultant shall keep all Work Product confidential and shall not disclose or distribute it to third parties without the City's prior express written authorization. Consultant shall put the necessary safeguards in place to prevent such unauthorized disclosure or distribution by its agents and employees.

12. **GENERAL PROVISIONS.**

(A) **Assignment & Subcontracting.** Consultant shall not assign any of its rights or obligations under this Agreement, or subcontract any work under this Agreement to a third party, without the prior written consent of the City, which may be granted or denied in the City's sole discretion.

(B) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Consultant agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by Consultant of its obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Consultant represent to each other that they have not dealt with a broker, salesperson, lobbyist, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Non-Exclusive Agreement. This is a nonexclusive agreement for professional services. The City may procure the same or similar services from other consultants at any time during the Term of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(M) Exhibits. The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - *Scope of Services (General)*
- Exhibit B - *Fee Schedules*
- Exhibit C - *Additional City Requirements*

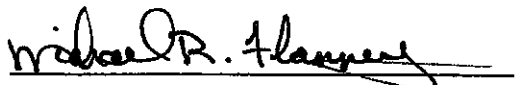
Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: 
Milton Dohoney, Jr., City Manager

Date: 3/12/, 2012

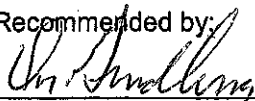
Woolpert, Inc.
[insert Consultant's name]

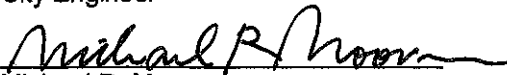
By: 

Printed Name: MICHAEL R. FLANNERY

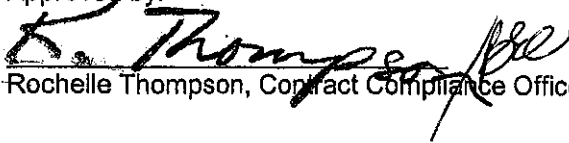
Title: PRESIDENT & CEO

Date: JAN. 20, 2012

Recommended by:

Don Gindling, P.E.
City Engineer


Michael R. Moore
Director, Department of Transportation and Engineering

Approved by:


Rochelle Thompson, Contract Compliance Officer

Approved as to Form:


Assistant City Solicitor

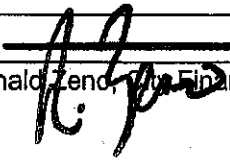
Certified Date: MAR 01 2012
Fund/Code: CERTIFICATION OF
Amount: FUNDS NOT REQUIRED
By: 
Reginald Zeno, City Finance Director

EXHIBIT A
SCOPE OF SERVICES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
AIRPORT ENGINEERING SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Airport Engineering Services may include any of the following:

Right-of-way plans	Preliminary plans
Planning and feasibility studies	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
LANDSCAPE ARCHITECTURE AND URBAN DESIGN SERVICES
EXHIBIT A

SCOPE OF SERVICES

The Consulting Services to be provided under this contract for Landscape Architecture and Urban Design Services may include any of the following:

Landscape inspections	Landscape investigations
Landscape studies	Preliminary Engineering
Planning & feasibility studies	Existing site and vegetation analysis
Plant, tree & vegetation selection	Schematic landscape design
Construction cost estimates	Environmental documents
Detailed contract plans	Specifications
Community input exhibits	Interim and final reports
Engineering cost estimates	Related reports
Related engineering & surveying services	Attendance at public meetings
Equipment rental	Utility coordination
Coordination with other agencies	Landscape architecture cost estimates
Landscape studies and designs for public right-of-way, and publicly owned property, streetscapes, parks, plazas, and buildings.	
Existing Conditions	Rendering
Urban Design Concepts	Market Studies/Economic
Historic Research	Parking Analysis
Blight Studies	Zoning Code Analysis
Urban Design Policies	Site Analysis
Investigations Inspections	Model building
Renderings	Construction management
Code research	Final design
Public space design	Bid packages
Photography	

Any services not specifically listed above may be provided in conjunction with those services listed above for the City of Cincinnati, with the approval of a Department of Transportation & Engineering Division Head.

All work assigned under this Contract will be coordinated through an Agency representative designated by a Department of Transportation & Engineering Division Head. When the services of the Consultant are needed, a Scope of Services meeting will be called by the Agency representative. Any work to be performed under this Contract may be authorized by signature of a Department of Transportation & Engineering Division Head.

Actual services assigned under this Contract will be identified in a written Scope of Services specific to each project. This Scope will include a project budget and completion schedule, and shall be prepared by the Consultant after a detailed Scope of Services meeting with the City. All projects initiated under this Contract shall be sequentially numbered and all documentation and billing shall reference both the Contract number and the project number and name.

EXHIBIT B
FEE SCHEDULES

SEE ATTACHED

DEPARTMENT OF TRANSPORTATION & ENGINEERING
CONTINGENCY CONSULTANT SERVICES
EXHIBIT B: COMPENSATION

The total cost of work to be completed under this agreement cannot be exactly determined until a detailed Scope of Services is prepared for each assignment.

After the Consultant receives a written notice to proceed from the City for a specific project, the City agrees to pay the Consultant for all services rendered under this agreement in accordance with the following salary schedule:

SEE ATTACHED

The above salary schedule represents the direct salary costs to be paid for this work and includes an overhead rate of 194.04% and a net fee (profit) of 9.85%. The Consultant will submit to the City a detailed breakdown of costs included in the computation of the overhead rate with the signed contract. Additional personnel positions may be added during the term of this agreement pending approval of the City's Director, Department of Transportation and Engineering.

In addition to the above listed salaries, the City will reimburse the Consultant for all applicable direct costs, if said costs are not included in the overhead computation and are approved in writing by the City, for each project as listed below:

- Outside reproduction - at cost
- Out-of-town travel - at cost
- Equipment rental - 5% markup
- Out-of-Pocket expenses - 5% markup
- Outside consultants - 5% markup

**WOOLPERT, INC
CITY OF CINCINNATI
CONTINGENCY CONSULTANT SERVICES
DECEMBER 2011**

Year One - January 1 through December 31, 2012

<u>Position Title</u>	<u>Hourly Labor Fee</u>	<u>Overhead Fee</u>	<u>Profit Fee</u>	<u>Total Fee</u>
Principal	\$ 70.05	\$ 135.93	\$ 20.29	\$ 226.26
Project Manager	\$ 46.49	\$ 90.21	\$ 13.46	\$ 150.16
Engineer - EIT	\$ 25.57	\$ 49.62	\$ 7.41	\$ 82.59
Engineer	\$ 34.26	\$ 66.48	\$ 9.92	\$ 110.66
Senior Engineer	\$ 39.95	\$ 77.52	\$ 11.57	\$ 129.04
Environmental Scientist	\$ 33.41	\$ 64.83	\$ 9.68	\$ 107.92
Associate Planner	\$ 22.26	\$ 43.19	\$ 6.45	\$ 71.90
Planner	\$ 35.23	\$ 68.36	\$ 10.20	\$ 113.79
Associate Architect	\$ 27.26	\$ 52.90	\$ 7.90	\$ 88.05
Senior Architect	\$ 41.43	\$ 80.39	\$ 12.00	\$ 133.82
Associate Landscape Architect	\$ 21.73	\$ 42.16	\$ 6.29	\$ 70.19
Senior Landscape Architect	\$ 40.80	\$ 79.17	\$ 11.82	\$ 131.79
Senior Technician	\$ 25.15	\$ 48.80	\$ 7.28	\$ 81.24
CAD Operator/Technician	\$ 20.25	\$ 39.29	\$ 5.86	\$ 65.41
Registered Surveyor	\$ 32.64	\$ 63.33	\$ 9.45	\$ 105.43
Clerical	\$ 19.43	\$ 37.70	\$ 5.63	\$ 62.76

WOOLPERT, INC
CITY OF CINCINNATI
CONTINGENCY CONSULTANT SERVICES
DECEMBER 2011

Year Two - January 1 through December 31, 2013

<u>Position Title</u>	<u>Hourly Labor Fee</u>	<u>Overhead Fee</u>	<u>Profit Fee</u>	<u>Total Fee</u>
Principal	\$ 72.15	\$ 140.00	\$ 20.90	\$ 233.05
Project Manager	\$ 47.88	\$ 92.92	\$ 13.87	\$ 154.67
Engineer - EIT	\$ 26.34	\$ 51.10	\$ 7.63	\$ 85.07
Engineer	\$ 35.29	\$ 68.47	\$ 10.22	\$ 113.98
Senior Engineer	\$ 41.15	\$ 79.84	\$ 11.92	\$ 132.91
Environmental Scientist	\$ 34.41	\$ 66.77	\$ 9.97	\$ 111.15
Associate Planner	\$ 22.93	\$ 44.49	\$ 6.64	\$ 74.06
Planner	\$ 36.29	\$ 70.41	\$ 10.51	\$ 117.21
Associate Architect	\$ 28.08	\$ 54.48	\$ 8.13	\$ 90.69
Senior Architect	\$ 42.67	\$ 82.80	\$ 12.36	\$ 137.83
Associate Landscape Architect	\$ 22.38	\$ 43.43	\$ 6.48	\$ 72.29
Senior Landscape Architect	\$ 42.02	\$ 81.54	\$ 12.17	\$ 135.74
Senior Technician	\$ 25.90	\$ 50.27	\$ 7.50	\$ 83.67
CAD Operator/Technician	\$ 20.86	\$ 40.47	\$ 6.04	\$ 67.37
Registered Surveyor	\$ 33.62	\$ 65.23	\$ 9.74	\$ 108.59
Clerical	\$ 20.01	\$ 38.83	\$ 5.80	\$ 64.64

WOOLPERT, INC
CITY OF CINCINNATI
CONTINGENCY CONSULTANT SERVICES
DECEMBER 2011

Year Three - January 1 through December 31, 2014

<u>Position Title</u>	<u>Hourly Labor Fee</u>	<u>Overhead Fee</u>	<u>Profit Fee</u>	<u>Total Fee</u>
Principal	\$ 74.32	\$ 144.20	\$ 21.52	\$ 240.04
Project Manager	\$ 49.32	\$ 95.70	\$ 14.28	\$ 159.31
Engineer - EIT	\$ 27.13	\$ 52.64	\$ 7.86	\$ 87.62
Engineer	\$ 36.35	\$ 70.53	\$ 10.53	\$ 117.40
Senior Engineer	\$ 42.38	\$ 82.24	\$ 12.28	\$ 136.90
Environmental Scientist	\$ 35.44	\$ 68.78	\$ 10.27	\$ 114.49
Associate Planner	\$ 23.62	\$ 45.82	\$ 6.84	\$ 76.28
Planner	\$ 37.38	\$ 72.52	\$ 10.83	\$ 120.72
Associate Architect	\$ 28.92	\$ 56.12	\$ 8.38	\$ 93.41
Senior Architect	\$ 43.95	\$ 85.29	\$ 12.73	\$ 141.97
Associate Landscape Architect	\$ 23.05	\$ 44.73	\$ 6.68	\$ 74.46
Senior Landscape Architect	\$ 43.28	\$ 83.99	\$ 12.54	\$ 139.81
Senior Technician	\$ 26.68	\$ 51.77	\$ 7.73	\$ 86.18
CAD Operator/Technician	\$ 21.48	\$ 41.69	\$ 6.22	\$ 69.39
Registered Surveyor	\$ 34.63	\$ 67.19	\$ 10.03	\$ 111.85
Clerical	\$ 20.61	\$ 40.00	\$ 5.97	\$ 66.58

WOOLPERT, INC.

**AUDITED STATEMENT OF DIRECT LABOR,
FRINGE BENEFITS, GENERAL OVERHEAD
AND FACILITIES CAPITAL COST OF MONEY**

YEAR ENDED DECEMBER 31, 2010



**INDEPENDENT AUDITORS' REPORT ON STATEMENT OF
DIRECT LABOR, FRINGE BENEFITS, GENERAL OVERHEAD
AND FACILITIES CAPITAL COST OF MONEY**

Woolpert, Inc.
Dayton, Ohio

We have audited the statement of direct labor, fringe benefits, general overhead and facilities capital cost of money of Woolpert, Inc. (the "Company") for the year ended December 31, 2010. This statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of direct labor, fringe benefits, general overhead and facilities capital cost of money. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement was prepared on a basis of accounting practices prescribed by Part 31 of the Federal Acquisition Regulations (FAR) and certain other federal and state regulations as described in Note 2, and is not intended to be a presentation in conformity with accounting principles generally accepted in the United States of America.

In our opinion, the statement referred to above presents fairly, in all material respects, the direct labor, fringe benefits, general overhead and facilities capital cost of money of Woolpert, Inc. for the year ended December 31, 2010, on the basis of accounting described in Note 2.

In accordance with *Government Auditing Standards*, we have also issued our report dated April 1, 2011, on our consideration of the Company's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

This report is intended solely for the information and use of the Company and government agencies or other customers related to contracts employing the cost principles of the Federal Acquisition Regulations and is not intended to be and should not be used by anyone other than these specified parties.

Battelle & Battelle LLP

April 1, 2011

WOOLPERT, INC.

STATEMENT OF DIRECT LABOR, FRINGE BENEFITS, GENERAL OVERHEAD
AND FACILITIES CAPITAL COST OF MONEY

YEAR ENDED DECEMBER 31, 2010

	<i>FAR Section Reference Unallowable Costs</i>	<i>Total Costs</i>	<i>FAR Unallowable Costs</i>	<i>Allowable Costs</i>
Direct labor		<u>\$ 25,527,806</u>	<u>\$ -</u>	<u>\$ 25,527,806</u>
Fringe benefits:				
Vacation, holiday & sick pay	31.202, 31.205-6(b)(2)(I)	\$ 5,029,872		\$ 5,029,872
Group insurance	31.205-13	4,413,300		4,413,300
Retirement plans	31.205-6	2,111,740		2,111,740
Payroll taxes	31.205-41	3,418,532		3,418,532
Employee welfare	31.205-13, 31.205-51	907,386	\$ 628,575	278,811
Total fringe benefits incurred		<u>15,880,830</u>	<u>628,575</u>	<u>15,252,255</u>
General overhead:				
Indirect salaries and wages	31.203, 31.205-6(b)(2)(I)	23,452,309	4,651,081	18,801,228
Indirect salary credit for salaried hours over 40		(2,381,492)	-	(2,381,492)
Temporary labor	31.203	123,612	-	123,612
Materials and supplies	31.202, 31.205-26	1,233,260	-	1,233,260
Travel	31.205-46	2,042,556	14,690	2,027,866
Telephone	31.203	683,038	-	683,038
Outside computer services	31.205-33	110,273	-	110,273
Outside service fees	31.205-33	409,376	5,250	404,126
Rent	31.205-36	5,633,142	-	5,633,142
Building expense	31.205-25	448,865	-	448,865
Equipment rental	31.205-36	2,326,286	-	2,326,286
Equipment maintenance	31.205-25	3,157,767	-	3,157,767
Depreciation	31.205-11, 31.205-49	3,356,404	78,244	3,278,160
Dues and fees	31.205-43	321,773	5,025	316,748
Continuing education	31.205-44	482,483	-	482,483
Insurance	31.205-19	1,170,243	-	1,170,243
Legal and accounting	31.205-27, 31.205-47	451,696	133,292	318,404
Taxes - city, property, and sales	31.205-41	540,923	143,764	397,159
Uncollectible accounts	31.205-3	772,049	772,049	-
Interest	31.205-20	392,839	392,839	-
Advertising and entertainment	31.205-14, 31.205-34	1,650,887	1,606,755	44,132
Donations	31.205-8	51,343	51,343	-
Miscellaneous	31.205-28	62,025	22,702	39,323
Total general overhead incurred		<u>46,491,657</u>	<u>7,877,034</u>	<u>38,614,623</u>
Less administrative costs charged to jobs		<u>(3,652,529)</u>	<u>679,980</u>	<u>(4,332,509)</u>
Net general overhead incurred		<u>42,839,128</u>	<u>8,557,014</u>	<u>34,282,114</u>
Total net overhead incurred		<u>\$ 58,719,958</u>	<u>\$ 9,185,589</u>	<u>\$ 49,534,369</u>
Facilities capital cost of money	31.205-10	<u>\$ 349,400</u>	<u>\$ -</u>	<u>\$ 349,400</u>

See accompanying notes to statement of direct labor, fringe benefits, general overhead and facilities capital cost of money.

WOOLPERT, INC.

**NOTES TO STATEMENT OF DIRECT LABOR, FRINGE BENEFITS,
GENERAL OVERHEAD AND FACILITIES CAPITAL COST OF MONEY**

YEAR ENDED DECEMBER 31, 2010

NOTE 1 – NATURE OF OPERATIONS

Woolpert, Inc. (the "Company") was founded in 1911 and incorporated in 2004. As a privately held company, Woolpert, Inc. provides various professional services throughout the United States and internationally. Services include civil engineering, enterprise information management (EIM), environmental, architecture, surveying, planning and other related services. A significant portion of the Company's fees is generated from services provided to state and local governmental entities as well as to federal government agencies.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company maintains its accounting records and prepares the accompanying statement of direct labor, fringe benefits, general overhead and facilities capital cost of money on the accrual basis of accounting.

The Company's policy is to prepare its overhead schedules, which support the statement of direct labor, fringe benefits, general overhead and facilities capital cost of money, on the accrual basis and on the basis of accounting practices prescribed by Part 31 of the Federal Acquisition Regulations (FAR). Accordingly, the above mentioned statements are not intended to present the results of operations of the Company in conformity with accounting principles generally accepted in the United States of America.

The Company maintains a job-order cost accounting system for the recording and accumulation of costs incurred under its contracts. Each project is assigned a job number so that costs may be segregated and accumulated in the Company's job-order cost accounting system.

The Company's method of estimating costs for pricing purposes during the proposal process is consistent with the accumulation and reporting of costs under its job-order cost accounting system.

The Company did not pay salaried employees for time worked in excess of 40 hours per week. The time in excess of 40 hours was credited to the general overhead. The credited amount totaled \$2,381,492 and consisted of hours worked in excess of 40, times the employee's standard hourly rate.

NOTE 3 – FRINGE BENEFITS AND GENERAL OVERHEAD

The following summarizes the allowable fringe benefits and general overhead incurred by the Company for the year ended December 31, 2010:

Fringe benefits	59.75%
General overhead	<u>134.29%</u>
	<u>194.04%</u>

NOTE 4 – FACILITIES CAPITAL COST OF MONEY CALCULATION

Average net book value of capital assets	(A)	\$	10,959,834
Cost of money rate for 2010	(B)		<u>3.188%</u>
Facilities capital cost of money		\$	349,400
Allocation base -- direct labor for 2010			<u>25,527,806</u>
Facilities capital cost of money as percent of direct labor			<u><u>1.37%</u></u>
 (A) Average net book value:			
Balance at 12-31-09			9,814,308
Balance at 12-31-10			<u>12,105,360</u>
Total			<u>21,919,668</u>
			÷ 2
Average net book value		\$	<u><u>10,959,834</u></u>
 (B) Cost of money rate for 2010:			
Ten-year treasury note rate 1-1-10 to 6-30-10			3.250%
Ten-year treasury note rate 7-1-10 to 12-31-10			<u>3.125%</u>
Total			<u>6.375%</u>
			÷ 2
Average rate for 2010			<u><u>3.188%</u></u>

NOTE 5 – RETIREMENT PLAN

The Company has a 401(k) retirement plan, meeting the requirements of FAR 31.205-6(j), to which it makes a cash contribution based on participant groups. Eligible employees may contribute any whole percent from a minimum of 2% to a maximum of 50% of their compensation. Participants who are considered continuing retirement plan participants receive employer matching contributions not to exceed 25% of participant's salary deferrals up to 6% of compensation. Participants who are considered frozen retirement plan participants receive employer matching contributions not to exceed 35% of participant's salary deferrals from July 1, 2006 to June 30, 2007, and employer matching contributions not to exceed 50% of participant's salary deferrals after July 1, 2007.

NOTE 6 – DEPRECIATION/LEASING POLICIES

Certain assets are purchased and depreciated, while others are leased and considered operating leases, and the annual costs are included in the overhead pool.

The depreciation expense reflected on the Company's financial statements differs from statutory amounts allowed under the Internal Revenue Service Code. Accordingly, the depreciation expense amounts reflected in this financial statement are considered allowable under FAR 31.205-11(e).

**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH
GOVERNMENT AUDITING STANDARDS**

Woolpert, Inc.
Dayton, Ohio

We have audited the statement of direct labor, fringe benefits, general overhead and facilities capital cost of money of Woolpert, Inc. (the "Company") for the year ended December 31, 2010, and have issued our report thereon dated April 1, 2011. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control over Financial Reporting

In planning and performing our audit, we considered the Company's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the aforementioned statement, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Company's statement is free of material misstatement, we performed tests of the Company's compliance with certain provisions of laws, regulations and contracts, including the provisions of the applicable sections of Part 31 of the Federal Acquisition Regulations, noncompliance with which could have a direct and material effect on the determination of the statement amounts. However, providing an opinion on compliance with those provisions was not the objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.



This report is intended solely for the information and use of the Company and government agencies or other customers related to contracts employing the cost principles of the Federal Acquisition Regulations, and is not intended to be and should not be used by anyone other than these specified parties.

Battelle ; Battelle LLP

April 1, 2011

PAYMENT REQUESTS:

All payment requests shall be submitted using City Form No. 37- Claim Voucher Invoice. Included with the payment request shall be an itemized cost summary including:

1. Personnel fees itemized by each individual or job title with their respective hours worked.
2. Sub-consultant fees with copies of itemized invoices submitted by the sub-consultant.
3. Reimbursable expenses as approved in advance by the City. The following expenses are considered to be included in the Consultant's overhead expenses and are **not eligible** for reimbursement:
 - a) Routine photocopying, postage and delivery services, and fax machine usage.
 - b) Telephone and cellular/PCS phone usage.
 - c) Computer usage fees. Special software package fees may be reimbursable pending pre-approval by the City.
 - d) Inter-office travel expenses. For consultant's with a local office, travel expenses from the local office to a project location are the only travel expenses that are eligible for reimbursement. Sub-consultant travel shall be evaluated and approved or denied with the proposal submittal.

PROPOSAL SUBMITTALS:

At the request of the City, the Consultant shall submit a project proposal that contains the following:

1. A comprehensive and well defined scope of services.
2. An itemized cost estimate showing all anticipated personnel costs, sub-consultant costs (including the sub-consultant's itemized costs), and reimbursable expenses.
3. A project schedule.
4. A signature line designated as "Recommended" for a city project manager, and a signature line designated as "Approved" for a city division or department head. If the work is being performed for an agency outside of the Department of Transportation and Engineering; an additional signature line shall be provided with "Recommended, City Engineer".

CONSULTANT INSURANCE:

It is the responsibility of the consultant to maintain all required insurance policies in effect for the duration of the contract period. Renewed insurance certificates shall be mailed to:

Mr. Bryan Carter, Supervising Accountant
City Engineer's Office
Room 425, City Hall
801 Plum Street
Cincinnati, OH 45202

EXHIBIT C

ADDITIONAL CITY REQUIREMENTS

(A) Small Business Enterprise Program. This Agreement is subject to the City of Cincinnati's Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. The provisions of Chapter 323 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(B) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(C) Prompt Payment. This Agreement is subject to the provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System".

(D) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of a Project shall have any personal financial interest, direct or indirect, in Consultant or in the Project, and Consultant shall take appropriate steps to assure compliance.

END OF EXHIBIT