

PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

THIS ENGINEERING SERVICES AGREEMENT and its attached exhibits ("Agreement") is made and entered into the 20th day of November, 2017 ("Effective Date") by and between **CROY ENGINEERING, LLC** ("Engineer") and the **CITY OF SMYRNA** ("City") (collectively, the "Parties").

RECITALS

WHEREAS, the CITY is authorized to contract with an independent contractor specially trained to perform the required professional services; and

WHEREAS, the ENGINEER is specially trained, experienced and competent to perform the required professional services to the Agreement.

NOW THEREFORE, in consideration of the recited relationship of the Parties and the promises, covenants, assurances and financial compensation provided by and between the Parties all of which is mutually acknowledge as good and sufficient consideration, by and between the Parties hereto, and ENGINEER and the CITY hereby promise, covenant and agree as follows:

ENGINEER'S REPRESENTATIONS

1. ENGINEER represents it has the background, knowledge, licensing, experience and expertise necessary to provide the professional services set forth in this Agreement.
2. ENGINEER's Georgia License Numbers are as follows: PEF004643 (Engineering) and LSF00878 (Surveying).
3. ENGINEER's Federal Tax Identification Number is 20-2469342.
4. ENGINEER acknowledges and agrees that this Agreement is not valid and no payment is authorized for services if the above representations are incorrect.
5. ENGINEER guarantees and contractually agrees that it has complied with the requirements of EVerify and SAVE, it will continue to comply with said laws and shall require any subcontractors/subconsultants to also comply.

CITY APPROVAL REQUIRED

ENGINEER understands that this Agreement is contingent upon the approval of the CITY's Mayor and Council. In the event such approval is not granted, this Agreement is not valid and no payment is authorized for services.

DESCRIPTION OF SERVICES, TERMS AND CONDITIONS

1. The Scope of Services to be performed and/or tasks to be accomplished are stated in Exhibit A attached to and made a part of this Agreement.
2. The cost components that constitute the Fee and Payment Schedule are stated in Exhibit B attached to and made a part of this Agreement.
3. Agreement Value is the total compensation payable to ENGINEER for performance of General Engineering Services (including, without limitation, all services, costs and expenses of its Subconsultants) in accordance with this Agreement.
4. The Terms and Conditions governing this Agreement are stated in Exhibit C attached to and made part of this Agreement.
5. The term of this Agreement shall begin upon the date stated in a Notice to Proceed from

the CITY to ENGINEER. During the period of performance, ENGINEER shall provide the types of insurance coverage in the amounts stipulated in Exhibit D attached to and made a part of this Agreement.

TERMINATION

This Agreement shall begin on 11-20, 2017 and continue until December 31, 2018 (the "Initial Term"). Unless terminated within ninety (90) days of the end of any calendar year and upon the expiration of the Initial Term, this Agreement may be renewed automatically for successive Renewal Terms equivalent in duration of one (1) year unless otherwise terminated as described in this Agreement.

GENERAL PROVISIONS

1. Time is of the Essence. Time is of the essence in this Agreement and the Parties agree to execute all documents and to proceed with due diligence to complete all covenants and conditions set forth herein.
2. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of Georgia.
3. Entire Agreement. This Agreement and any exhibits attached hereto contain the entire agreement of the Parties and supersede any prior or contemporaneous written or oral statements or agreements between the Parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties.
4. Severability. If any of the provisions of this Agreement are hereinafter expressly declared by a court of competent jurisdiction to be invalid or unenforceable, then any such provision shall be canceled and severed from this Agreement and the other provisions of this Agreement shall continue in full force and effect.
5. Notices. All notices required hereunder shall be given in writing to the following addresses or such other addresses as the parties may from time to time designate by written notice:

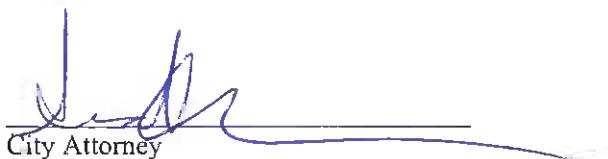
To Engineer: Croy Engineering, LLC
 P.O Box 6097
 Marietta, Georgia 30065-0097
 Telephone: 770-971-5407

To City: City of Smyrna
 2800 King Street
 Smyrna, GA 30080

Notice shall be deemed received as follows, depending upon the method of transmittal, by email, as of the date and time sent; by messenger or overnight delivery, as of the date delivered; and by U.S. Mail, certified, upon return receipt requested, as of 72 hours after deposit in the U.S. Mail.

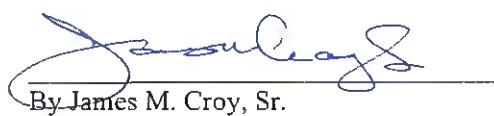
IN WITNESS WHEREOF, the Parties hereto have accepted and made and executed this Agreement upon the terms, conditions and provisions set forth above and the Effective Date.

Approved as to form:


City Attorney

ENGINEER:

CROY ENGINEERING, LLC



By James M. Croy, Sr.
Title: Managing Partner

CITY:

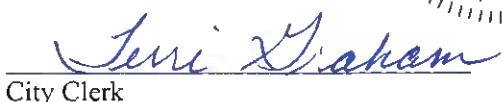
CITY OF SMYRNA



By: Max Bacon
Title: Mayor



Attest:


Terri Graham
City Clerk

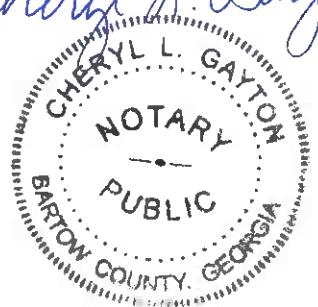


Exhibit A SCOPE OF SERVICES

Project Name: General Engineering Services

Project Location: Various Sites located within the City of Smyrna, Georgia 30080

I. PROJECT DESCRIPTION

The CITY requires Engineering Services for various projects on an as-needed basis.

II. DEFINITIONS

The following terms as used in this Agreement are defined as follows:

- A. *Appropriate Authorities and Agencies:* Private, municipal, county, state, regional or federal authority with which the Project may be involved. This term is intended to include those agencies and authorities which may require information or the filing of drawings, specifications, permits, etc., such as: the Georgia Departments of Transportation, Natural Resources, State Historic Preservation Office, Fire Marshal and other local government authorities having jurisdiction, Health Department, or any organization for code compliance in connection with the Project.
- B. *ENGINEER:* The firm identified in the signature box of this Agreement and consulting engineers and specialty firms contracted by ENGINEER for this work.
- C. *Record Plans and Specifications:* The Working Drawings and Project Specifications as prepared under Construction Documents that have been revised to incorporate changes to the Project subsequent to the issue of the bidding documents for the Project. Changes to be incorporated shall be based on information provided by the selected contractor and include, but not be limited to, addenda, change orders, construction alterations and other changes to the physical components of the Project. Changes shall be incorporated into the appropriate original drawing. Simple attachments to the document set are not acceptable.
- D. *Coordination:* The interdisciplinary coordination to ensure the documents shall be consistent and in conformance each part with all parts.
- E. *Construction Documents:* The Working Drawings, Specifications, General Conditions, Supplementary General Conditions, Special Conditions, Addenda, Change Orders, and electronic submittals developed to set forth in detail aspects of design, function and construction and which will be used for estimating the cost of the Project, securing bids for constructing the Project, and directing a contractor in construction of the Project. These Construction Documents shall be full, complete, and accurate, giving such directions as will enable any competent contractor, mechanic or other builder to carry them out.

F. *Consulting and Engineering Services*: Those consulting services provided by the ENGINEER and/or any Subcontractors/subconsultants, including but not limited to architecture, engineering, civil, landscape architect, structural, electrical, mechanical, telecommunication conduit and cabling specialty consultants and cost estimators, which are necessary and appropriate to provide the design and direction of a completed Project. The principals and project managers for the engineering and consulting firms involved in this Project shall be licensed in their respective fields by the State of Georgia if such licensing requirements are applicable to them.

G. *(CSI)*: Construction Specification Institute

H. *Contract Documents*: The Invitation for Bid, Bid Proposal Form, Notice to Contractors, Notice to A/E; Bonds, Construction Documents and the CITY-General Contractor Agreement (the agreement entered into between the CITY and the selected contractor) and Change Orders relative to the Project, and any other document submitted by the selected contractor as a part of its bid response.

I. *Payroll Costs*: Either the direct salaries paid by the ENGINEER for the services of employees with respect to the Project or the direct salaries paid by the ENGINEER's consultants for the services of their employees with respect to the Project, including the portion of the cost of the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, vacations, sick leave, holidays, pensions, and similar contributions and benefits.

J. *Estimated Project Construction Cost/Schematic Design Phase, Design Development Phase, and Construction Document Phase respectively*: The ENGINEER's estimate of the current cost of the construction work represented by the Drawings and Specifications prepared by or under the direction of the ENGINEER with respect to each phase of document development.

Estimates prepared by the ENGINEER represent the ENGINEER's best judgement as a design professional familiar with the construction industry. It is recognized, however, that neither the ENGINEER nor the CITY had any control over the cost of labor, materials or equipment, over the selected contractor's methods of determining bid prices, or over competitive bidding or market conditions. It is recognized the ENGINEER does not have guarantee that bids will not vary from the Estimated Project Construction Cost estimates. This, however, is not intended to discharge the ENGINEER from any obligations imposed or otherwise.

K. *Principal*: Individuals who are sustained participating owners of the ENGINEER firm and are authorized on behalf of the firm to act as signatories to Agreements for this Project.

- L. *Project Construction Cost*: The actual amount paid by the CITY to contractors for constructing the Project pursuant to the Drawings and Specifications prepared by or under the direction of the ENGINEER, including work covered by change order.
- M. *Project Program*: The CITY's Project Program that defines all the spaces and support facilities for the Project.
- N. *Stated Cost Limitation*: The maximum amount that the CITY is authorized to spend for construction of the Project.

III. ENGINEER'S SERVICES

The Technical Services required may include, but are not limited to the following:

- 1. **Transportation Design:** Design services to include planning, computations, modeling, regulatory review and consultation and other background work necessary to ensure design products that satisfy compatibility with all applicable standards. Perform all design as needed to produce construction and right-of-way plans on a variety of transportation related projects such as road improvements, streetscapes, sidewalks, intersections, bicycle trails, multi-use trails, and bridge replacement projects. Develop concept plans, produce base mapping/surveying data, construction plans, quantities, right-of-way plans, legal descriptions, cost estimates, etc.

Perform all necessary design work for Streetscape, Transportation Enhancement, and LCI projects. Provide both landscape architecture and transportation design services as required to successfully complete construction plans in the State and Federal process.
- 2. **Land Surveying:** Perform all land surveying services as needed to produce base mapping for the various projects. Produce base mapping, legal descriptions, boundary surveys, topographic surveys, right-of-way surveys, research land records, deeds, etc., necessary for various projects. All surveying performed will be compatible with the CITY's G.I.S. system database. On certain projects, the CITY may allow aerial mapping to be used in lieu of some surveyed data.
- 3. **Traffic Engineering:** Traffic Engineering shall be provided by a Professional Traffic Operations Engineer (PTOE) who shall perform traffic studies and counts as needed to produce intersection and roadway capacity analyses as well as traffic forecasts, if required. Collect turning movement data in the field, perform traffic projections, produce signal timing plans, traffic models, and all related traffic studies and recommendations necessary for approval of the design of the various local and State/Federal projects.

4. **Environmental:** Perform all environmental services as needed for local and regional planning, and for meeting State and Federal preliminary engineering requirements on the various projects, including all erosion sedimentation control requirements. Prepare assessments, site investigations, categorical exclusions, archeological assessments, historic preservation analysis, various reports, and assist the CITY in a review capacity, if necessary, on environmental work for various projects. Assist the CITY in environmental land acquisition issues. Assist the CITY by making recommendations regarding the environmental impacts of conceptual designs.
5. **Water & Wastewater Services:** Design Services shall include water and wastewater design in accordance with CITY standards. Develop base mapping/surveying data, construction documents, right-of-way plans, permitting, cost estimates, bid documents. Assist CITY with AWWA water audit, perform computer modeling for water and wastewater facilities. Perform GIS mapping of existing water and wastewater facilities.
6. **Land Acquisition Services:** Perform all services necessary for land acquisition, including but not limited to: title searches, cost estimates, appraisals, negotiations, and preparation of closing and condemnation documents. Work will be performed on an as needed basis as determined by the CITY. Coordinate and monitor right-of-way acquisition activities on select projects through all phases of development. Conduct right-of-way impact studies and right-of-way and land acquisition coordination with all state, federal, and local agencies, to include cultural resources studies, etc. All acquisitions will comply with applicable local, state, and federal regulations.
 - i. Develop and implement a cost-effective approach to property acquisition. Review right-of-way drawings. Perform environmental assessment of lands to be purchased or when obtaining easements. Assist the CITY staff in determining which properties to acquire based on the right-of-way plans. Prepare estimates of the cost of easements and rights-of-way (property) necessary for program funding as identified by the CITY staff. Attend and/or conduct public meetings as requested by the CITY staff. Contact owners to verify ownership and property lines shown on the plans and advise owners of their rights and acquisition procedures under applicable local, state, and Federal guidelines.
 - ii. Provide technical assistance during appraisals. Submit quarterly progress reports of land acquisition activities to the Public Works Department. Plan and implement relocation of obstructions plan for affected parcels.
 - iii. Coordinate and review appraisals in accordance with City, State, and Federal guidelines, as applicable.
 - iv. Submit final appraisals to the CITY Attorney for review. Perform negotiations with property owners in accordance with City, State, and Federal guidelines, as applicable. Notify owners through written correspondence.

- v. Conduct land acquisition negotiations in accordance with CITY procedures for approval and execution by the CITY Staff. Maintain organized project records of land acquisition/condemnation process. Provide appraisal support for court-related land acquisition and condemnation cases.
- 7. **Construction Engineering and Inspection Services:** Provide construction engineering and inspection services as required by the CITY on an as-needed basis.
- 8. **Public Involvement** – Working closely with the CITY staff, help to organize, coordinate, facilitate, and document any needed public outreach and involvement efforts associated with CITY transportation projects. (Note: The CITY will fund any advertising required.) In general, these efforts may include:
 - i. Conducting Public Information Meetings;
 - ii. Preparation of project fact sheets, public notices, and press releases;
 - iii. Facilitating Stakeholder Committee meetings with local interest groups;
 - iv. Preparing and evaluating public surveys;
 - v. Organizing and conducting focus group discussions;
 - vi. Conducting stakeholder interviews;
 - vii. Presenting at public hearings before the City Council.
- 9. **Storm Drainage Infrastructure Services** – Design services shall include culvert design, storm sewer design, stormwater management facility design, open channel design, stream bank restoration, environmental services, and stormwater best management practices design. Develop concept plans, base mapping/surveying data, engineering reports, construction plans, construction documents, erosion and sediment control, quantities, right-of-way plans, permitting, cost estimates, bid documents, etc. Plan review, bid-phase services. Preparation of GIS mapping of existing stormwater facilities.
- 10. **Parks and Recreation Design** – Design services to include planning, computations, modeling, regulatory review and consultation and other background work necessary to ensure design products that satisfy compatibility with all applicable standards. Perform all design as needed to produce construction plans on a variety of parks and recreation related projects such as athletic fields & courts, concession areas, playgrounds, passive parks, bicycle trails and multi-use trails projects. Develop concept plans, produce base mapping/surveying data, construction plans, quantities, cost estimates, etc.
- 11. **Miscellaneous Services** – Any other services which may be required by the CITY in which the ENGINEER is able to accomplish

IV. Program Management Services

The required program management services may include, but are not limited to the following:

1. Developing a proposed design construction schedules as necessary for each assigned project. Each schedule must contain milestone events reflecting project phase completions, submittal of major deliverables, and other such milestone events as directed by the CITY.
2. When directed by the CITY, the PROGRAM MANAGER will prepare bid documents, special provisions, administer the bidding process, and shall be responsible for the sale of Construction Plans and Specifications to potential bidders.
3. The PROGRAM MANGER shall coordinate the preparation and submittal of required and necessary documents to obtain all State and Federal permits and approval of the Plans and Specifications for the project, if needed.
4. The PROGRAM MANAGER will coordinate the preparation of conceptual, preliminary, final construction estimates of design projects, and any other interim estimate as required by the CITY in the project scope of work.
5. Upon request by the CITY, the PROGRAM MANAGER will be present at all related public hearings, City Council meetings, meetings with outside agencies, etc.

Exhibit B
PAYMENT AND PAYMENT SCHEDULE

ENGINEER will invoice the CITY monthly. The invoice will be based on ENGINEER's payroll costs times a 2.60 multiplier. The multiplied rates are complete, and include all taxes, contributions, insurance, overhead, profit, labor, burden and any other costs.

I. TIMES OF PAYMENT

Payment under this Agreement shall be made in arrears of the completion of work, upon the submittal of an accurate invoice.

II. RECORDS

Records of the ENGINEER's direct personnel, consultants, additional and reimbursable expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the CITY or authorized representative at mutually convenient times

Exhibit C
TERMS AND CONDITIONS

1. **ENGINEER Performance Standard.** All services performed in connection with this Agreement shall be performed in a manner consistent with the standard of care applicable to those who specialize in providing such services for Projects of the type, scope and complexity of the Project.
2. **Authority of ENGINEER.** ENGINEER authority to act on behalf of CITY is limited to its scope of authority set forth in this Agreement and the agreement between the selected contractor and CITY for construction of the Project. Notwithstanding anything else stated in this Agreement or any of the Contract Documents, ENGINEER does not have the express or implied authority to obligate CITY to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between CITY and the selected contractor, separate contractor or CITY consultants or any other third persons or parties.
3. **Ownership of Documents**
 - a. **Property of CITY.** The ENGINEER warrants that it is the author of the design documents prepared by it for the Project and that it holds the copyright therein, subject to the last sentence of this Section. All design documents prepared by the ENGINEER and its Subconsultants, and the designs depicted in them, shall become upon their creation the property of the CITY whether the Project is constructed or not. Without limitation to the foregoing, CITY shall hold, and ENGINEER shall be deemed to have irrevocably assigned to CITY in perpetuity with no reserved or retained rights to ENGINEER or to any other persons or entities, all copyrights to the design documents and to the designs depicted in them.
 - b. **Use by ENGINEER.** The CITY hereby grants to ENGINEER and its Subconsultants a license, revocable at will of CITY, to use and copy the design documents, and the designs depicted in them, during the term of this Agreement for the sole purpose of performing the services required under this Agreement. With the exception of (i) standard and generic details in the design documents, and (ii) other designs or details that do not involve a replication of the overall building design or aesthetic appearance, the design documents shall not be used or replicated as a whole, or in substantial part, by the ENGINEER on other projects.
 - c. **Use by CITY.** The CITY may use the design documents, and the designs depicted in them, without the ENGINEER's consent, in connection with the Project, including, without limitation, future additions, alterations, connections, repairs, information, reference, use or occupancy of the Project. Any such use of the design documents without the ENGINEER's participation shall be at CITY sole risk, and the ENGINEER shall not be responsible for losses arising from CITY modification of the Documents without the ENGINEER's participation.
 - d. **Termination.** In the event of termination of this Agreement by either party for any reason, the CITY reserves the right to receive, and the ENGINEER shall promptly provide to the CITY, all drawings, specifications, models, and other design documents prepared to the date of termination by the ENGINEER and its Subconsultants for the Project. ENGINEER shall be permitted to retain copies,

including reproducible copies, of the design documents for information and reference. Any dispute regarding the amount of any payment to be made by CITY under this Agreement shall not diminish, restrict or limit the right of the CITY to own, receive and use the design documents, and the designs depicted in them, as provided in this section. The CITY may withhold any payments due ENGINEER upon termination until all design documents prepared through the date of termination are furnished to CITY pursuant to the terms of this paragraph.

4. **Applicable Laws, Orders of Governmental Authorities.** ENGINEER shall, at all times in its performance of its obligations under this Agreement, comply with all applicable laws and lawful orders of Appropriate Authorities and Agencies. All design documents prepared by ENGINEER and its Subconsultants shall be in compliance with applicable laws and lawful orders of Appropriate Authorities and Agencies in effect on the date such design documents were created. ENGINEER shall exercise professional care to keep informed and advise CITY of possible changes in applicable laws and lawful orders of Appropriate Authorities and Agencies that could affect the Project and shall promptly inform CITY of such changes in advance of their becoming effective. ENGINEER shall provide all tasks and services required by governing state and federal agencies for the successful completion of the Project.
5. **Approval by CITY.** Neither the review or approval of, nor any request for corrections to, the design documents by CITY, Appropriate Authorities and Agencies or any other Project team member shall be construed as relieving ENGINEER of its responsibility for the suitability, completeness and coordination of the design documents prepared by ENGINEER or its Subconsultants. Any errors, omissions, or ambiguities in the design documents shall be resolved by the ENGINEER at no cost to the CITY.
6. **Time of Essence.** All time limits set forth in this Agreement pertaining to ENGINEER's performance of any obligation or act relating to or for the benefit of the Project are of the essence to this Agreement and shall not be exceeded by the ENGINEER.
7. **CITY Approvals.** Approval by CITY of design documents prepared by ENGINEER or its Subconsultants (i) shall not relieve ENGINEER or its Subconsultants of their sole responsibility for the completeness, coordination or suitability of the design documents, and (ii) shall not constitute acceptance or approval of any revision to the Project Program unless ENGINEER informs CITY in writing at the time of seeking such approval that it is requesting approval of a revision to the Program and CITY thereafter issues approval of such change in the Program in writing. Any and all CITY approvals or decisions that involve changes to the Program, ENGINEER compensation or time for performance by ENGINEER (including, without limitation, changes in the Project Schedule) must be approved by CITY in writing.

8. **Surveys, Services and Reports**

- a. **Surveys, Legal Restrictions.** The ENGINEER shall conduct and provide an engineering survey and topography of the Project site(s), giving (as applicable) grades and lines of existing improvements (such as structures, streets, alleys, pavement); rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site. CITY shall supply information in CITY's possession concerning available service and utility lines, both public and private.

- b. Geotechnical.** ENGINEER shall furnish geotechnical data and reports, or employ specialty consultants to provide such data or reports, when deemed necessary, including test logs, soil classifications, soil bearing values and other data and information necessary to define subsoil conditions.
 - c. No Warranty by CITY.** Although ENGINEER shall be entitled to rely upon the accuracy and sufficiency of data, reports or other information furnished by CITY pursuant in performing its obligations under this Agreement, CITY shall have no liability to ENGINEER, other than as permitted by this Agreement for authorized Additional Services, in the event that such data, reports or other information are found to be inaccurate, incomplete or insufficient.
 - d. Notice of Defects.** CITY and ENGINEER shall each provide prompt written notice to the other party if either becomes aware of any defect or deficiency in the Project or nonconformance with the Contract Documents.
 - e. Appropriate Authorities and Agencies.** CITY shall pay all fees required by any local, state or federal agency for filing and checking any of the design documents of ENGINEER or its Subconsultants and for building and related permits required by Governmental Authorities.
- 9. Time for Payments.** Payments of undisputed sums due shall be made by CITY in a timely manner after receipt by CITY of an Invoice for Payment that has been properly and timely prepared and submitted in accordance with this Agreement and accepted by the CITY. No payment to the ENGINEER shall be deemed an acceptance of work not completed in accordance with this Agreement.

10. Inspection by CITY

- a. Records.** ENGINEER and its Subconsultants shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information necessary to verify the scope or charges for any services provided under this Agreement. ENGINEER and its Subconsultants shall maintain such records in sufficient detail to permit the CITY, CITY independent auditors, or a designee of any of them, to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Project for a period of four (4) years after the later of termination of this Agreement or final completion of the Project.
- b. Audit.** The CITY, CITY independent auditors, or a designee of any of them, shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in ENGINEER and its Subconsultants' performance of this Agreement, including, without limitation, verification of the amounts and tasks performed for all time expended that is charged to CITY on an hourly basis. Such right to audit

shall include inspection at all reasonable times at the ENGINEER offices or facilities. In addition, ENGINEER shall, at no cost or expense to the CITY, furnish facilities and cooperate fully with the audit. Upon request, ENGINEER shall provide reproducible copies of books, records and other documents in the possession of ENGINEER and its Subconsultants that are applicable to this Agreement for reproduction by the CITY or its designee.

- c. **Reimbursement.** To the extent that an audit by the CITY, CITY independent auditors, or a designee of any of them, discloses excess charges inaccurately or improperly attributed to this Project by the ENGINEER, ENGINEER agrees to remit the amount of the overpayment to the CITY within five (5) days after demand.

11. Termination by CITY

- a. **For Cause.** If CITY determines ENGINEER has failed to perform in accordance to the Agreement, CITY may terminate all or part of the Agreement for cause upon seven (7) days written notice.
- b. **For Convenience.** CITY may terminate or suspend performance of all or part of this Agreement for convenience and without cause anytime upon ten (10) days written notice to ENGINEER, in which case CITY will, within forty-five (45) days after receipt and CITY acceptance of invoice prepared in accordance with Agreement, pay ENGINEER an amount calculated in accordance with this Agreement for all Basic Services and authorized Additional Services performed, and all authorized reimbursable expenses incurred, up to and including the effective date of termination.
- c. **Termination Payments.** ENGINEER payments, if any, made pursuant to this Section shall be ENGINEER's sole and exclusive compensation and CITY shall have no liability to ENGINEER for any other compensation or damages, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.
- d. **Deletion of Services.** In the event of termination by CITY, for cause or convenience, of a portion of the Project or a portion of the Basic Services, then the ENGINEER's fixed compensation for Basic Services for the portions of the Project or Basic Services not so terminated shall be adjusted to reflect the resulting reduction in ENGINEER's Scope of Basic Services.

12. Payment Contingent on ENGINEER Furnishing All Design Documents.

Any provision to the contrary in this Agreement notwithstanding, no payment shall be due the ENGINEER following termination of this Agreement until the ENGINEER provides the CITY with all design documents in its possession or control.

13. Indemnification

a. Indemnification by ENGINEER. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CITY, and each of them, and each of their respective officers and employees ("Indemnitee(s)"), utilizing legal counsel reasonably acceptable to Insurance Company, from and against any and all claims, damages, losses and expenses (court, arbitration or other dispute resolution costs), to the extent they arise from any of the following:

- 1) Any negligent or actual act or omission of ENGINEER or its Subconsultants or any person or entity for whose acts or omissions any of them may be liable;
- 2) Infringement upon any United States patent, trademark or copyright arising out of the actual or negligent alleged acts or omissions of the ENGINEER or any of the ENGINEER's Subconsultants, in connection with performance of this Agreement; provided however, that nothing herein shall be interpreted as obligating ENGINEER to indemnify any Indemnitee against its sole negligence.

14. ENGINEER Responsibility as to Subconsultants/Subcontractors. The ENGINEER shall be as fully responsible to the CITY for the acts and omissions of his subconsultants/subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. The ENGINEER shall cause appropriate provisions to be inserted in all subcontracts relative to the work to require compliance by each subconsultant/subcontractor with the applicable provisions of the Agreement. Nothing contained in the contract shall create any contractual relationship between any subconsultant/subcontractor and the CITY.

15. Dispute Resolution. The parties shall utilize each of the following steps in the Dispute Resolution Process in the sequence in which they appear below. Each party shall participate fully and in good faith in each step in the Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the Dispute Resolution Process.

a. Direct Negotiations. Designated representatives of CITY and ENGINEER shall meet as soon as possible (but not later than ten (10) days after receipt of the plaintiff's statement of dispute, containing a detailed explanation of the claim) in a good faith effort to negotiate a resolution to the claim. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the claim or defenses being asserted by such party, and with full authority to resolve such claim then and there, subject only to CITY right and obligation to obtain CITY approval of any agreed settlement or resolution. If the claim involves the assertion of a right or claim by a third party (e.g., the contractor) against ENGINEER that is in turn being asserted by ENGINEER against CITY, then such third party shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged.

b. **Litigation.** If the direct negotiations between the ENGINEER and the CITY do not resolve the dispute, then the party asserting the claim shall have the option to initiate a lawsuit in the Cobb County Superior Court in Cobb County, Georgia.

16. Non Discrimination. It is the policy of the CITY that in connection with all ENGINEER services rendered there be no discrimination against any prospective or active employee engaged in such ENGINEER services because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, sexual orientation, political belief or affiliation, or to deny family care leave, therefore ENGINEER agrees to comply with applicable Federal and Georgia laws including, but not limited to Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; The Americans with Disabilities Act of 1990; Age Discrimination Act of 1975 and Rehabilitation Act of 1973 (Section 504). In addition, ENGINEER agrees to require like compliance by all Subconsultants employed by ENGINEER on the Project.

17. Waiver. Provisions of this Agreement may be waived by CITY only by a written statement expressing that it is intended as a waiver of specified provisions of the Agreement. A waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character. CITY approval, acceptance, use or payment for any part of ENGINEER services shall not in any way alter ENGINEER obligations, or waive any CITY rights, under this Agreement.

18. No Third Party Rights. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right or obligation created by this Agreement or by operation of law.

19. Extent of Agreement; Amendment. This Agreement represents the entire Agreement between CITY and ENGINEER for furnishing of services and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CITY and ENGINEER and approved as required by Georgia law and CITY policy.

20. Severability. In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.

21. Successors and Assigns. This Agreement shall be binding upon CITY and ENGINEER and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any claim hereunder, may be assigned by ENGINEER without the prior written consent and approval of CITY, which may be granted or withheld in CITY's sole discretion. This Agreement and all of CITY's rights in and to the design documents may be assigned by CITY upon written notice to ENGINEER. CITY shall have no liability or responsibility to ENGINEER for payment for any services performed after the date of such assignment and notice by CITY.

22. Confidentiality. ENGINEER shall treat all information and data furnished to it by CITY or any other Project team member or otherwise obtained or prepared by ENGINEER concerning the Project as strictly confidential and shall not disclose any of the same to any

other person or entity unless required to do so in connection with ENGINEER's performance of this Agreement, any governmental filings or applications or the Georgia Open Records Act. ENGINEER shall not engage in or permit any public references or statements to the Project, CITY or ENGINEER's services hereunder, including, without limitation, granting interviews to broadcast, print or other media, without the prior written consent of CITY, which may be granted or withheld in the sole discretion of the CITY. ENGINEER shall instruct all of its employees of the foregoing confidentiality obligation.

23. **Independent Contractor.** ENGINEER is and shall at all times remain as to the CITY a wholly independent contractor. Neither the CITY nor any of its agents shall have control over the conduct of ENGINEER or any of ENGINEER's officers, agents or employees, except as herein set forth. ENGINEER shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY.
24. **Representations by ENGINEER.** ENGINEER represents (i) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services and perform the obligations required by this Agreement; (ii) that it is authorized to do business in the State of Georgia; and (iii) the ENGINEER's principal in charge of the Project is duly licensed in accordance with Georgia and all other applicable laws to render the services to be provided by this Agreement.
25. **Survival.** The provisions of this Agreement which by their nature survive completion of the Services or termination of this Agreement, including, without limitation, all warranties, indemnities and payment obligations, shall remain in full force and effect after completion or termination of this Agreement.
26. **Cost Principles.** ENGINEER agrees to charge standard industry rates for any reimbursable Project-related expenditure.
27. **Interpretation.** ENGINEER and CITY acknowledge that the terms of the Agreement have been mutually negotiated and accordingly, shall not be interpreted against either CITY or ENGINEER on the basis that either party was solely responsible for or in control of the drafting of this Agreement.
28. **Electronic Documents.** In the event of any conflict between a document contained in an electronic file and the hard copy of such document maintained in the files of CITY or ENGINEER, the hard copy shall control.
29. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with laws of the State of Georgia.
30. **Key Personnel.** The CITY shall have the right in its absolute discretion to require the removal of ENGINEER's personnel or Subconsultants at any level assigned to or hired for the performance of the work hereunder if the CITY considers such removal in its best interests and directs such removal in writing to ENGINEER. Upon receipt of such direction by CITY, ENGINEER shall remove the personnel or Subconsultant immediately from the work.

31. **Conflict of Interest.** ENGINEER represents that ENGINEER has no existing financial interest and will not acquire any such interest, direct or indirect, which could conflict in any manner or degree with performance of services required under this Agreement and that no person having any such interest shall be subcontracted in connection with the Agreement, or employed by ENGINEER. ENGINEER shall not conduct or solicit any non-CITY business while on CITY property or time. ENGINEER will also take all necessary steps to avoid the appearance of conflict of interest and shall have a duty to disclose to the CITY prior to entering into the Agreement any and all circumstances existing at such time which pose a potential conflict of interest. ENGINEER warrants that is had not directly nor indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of CITY or influencing such a person with respect to the conditions, or performance of any agreements with orders from CITY, including without limitation between CITY and ENGINEER. Should a conflict of interest issue arise, ENGINEER agrees to fully cooperate in any inquiry and to provide the CITY with all documents or other information reasonably necessary to enable the CITY to determine whether or not a conflict of interest existed or exists. Failure to comply with the provisions of the section shall constitute grounds for immediate termination of this Agreement, in addition to whatever other remedies the CITY may have.
32. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties. Each Counterpart shall be deemed an original instrument as against any party who has signed it.

Exhibit D
INSURANCE REQUIREMENTS
Professional Services Agreement
for Engineering Services

I. INSURANCE

The ENGINEER must carry and provide evidence of the following insurance coverage prior to the initiation of any contract services:

- a. General Liability: \$2,000,000 combined single limit per occurrence, and \$4,000,000 general aggregate for bodily injury, personal injury and property damage including products/completed operations coverage.
- b. Professional Liability: \$2,000,000 each claim and \$4,000,000 annual aggregate including "errors and omissions" liability.
- c. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, when applicable.
- d. Workers Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Georgia and Employers Liability of \$1,000,000 per accident.
- e. Insurance Guidelines: Required documentation includes certificate from insurance company showing issuance of Worker's Compensation coverage for the State of Georgia. The ENGINEER shall provide the CITY with a certified copy of each of the policies, or binders indicating the existence of the policies prior to the beginning of any contract services. In the event a binder is delivered, it shall be replaced within ten (10) days by a certified copy of the policy. Each policy shall contain a valid provision or endorsement that the policy may not be canceled without giving thirty (30) days written notice thereof to the official CITY representative. If at any time, any of the policies shall be or become unsatisfactory to the CITY as to form or substance, or any of the carriers issuing such policies shall be or become unsatisfactory to the CITY, the ENGINEER shall deliver to the CITY representative upon demand a certified copy of any policy required herein for review.

II. INSURANCE BY SUBCONTRACTORS

The Engineer shall cause its subcontractors and subconsultants to carry the insurance at the same levels as set forth above unless otherwise agreed to by CITY.