

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use, completion or modification. This document should be adapted to the particular circumstances of the contemplated project and the applicable laws of the jurisdiction in which the professional services for the project are to be performed.

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of Between ALLEN COUNTY
COMMISSIONERS, 301 N. Main Lima, Ohio 45801 (“OWNER”) and
_____ (“ENGINEER”)
I . (the “Project”)

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of professional engineering services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER’s written authorization to ENGINEER to proceed on the date first above written with the first phase of the Basic Services described in Section 2 below and as further set forth in Exhibit A, “Further Description of Basic Engineering Services and Related Matters” (“Exhibit A”) and in the other exhibits listed in Section 9 below. This Agreement will become effective on the date first above written.

SECTION 1 – GENERAL

1.1 Standard of Care.

ENGINEER shall perform for or furnish to OWNER professional engineering and related services in all phases of the Project to which this Agreement applies as hereinafter provided. ENGINEER shall serve as OWNER's prime design professional and engineering representative for the Project providing professional engineering consultation and advice with respect thereto. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

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

1.2 Coordination with other Documents.

It is the intention of the parties that the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

1.3 Definitions.

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.3.1 Additional Services - Additional Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 3 of this Agreement.
- 1.3.2 Agreement - Agreement means this Stand Form of Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in this Agreement.
- 1.3.3 Basic Services - Basic Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 2 of this Agreement.
- 1.3.4 Construction Cost - Construction Cost means the total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Section 4 of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
- 1.3.5 Contractor - Contractor means the person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.
- 1.3.6 ENGINEER's Consultant - ENGINEER's Consultant means a person or entity having a contract with ENGINEER to perform or furnish Basic or Additional Services as ENGINEER's independent professional associate or consultant engaged directly on the Project.
- 1.3.7 Reimbursable Expenses - Reimbursable Expenses means the expenses incurred directly in connection with the performance or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters" ("Exhibit A").

- 1.3.8 Resident Project Representative - Resident Project Representative means the authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER.
- 1.3.9 Standard General Conditions - Standard General Conditions means the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) of the Engineers Joint Contract Documents Committee.
- 1.3.10 Total Project Costs - Total Project Costs means the sum of the Construction Cost, allowances for contingencies, the total cost of design professional and related services provided by ENGINEER and (one the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of way, for compensation for or damages to properties for interest and financing charges and for other services to be provide by others to OWNER under paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive.

SECTION 2--BASIC SERVICES OF ENGINEER

2.1 Preliminary Design Phase.

After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

- 2.1.1 On the basis of the Report, the recommended solution selected by OWNER and the specific modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER, prepare preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
- 2.1.2 Advise OWNER if additional reports, data or other information or services of the types described in paragraph 4.4 are necessary and assist OWNER in obtaining such reports, data or other information and services.
- 2.1.3 Based on the information contained in the Preliminary Design documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
- 2.1.4 Furnish the Preliminary Design documents, to and review them with OWNER.
- 2.1.5 ENGINEER's services under the Preliminary Design Phase will be considered complete at the earlier of (1) the date when the Preliminary Design documents have been accepted by OWNER or (2) thirty days after the date when such Preliminary Design documents are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Preliminary Design documentation, if such approval is to be obtained during the Preliminary Design Phase.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase as set forth in this paragraph 2.1 are amended and supplemented as indicated in Exhibit A.

2.2 Final Design Phase.

After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

- 2.2.1 On the basis of the accepted Preliminary Design documents, the modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER and the revised opinion of probable Construction Cost, prepare for incorporation in the Contract Documents final Drawings showing the scope, extent

and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute).

- 2.2.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.
- 2.2.3 Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, as a result of changes in scope, extent or character or design requirements of the Project.
- 2.2.4 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which will be generally consistent in form and substance with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.
- 2.2.5 Furnish the above documents, Drawings, and Specifications to and review them with OWNER.
- 2.2.6 Submit the above documents, Drawings and Specifications and a revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.3 Bidding and Negotiating Phase.

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

- 2.3.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.
- 2.3.2 Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.
- 2.3.3 Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 2.3.4 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.
- 2.3.5 The Bidding or Negotiating Phase will terminate and the services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors. The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 2.3 are amended and supplemented as indicated in Exhibit A.

2.4 Construction Phase.

During the Construction Phase:

- 2.4.1 *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as Owner's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in Exhibit A as except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent proved in this Agreement and said Standard General Conditions except as otherwise provided in writing.
- 2.4.2 *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor while it is in progress:

- 2.4.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. An outline of the Resident Project Representative responsibilities are attached as "Exhibit B". The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 2.4. Such visits and observations by ENGINEER are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 2.4.2.2 and other express or general limitations in this Agreement and elsewhere.
- 2.4.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
- 2.4.3 *Defective Work.* During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- 2.4.4 *Clarifications and Interpretations; Field Orders.* ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents.
- 2.4.5 *Change Orders and Work Change Directives.* ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.
- 2.4.6 *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- 2.4.7 *Substitutes.* ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph 3.2.2.
- 2.4.8 *Inspections and Tests.* ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or

procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

2.4.9 *Disagreements between OWNER and Contractor.* ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

2.4.10 *Applications for Payment.* Based on ENGINEER's on site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

2.4.10.1 ENGINEER shall determine the amounts that ENGINEER recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 2.4.10.1 are expressly subject to the limitations set forth in paragraph 2.4.10.2 and other express or general limitations in this Agreement and elsewhere.

2.4.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.4.11 *Contractor's Completion Documents.* ENGINEER shall receive, review and transmit to owner with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 2.4.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

2.4.12 *Substantial Completion.* Following notice from Contractor that Contractor considers the entire work Ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

2.4.13 *Final Notice of Acceptability of the Work.* ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final

payment to Contractor.

2.4.14 *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Document.

2.4.15 *Duration of Construction Phase.* The Construction Phase will commence with the execution of the Construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment. The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 2.4 are amended and supplemented as indicated in Exhibit A.

2.5 Operational Phase.

During the Operational Phase, ENGINEER shall, when requested by OWNER:

2.5.1 Provide assistance in connection with the refining and adjusting of any equipment or system.

2.5.2 Assist OWNER in training OWNER's staff to operate and maintain the Project.

2.5.3 Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

2.5.4 Prepare a set of reproducible record drawings showing record information which ENGINEER considers significant based on the Drawings, Shop Drawings, and other record documents furnished by Contractor to ENGINEER which were annotated by Contractor to show all changes made during construction. ENGINEER will not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents.

2.5.5 In company with OWNER, visit the Project to observe any apparent defects in the completed work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.

2.5.6 Provide miscellaneous services as requested by OWNER in connection with Project closeout.

2.5.7 The operational Phase may commence during the Construction Phase and will terminate one year after the date of Substantial Completion.

The duties and responsibilities of ENGINEER during the Operational phase as set forth in this paragraph 2.5 are amended and supplemented as indicated in Exhibit A.

SECTION 3 – ADDITIONAL SERVICES OF ENGINEER

3.1 Additional Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 3.1.1 through 3.1.19, inclusive, as amended and supplemented as indicated in Exhibit A. These services are not included as part of Basic Services except to the extent otherwise provided in Exhibit A. These services will be paid for by OWNER as indicated in Section 6.

3.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

- 3.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 3.1.3 Services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's Request of alternative solutions in addition to those specified in Exhibit A.
- 3.1.4 Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by orders enacted subsequent to the preparation of such studies, reports, Drawings, Specifications, or Contract Documents, or are due to any other causes beyond ENGINEER's control.
- 3.1.5 Services resulting from facts revealed about conditions:
 - 3.1.5.1 which are different from information about such conditions that OWNER previously provided to ENGINEER under paragraph 4.4 and upon which ENGINEER was entitled to rely; or
 - 3.1.5.2 as to which OWNER had responsibility to provide information under paragraph 4.4 if such information was not previously provided.
- 3.1.6 Providing renderings or models for OWNER's use.
- 3.1.7 Preparing documents for alternate bids requested by OWNER for Contractor's work which is not executing or documents for out of sequence work.
- 3.1.8 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 3.1.9 Furnishing services of ENGINEER's Consultants for other than Basic Services; and furnishing data or services of the types described in paragraph 4.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same under paragraph 4.4.
- 3.1.10 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 2.
- 3.1.11 Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructability Review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or Contract Documents as a result of such review processes.
- 3.1.12 Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 3.1.13 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
- 3.1.14 Providing field surveys for design purposes, engineering surveys and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 3.1.15 Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 2.5.3.

- 3.1.16 Preparing to service or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project.
- 3.1.17 Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 4.12.
- 3.1.18 Other additional services performed or furnished by ENGINEER in connection with the Project, including services which are to be furnished by OWNER under Section 4, and services not otherwise provided for in this Agreement.

3.2 Required Additional Services.

When required by the Contract Documents in connection with the performance or furnishing of ENGINEER’s services during the Construction Phase, ENGINEER shall perform or furnish, without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 3.2.1 through 3.2.6, inclusive. These services are not included as part of Basic Services except to the extent provided in Exhibit A. Required Additional Services will be paid for by OWNER as indicated in Section 6. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

- 3.2.1 Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER if, because of the method of compensation agreed upon by OWNER and ENGINEER, the resulting change in compensation for Basic Services is not commensurate with the extent of the additional services rendered.
- 3.2.2 Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or-equal” items, and services after the award of the construction contract in evaluating and determining the acceptability of a substitution which is inappropriate for the Project or an excessive number of substitutions.
Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.
- 3.2.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.
- 3.2.4 Additional or extended services during construction made necessary by (1) work damages by fire or other cause during construction, (2) a significant amount of defective, neglected or delayed work of Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Contractor.
- 3.2.5 Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to its Substantial Completion.
- 3.2.6 Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the work.

SECTION 4 – OWNER’S RESPONSIBILITIES

Except as otherwise provided in Exhibit A, OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

- 4.1 Designate in writing a person to act as OWNER’s representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define OWNER’s policies and decisions with respect to ENGINEER’s services for the Project.
- 4.2 Provide all criteria and full information as to OWNER’s requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

- 4.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 4.4 Furnish to ENGINEER, as requested by ENGINEER for performance of Basic Services or as required by the Contract Documents, the following:
 - 4.4.1 data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;
 - 4.4.2 the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment prior to and after installation, or to evaluate the performance of materials, equipment and facilities of OWNER, prior to specification, and during construction;
 - 4.4.3 appropriate professional interpretations of all of the foregoing;
 - 4.4.4 environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
 - 4.4.5 property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference point;
 - 4.4.6 property descriptions;
 - 4.4.7 zoning, deed and other land use restrictions; and
 - 4.4.8 other special data or consultations not covered in Section 2.

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

- 4.5 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.
- 4.6 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 4.7 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.
- 4.8 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.
- 4.9 Provide, as may be required for the Project:
 - 4.9.1 accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
 - 4.9.2 such legal services as OWNER may require or ENGINEER may reasonable request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and
 - 4.9.3 such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

- 4.10 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:
- 4.10.1 that Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or
 - 4.10.2 that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 4.10.1 and 4.10.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

- 4.11 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructability Review. If OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and make a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.
- 4.12 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.
- 4.13 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.
- 4.14 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER such as services pursuant to paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive) so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- 4.15 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections.
- 4.16 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's services, or defect or nonconformance in ENGINEER's services or in the work of any Contractor.
- 4.17 Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 3.1 of this Agreement or other services as required.

SECTION 5 – TIMES FOR RENDERING SERVICES

- 5.1 ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will extend for a

period which may reasonably be required for the design, award of construction contracts, construction and initial operation of the Project including extra work and required extensions thereto.

- 5.2 If in this Agreement specific period of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such period of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- 5.3 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER:
- 5.3.1 for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised; or
 - 5.3.2 for more than one year through no fault of ENGINEER, or if ENGINEER for any reason is required to render Construction Phase services more than one year after Substantial Completion is achieved, the rates and amount of compensation provided for elsewhere in this Agreement will be subject to equitable adjustment to reflect, among other things, changes in the various elements that comprise such rates of compensation.

SECTION 6 – PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

6.1 Methods of Payment for Services and Expenses of ENGINEER.

- 6.1.1 *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 3 on the basis set forth in Exhibit A.
- 6.1.2 *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Section 3 on the basis set forth in Exhibit A.

6.2 Other Provisions Concerning Payments.

- 6.2.1 *Preparation of Invoices.* Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. The amount billed for Basic Services and Additional Services in each invoice will be calculated on the basis set forth in Exhibit A. Invoices are due and payable on receipt.
- 6.2.2 *Unpaid Invoices.* If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoices therefore, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due to services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- 6.2.3 *Payments Upon Termination.*
 - 6.2.3.1 *Termination by OWNER for Cause.* In the event of termination by OWNER for cause under paragraph 8.1.1
 - 6.2.3.1.1 Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.1.2 During any phase of the Basic Services, ENGINEER also will be paid for such services performed or furnished in accordance with this Agreement by ENGINEER during that phase through the date of termination on the basis specified in Exhibit B. ENGINEER also will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services to the extent such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.2 *Termination by OWNER for Convenience.* In the event of termination by OWNER under paragraph 8.1.2:

6.2.3.2.1 Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph below.

6.2.3.2.2 During any phase of Basic Services, ENGINEER also will be paid for such services performed or furnished by ENGINEER during that phase through the date of termination on the basis specified in Exhibit B. In addition, ENGINEER will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3 below.

6.2.3.2.3 In the event of termination by OWNER for convenience during or at completion of any phase of Basic Services, OWNER shall pay ENGINEER's reasonable expenses directly attributable to termination in accordance with rates applicable to the various categories of Additional Services measured from the date of termination, including other fair and reasonable sums for overhead and profit, and costs of terminating contracts with ENGINEER's Consultants.

6.2.3.3 *Termination By ENGINEER for Cause.* In the event of termination by ENGINEER for cause under paragraph 8.1.1, ENGINEER shall be entitled to receive compensation calculated as set forth in paragraph 6.2.3.2.

6.2.4 *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

SECTION 7 – OPINIONS OF COST

7.1 Opinions of Probable Construction Cost.

ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in paragraph 4.9.1.

7.2 Opinions of Total Project Costs.

ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs provided for in Section 2.

SECTION 8—GENERAL CONSIDERATIONS

8.1 Termination.

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

8.1.1 *For cause,*

8.1.1.1 by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonable cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

8.1.1.2 By ENGINEER:

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

8.1.1.2.2 upon seven days' written notice if the ENGINEER's services for design or during the construction of the Project are delayed suspended for more than ninety days for reasons beyond ENGINEER's control.

8.1.1.2.3 In the case of termination under this paragraph 8.1.1.2, ENGINEER shall have no liability to OWNER on account of such termination.

8.1.2 *For convenience,* by OWNER effective upon the receipt of notice by ENGINEER.

8.2 Reuse of Documents.

All documents including Drawings and Specifications provided or furnished by ENGINEER (or ENGINEER's Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER and ENGINEER's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of ENGINEER and ENGINEER's Consultants, as appropriate) whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by ENGINEER and ENGINEER's Consultants, as appropriate, for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER'S consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

8.3 Insurance.

8.3.1 The Engineer will secure and maintain such insurance as will protect it and the OWNER from claims under Worker's Compensation laws, claims for damages because of bodily injury or personal injury, sickness or disease, or death of any of its employees, agents or other person working at its direction, and from claims for damages because of injury to or destruction of property as a result of performing responsibilities covered in this

AGREEMENT. Further, ENGINEER shall secure and maintain such insurance with the minimum limits of coverage for claims for bodily injury, death, and property damage as follows:

- a) Auto liability coverage limits shall be at least \$250,000 per person, for bodily injury per occurrence, and \$100,000 per occurrence for property damage.
- b) General Liability: \$500,000 bodily injury and property damage- combined single limit.
- c) Umbrella Liability: \$1,000,000 bodily injury and property damage combined, single limit.
- d) Professional Liability: \$1,000,000 per claim of liability.
\$1,000,000 Aggregate limit of liability per policy year.

ENGINEER shall furnish proof of such insurance at any time upon request of the OWNER.

8.3.2 OWNER shall list ENGINEER and ENGINEER'S Consultants as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list ENGINEER and ENGINEER'S Consultants as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor. All policies of property insurance shall contain provisions to the effect the ENGINEER'S and ENGINEER'S Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insureds thereunder.

8.3.3 At any time OWNER may request that ENGINEER, at OWNER'S sole expense, provide additional insurance coverage, different limits or revised deductibles. If so requested by OWNER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER'S Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested OWNER, at OWNER'S sole expense.

8.4 **Controlling Law.**

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

8.5 **Successors and Assigns.**

8.5.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 8.5.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

8.5.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.5.3 Unless expressly provided otherwise in this Agreement:

8.5.3.1 Nothing in this Agreement shall be construed to create, impose or give rise to any duty owned by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

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

8.6 Dispute Resolution.

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit G or other provisions of this Agreement, or under law.

8.7 Allocation of Risks—Indemnification.

- 8.7.1 To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, employees and agents from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.
- 8.7.2 To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees and agents and ENGINEER's Consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, agents and OWNER's consultants with respect to this Agreement or the Project.
- 8.7.3 In addition to the indemnity provided under paragraph 8.7.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and agents and ENGINEER's Consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release, or escape of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material at, on, under or from the Project site.

8.8 Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page of this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

8.9 Survival.

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of ENGINEER under this Agreement or the termination of this Agreement for any reason.

8.10 Severability.

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

SECTION 9 – EXHIBITS AND SPECIAL PROVISIONS

9.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

- 9.1.1 **Exhibit A** - “Further Description of Basic Engineering Services and Related Matters”, consisting of one (1) page.
- 9.1.2 **Exhibit B** - “Duties, Responsibilities, and Limitations of the authority of the Resident Project Representative”, consisting of three (3) pages.

9.2 This Agreement (consisting of pages 1 to 17, inclusive and the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:BOARD OF COUNTY
COMMISSIONERS
ALLEN COUNTY, OHIO

ENGINEER:

By: _____

By: _____

By: _____

Address for giving notices:

Address for giving notices:

Approved as to form:

Allen County Prosecutor

I hereby certify that the funds necessary to meet the terms and conditions of this Agreement have been lawfully appropriated or authorized or directed for said purpose and in the Treasury or in the process of collection, to the credit of the fund designated for this purpose, free from any previous or now outstanding obligations or certificates.

Signed this _____ day of _____, 2000.

Allen County Auditor

Note: The following Exhibits are attached and made part of this Agreement:

Exhibit A - "Further Description of Basic Engineering Services and Related Matters", consisting of one (1) page.

Exhibit B - "Duties, Responsibilities, and Limitations of the authority of the Resident Project Representative", consisting of three (3) pages.

PHASE 1

EXHIBIT "A" To Agreement
Between Owner and Engineer
For Professional Services

Dated _____, 2001

Further Description of Basic Engineering Services and related Matters:

SECTION 1. Time of Service

- 1.1 The ENGINEER shall complete the Design Work within ___days after receipt of written authorization to proceed with the design.
- 1.2 The ENGINEER shall work with the OWNER to establish a suitable schedule for obtaining bids, awarding of contract and proceeding with the construction phase.

SECTION 2 Basic Services to include the following items with fees:

<u>Preliminary Design Phase</u> (Section 2.2)	\$ _____
<u>Final Design Services Phase</u> (Section 2.2)	\$ _____
<u>Bidding & Negotiating Phase</u> (Section 2.3)	\$ _____
<u>Construction Phase</u> (Section 2.4)	
Administrative Services (Section 2.4.1)	\$ _____
Construction Observation (Section 2.4.2 thru 2.4.15) (estimated at _____ hours)	\$ _____
<u>Operational Phase</u> (Section 2.5)	\$ _____
<u>Additional Services Of Engineer Requiring Authorization In Advance</u> (Section 3.1)	\$ _____
<u>Required Additional Services</u> (Section 3.2)	\$ _____
TOTAL COST	\$ _____

SECTION 3 Invoices shall be submitted monthly based upon the percentage of work completed at the time of the invoice.

(Exhibit A - Basic Services and Related Matters)

EXHIBIT "B"
TO
AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF THE AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER'S agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. GENERAL

RPR is ENGINEER'S agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary, RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. DUTIES AND RESPONSIBILITIES OF RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as re-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operation.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.
9. Reports:
 - a. Furnish ENGINEER periodic reports of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
 - d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the

payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the WORK.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER AND CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. LIMITATIONS OF AUTHORITY

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawings or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.