

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

CROY ENGINEERING, LLC
AND
THE CITY OF SMYRNA

FOR

SMYRNA 2016 SPLOST PROGRAM MANAGEMENT



SPLOST 2016

*Investing today for
a better tomorrow*



CROY ENGINEERING

Engineers • Planners • Surveyors
200 North Cobb Parkway, Suite 413
Marietta, Georgia 30062

PROGRAM MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT made this _____ Day of _____, 20____.

BETWEEN "Owner": CITY OF SMYRNA
2800 King Street
Smyrna, Georgia 30080

And "Program Manager": CROY ENGINEERING, LLC
200 North Cobb Parkway
Building 400, Suite 413
Marietta, Georgia 30062

For services in connection with Smyrna 2016 SPLOST more fully described herein.

WITNESSETH

WHEREAS, the Owner is a Municipality created pursuant to Georgia Constitution Article 9, § 7, and plans to undertake improvement projects within the City of Smyrna limits to be identified as specified herein; and

WHEREAS, the Owner wishes to engage the Program Manager to provide certain program management services for one or more of said projects upon the terms, conditions, and covenants hereinafter described; and

WHEREAS, the Program Manager wishes to perform such services for the Owner upon the terms, conditions, and covenants hereinafter described.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Owner and the Program Manager agree as set forth below.

ARTICLE 1 **DEFINITIONS**

1.1 For purposes of this Agreement, the following words shall have the following meanings:

"Engineer" shall mean any professional architect, engineer, or design firm retained by or for Owner for the design for any Project or portion thereof.

"Engineer Agreement" shall mean any agreement entered into between the Owner and any Engineer for any Project.

"Construction Documents" shall mean Drawings and Specifications which are issued for construction of all work required for any Project.

“Contractor” shall mean any firm or company retained by Owner to construct, fabricate, assemble, or manufacture the whole or any portion of any Project.

“Construction Agreement” shall mean any agreement entered into by and between the Owner and any Contractor for any Project.

“Consultant” shall mean any and all firms or individuals, other than the Engineer and the Program Manager, with whom the Owner enters into a contract for the provision of any services for any Project.

“Contract Documents” shall mean any Construction Agreement and all documents incorporated therein or attached thereto as exhibits (including but not limited to general conditions, special conditions, Drawings, Specifications, addenda, amendments, and change orders).

“Drawings” shall mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, which are prepared by the Engineer and which show the design, location and dimensions of the Work, generally including, but not limited to, plans, elevations, sections, details, schedules, and diagrams.

“Program Manager” shall mean CROY ENGINEERING, LLC.

“Project” shall mean the total construction required for each Project identified by the Owner pursuant to Paragraph 2.1 hereof, and shall consist of the total planning, design, construction and implementation of each Project.

“Specifications” shall mean that portion of the Contract Documents which consists of the written requirements for the Project or any Component or portion thereof, including, but not limited to, the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

“Work” shall mean all plant, labor, transportation, equipment, materials, resources, services and appurtenances to be provided by a Contractor for a Project, all in accordance with the Contract Documents applicable to the Contractor and in compliance with all federal, state and local laws, statutes, orders, rules, regulations, ordinances, and all rules, regulations, policies, practices and procedures, established by the Owner. The Work may incorporate the whole or any part of any Project.

1.2 In addition to the foregoing specifically defined terms, other capitalized terms used in this Agreement shall have the respective meanings given to them in other articles of this Agreement or elsewhere in the Contract Documents.

ARTICLE 2
RELATIONSHIP OF THE PARTIES

2.1 Nature of the Agreement

Owner and Program Manager have agreed to execute this Agreement with the purpose of engaging the Program Manager to perform on Smyrna 2016 SPLOST Projects as identified in Exhibit A from January 1, 2016 through the completion of the Smyrna 2016 SPLOST program (the "Term Period"). The terms and conditions outlined in this Agreement shall govern the obligations and responsibilities of the parties. The parties also expressly acknowledge that, if Owner elects to engage Program Manager to perform specific Project related services not covered under this Agreement during the Term Period, Owner reserves the right to issue purchase orders for such work. It is anticipated that such work may include, but not be limited to, site studies, surveys, traffic studies, signal timing designs, environmental permitting, miscellaneous design, preparation of plans and specifications for miscellaneous items and other tasks as deemed necessary and appropriate to complete work under the Smyrna 2016 SPLOST in the best interest of the Owner.

2.2 Owner and Program Manager

With the respect to the Owner, the Program Manager shall at all times be an independent contractor. No provision hereof shall be construed to constitute the Program Manager or any of its officers or employees as an employee or employees of the Owner nor shall any provision of this Agreement be construed as creating a partnership or joint venture between the Program Manager and the Owner. Neither the Owner nor the Program Manager shall have the power to bind the other party except pursuant to the terms of this Agreement.

2.3 Standard of Care

The Program Manager covenants with the Owner to exercise that degree of skill, competence, quality and professional care rendered by the leading and most reputable companies performing the same or similar type services in the State of Georgia; to cooperate with the Engineer, the Contractor, Consultants, and other parties in furthering the interests of the Owner; to perform the Program Manager's services and to make sure each Project is planned, designed, and constructed in an expeditious and economical manner consistent with the interests of the Owner, and that all work on the Project shall be in accordance with applicable federal, state and local laws and regulations. The Program Manager will not subcontract any of its

services to any other entity or person without first obtaining the Owner's prior written consent.

2.4 Relationship of Program Manager to Other Project Participants

In providing the services required under this Agreement, the Program Manager shall maintain a working relationship with the Contractor, Consultants, and the Engineer on behalf of the Owner. The Contractor shall be responsible for construction means, methods, sequence or procedures used in the construction, and the complete safety program for the work for which each is responsible, including but not limited to the safety of its personnel and its operations. The Engineer shall be solely responsible for the Project design.

2.5 Use of Subconsultants

Other than the Subconsultants proposed in the Program Managers Statement of Qualifications, the Program Manager shall not use any subconsultants for the performance of any services for any Project without the prior written approval of each such subconsultant by the Owner. The Program Manager shall be solely responsible for the management and administration of the services or work performed by each of the Program Manager's subconsultants. Notwithstanding the Owner's approval of any subconsultants, the Owner reserves the right to recommend that the Program Manager employ different subconsultants to perform any type of work or services required for the successful completion of any services under this Agreement. No substitution or elimination or material reduction in scope of the work of any approved subconsultant may be made without written authorization from the Owner.

2.6 Program Manager Responsibility

The Program Manager shall be responsible to the Owner for the acts and omissions of the Program Manager's employees and other persons engaged by the Program Manager to perform any portion of the Program Manager's obligations under this Agreement.

2.7 Contractual Relationship

Nothing contained in this Agreement shall create a contractual relationship between the Owner and any person or entity other than the Program Manager or between the Program Manager and any other person or entity other than the Owner.

2.8 Time and Services Performed

The services performed by the Program Manager, its employees and consultants, shall be as specified in this Agreement and as necessary to meet the Owner's program requirements and the specific requirements of the Project. Time is of the essence in the performance of the Program Manager's services hereunder. The Program Manager's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

ARTICLE 3 **PROGRAM MANAGER'S BASIC SERVICES**

The tasks listed in the Article describe the general range of services to be provided by the Program Manager with respect to each Project. All services to be provided under this Article and elsewhere in this Agreement shall be defined as the Program Manager's "Basic Services".

3.1 Pre-Construction and Design Phase Services

3.1.1 Project Management Plan and Manual

The Program Manager shall prepare a preliminary Project Management Manual for the Project which shall establish the basis for the management of the Project. In preparing the Project Management Manual, the Program Manager shall consider the Owner's schedule, cost, and design requirements for the Project.

3.1.2 Master Summary Schedule

The Program Manager shall prepare a Master Summary Schedule ("Master Schedule"). This schedule shall monitor project schedules through design and construction as well as monitoring cash flows and reimbursements for each project in the program. The Program Manager shall work cooperatively with the Owner, Contractor, Architect's, and Engineer's to develop various alternative approaches for the phasing and logistics of construction and shall make appropriate recommendations to Owner. In preparing the Master Schedule, the Program Manager shall take into consideration and account for all Projects identified by the Owner in the form of a Work Authorization as well as additional projects that the Owner has provided the Program Manager with notice that the Owner is considering during the Term Period.

3.1.3 Revisions to Master Schedule

Throughout the Program, the Program Manager will monitor and provide required revisions to the Master Schedule for each Project on a monthly basis. The Program Manager shall coordinate changes in the schedule with the Owner.

3.1.4 Management of Design Services and Review of Design Documents

- 3.1.4.1 The Program Manager shall oversee the services and activities of the Engineer, and any other Consultants retained by the Owner for each Project, in the development and production of Drawings and Specifications for the Project, implement design management procedures to be followed by the Engineer and such Consultants, and conduct regularly-scheduled design coordination meetings. The Program Manager shall coordinate the review of design documents for clarity, consistency, constructability, and adaptability to the Owner's program for each Project. The results of the review coordination shall be provided to the Owner in writing. The performance of such coordination review by the Program Manager shall not make the Program Manager liable for the design obligations or performance, or both, of the Engineer.
- 3.1.4.2 With regards to projects involving design, the Program Manager shall perform reviews of the design documents at the intervals identified below and shall forward all comments to the Owner and Engineer. The first review shall be of the Engineer's preliminary Drawings and Specifications. The second review shall be of the approximately 90% complete Drawings and Specifications, and the Program Manager shall conduct an additional field review to identify any changes in the proposed alignment or other Project elements in an attempt to improve the Project concept or make the Project more cost-effective. This review shall be for verification of overall completeness, accuracy, and clarity of the plans. The Program Manager shall prepare a written list of all ambiguities, discrepancies, or unclear details and forward same to the Owner and Engineer. The final review shall be of the 100% complete documents that have been issued for construction. Among other things, the Program Manager will review the Construction Documents to verify that the Program Manager's prior comments have been incorporated or addressed in the Construction Documents, the quantities on the plans and specifications match the quantities shown in the Contractor's bid schedule, the Drawings include all unit price items necessary to construct the Project as included in the bid schedule, all drawings are listed in the index accompanying the Drawings, and that the

Drawings and Specifications meet all applicable Owner, Cobb County and Georgia Department of Transportation requirements.

3.1.5 Cost Estimates

The Program Manager shall evaluate project cost estimates for each Project. The Program Manager shall work cooperatively with the Engineer to reconcile the independent cost estimates at the completion of the various phases of the Project. In performing evaluation of such cost estimates, the Program Manager shall consider constructability, maintenance of traffic, any necessary adjustment in unit prices, as well as any "matching fund" commitments by the Owner for the specific Project.

3.1.6 Construction Recommendations

The Program Manager shall provide written recommendations and input to Owner and the Engineer with respect to comments on constructability, construction cost, expected construction durations of various building methods, traffic control, availability of rights-of-way, and separation or bundling of projects into contracts for various categories of the Work.

3.1.7 Value Engineering

The Program Manager shall conduct, in cooperation with the Owner and the Engineer, a formal value engineering study for each Project if so directed by the Owner. The results of this study shall be in report form and shall be distributed to the Owner and the Engineer.

3.1.8 Design Review Meetings

The Program Manager shall hold periodic Design Review meetings with the Engineer during all phases of design of each Project.

3.1.9 Land Acquisition Services

The Program Manager will work with the Owner, governmental agencies and departments, utilities, and property owners to minimize the amount of easements and rights-of-way for each Project and make recommendations to the Owner on same. The Program Manager will monitor the right-of-way acquisition schedule by holding periodic status meetings with the Right-of-Way Committee.

3.1.10 Public Meetings

The Program Manager shall attend and assist the Owner with all public meetings related to projects in the Smyrna 2016 SPLOST.

3.1.11 Coordination with Public Agencies

The Program Manager shall be the point of contact with all public agencies for all projects identified in the Smyrna 2016 SPLOST. The Program Manager shall coordinate with the following agencies: GDOT, Cobb County, CSX, EPA, Corps of Engineers and other Federal, State and Local agencies as required to complete the Program.

3.2 Bidding Services

3.2.1 Contract Documents

The Program Manager shall assist the Owner and the Engineer in preparation of the scope and schedule for the contract bidding documents. In addition, the Program Manager shall provide input as appropriate for the instructions to bidders. As part of this task, the Program Manager will focus on documents dealing with project controls, including but not necessarily limited to, project scheduling, monthly progress reporting, and progress payment requirements. The Program Manager shall assist the Owner and the Engineer in developing and issuing addenda to provide answers to bidders' questions.

3.2.2 Assembly and Delivery of Bid Documents and Addenda

The Program Manager shall prepare and make available all bid documents and addenda to the prospective bidders. The Program Manager shall prepare the legal advertisements of each bid for the Owner's prior approval.

3.2.3 Pre-Bid Conference

The Program Manager shall hold and preside over the pre-bid conference(s) for all projects. The Program Manager will assemble and distribute minutes of all meetings.

3.2.4 Bid Opening and Recommendations

The Program Manager shall participate in the bid opening(s) and shall assist the Owner in evaluating bidder qualifications and the bids for completeness, responsiveness and price by preparing a written tabulation, analysis, and assessment of all bids.

3.2.5 Construction and Design Contracts

The Program Manager shall prepare or, at the Owner's election, assist the Owner with the preparation, review, and negotiation of Contract Documents with the Contractor and/or Engineer for all Projects.

3.3 Construction Services

3.3.1 Pre-Construction Conference

The Program Manager shall hold and preside over the pre-construction conference to be attended by the Owner, Engineer, Contractor, and other appropriate parties for each Project. The Program Manager will assemble and distribute minutes to all appropriate parties.

3.3.2 Permits, Insurance and Labor Affidavits

The Program Manager shall maintain duplicate copies of all permits, insurance certificates, bonds, labor affidavits, and other government agency documents as appropriate for each Project.

3.3.3 Contractor Construction Schedules

Upon the transmission of the notice to proceed to a successful bidder for a Project, the Program Manager shall advise the Contractor of the specific details for developing a detailed construction schedule within the framework of the Program Manager's Master Schedule requirements.

3.3.4 Contract Administration and Construction Phase Procedures

The Program Manager shall provide contract administration for each Project and shall, in accordance with Owner's policies, establish and implement administrative coordination and communication procedures among the Program Manager, the Owner, the Engineer, the Contractor, governmental agencies or departments, and other appropriate parties. The Program Manager shall establish and implement procedures for submittals, material samples, change orders, payment requests and other procedures and maintain daily job reports, logs, files, and other necessary documentation. As the Owner's representative, the Program Manager shall be the party through which change orders, payment requests, requests for information submittals and information shall be processed and communicated between the Owner and the Engineer or Contractor. The Contract Administrator shall maintain a log of all citizen or business inquiries and coordinate resolution of these inquiries. The Contract Administrator will also maintain a separate log on needed maintenance issues and will coordinate the completion of these issues in accordance with procedures established by the Owner.

3.3.5 Construction Site Meetings

The Program Manager shall attend periodic construction site meetings with the Contractor, and attend overall coordination meetings with the Contractor, and as appropriate, the Owner and the Engineer, and shall record, transcribe and distribute minutes to all attendees and all other appropriate parties.

3.3.6 Weekly Coordination Meetings

The Program Manager shall conduct weekly coordination meetings as necessary with the Owner to review Construction progress on each Project, identify any delays to the applicable Project schedule, initiate measures to correct delays or other problems in the Project schedule, monitor progress of outstanding right-of-way acquisitions, resolve any issues pertaining to quality of construction, and review utility work on each Project, and initiate efforts to resolve any conflicts.

3.3.7 Quality Control and Testing

Technical inspection and testing required by the Owner, the Engineer, or any other third party shall be provided by the Program Manager and shall be transmitted to the Owner as expeditiously as possible.

3.3.8 Liaison in Dealing with Property Owner's Inquiries

The Program Manager shall handle any inquiries that may arise from affected property owners as they relate to any Project. This specifically will include but not be limited to, field visits, if required, as well as any follow-up action and correspondence which shall be approved in advance by the Owner.

3.4 Progress Payments

- 3.4.1 In consultation with the Engineer, based upon observations at the site and upon applications for payment by the Contractor, which may include certified payrolls, the Program Manager and its resident inspector shall review the payment requests for accuracy and determine whether the amount requested reflects the progress of the Contractor's work. The Program Manager shall recommend appropriate adjustments to each payment application and shall review and forward to Owner the Certificate for Payment prepared by the Contractor and approved and recommended for payment by the Program Manager.

3.4.2 The Program Manager shall review the Engineer's payment requests for accuracy and determine whether the amount requested reflects the progress of the Engineer's work.

3.5 Weekly Job Progress Report

The Program Manager shall report to the Owner in writing, on a weekly basis, a status of jobsite progress. The report shall include the Program Manager's review of the Engineer's and the Contractor's invoices or progress payment requests, a status report on all open change orders or amendments, and an evaluation of the Project Schedule. Such evaluation will include a revised copy of the Schedule reflecting the current progress.

3.6 Nonconforming Work

The Program Manager shall make recommendations for corrective action on any nonconforming Work for each Project. The Program Manager shall make recommendations to the Owner in instances where Program Manager observes Work that, in the Program Manager's opinion, should be rejected.

3.7 Punch Lists

The Program Manager and its resident inspector shall coordinate the preparation of lists of incomplete or defective work ("Punch Lists") by the Contractor prior to final completion of each Project. When incomplete work or defective work has been remedied, the Program Manager shall advise the Owner of Project completeness and upon the Owner's concurrence, prepare a certificate of completion.

3.8 Change Order Control

The Program Manager shall establish and implement a change order control system for each Project. The Program Manager shall make recommendations to the Owner concerning time extensions and shall verify that work and time adjustments, if any, required by approved change orders, have been incorporated into the Contractor's construction schedule. All change orders must be approved by the Owner in writing. The Program Manager is not authorized to enter into change orders on the Owner's behalf.

3.9 Submittals

The Program Manager shall provide, establish and implement a control system for the review and approval of all submittals for each Project. "Submittals" shall include vendor's drawings, catalog cuts, manufacturer's

literature, samples, mock-ups and other materials submitted as required by the various contracts.

3.10 Claims

The Program Manager shall review the contents of any claim submitted by any Contractor or any Engineer, assemble information concerning the claim, review the impact of the alleged cause, and make recommendations to the Owner with respect to the claim in a timely manner. When requested by the Owner, the Program Manager shall further negotiate the claim on behalf of Owner pursuant to the Owner's instructions. The Program Manager shall make a final recommendation to the Owner concerning settlement or other appropriate action. Detailed claims analysis, including detailed time impact analyses, trial assistance, or depositions/testimony requested by the Owner will be provided as an Additional Service.

3.11 Record Documents

The Program Manager shall coordinate and expedite submittal of information by the Contractor for record documents preparation and shall coordinate and expedite the transmittal of record documents from the Engineer to the Owner for each Project.

3.12 Occupancy or Use Permits

The Program Manager shall participate in activities conducted by the Owner and/or the Contractor in obtaining occupancy or use permits (if applicable), including accompanying governmental officials during inspections of the Project, verifying that proper documentation is submitted to the appropriate approving agencies, and verifying that final testing and other activities are conducted.

3.13 Administration of Testing and Start-Up

The Program Manager shall participate in the activities conducted by the Contractor and the Owner in administrating and coordinating all related equipment testing and shall coordinate the Owner's start-up operations.

3.14 Final Payment and Project Close-Out

The Program Manager shall, at the conclusion of corrective action of all Punch List items for a Project, make a final inspection of the Project, and prepare a report of the final inspection for the Owner, determine final quantities, collect complete as-built drawings from the Contractor, and make recommendations to the Owner as to final payment to the Contractor.

ARTICLE 4
ADDITIONAL SERVICES

4.1 Windy Hill Road Improvements

Due to Program Manager's previous concept design activities relating to Windy Hill Road and prior knowledge, Program Manager shall be the Engineer of record for the project and, as directed by the Owner, shall provide needed environmental services, survey and design services for the project and shall be compensated in accordance with Article 6 of this Agreement.

4.2 Right-of-Way Services

Program Manager shall provide all right-of-way and property acquisition services required for the 2016 SPLOST Projects as directed by the Owner. Compensation for these services shall be in accordance with Article 6 of this Agreement.

4.3 Construction Engineering and Inspection Services

Program Manager shall provide construction engineering and inspection services as directed by the Owner for the 2016 SPLOST Projects. Compensation for these services shall in accordance with Article 6 of this Agreement.

4.4 Owner, without invalidating this Agreement, may make changes in the Program Manager's Basic Services specified in Article 3 of this Agreement. The Program Manager shall promptly notify the Owner in writing in advance of changes that will increase or decrease the Program Manager's compensation, the duration of Program Manager's services, or both. No Additional Services shall be performed without prior written approval of the Owner and Program Manager waives any claim for additional compensation for any services or materials provided without such prior written approval.

Additional Services may include but are not limited to the following:

- Site Studies
- Transportation Studies
- Topographic and Boundary Surveys
- Environmental Services
- Miscellaneous Design Services
- Traffic Studies
- Signal Timing Designs
- Assistance with Sidewalk Designs
- Assistance with Intersection Improvement Designs
- Any other efforts as requested by the Owner

4.5 Payment for Additional Services

The Program Manager shall submit invoices for Additional Services with its invoices for Basic Services, and payment shall be made pursuant to the provisions of Article 6 of this Agreement.

ARTICLE 5 **OWNER'S RESPONSIBILITIES**

5.1 Owner Requirements for Program Management

The Owner will provide to the Program Manager full information regarding the Owner's requirements or other Project-related data in Owner's possession applicable to the Program Manager's services for the Project as reasonably requested by the Program Manager.

5.2 Submittal Review

The Owner will examine information submitted by the Program Manager and shall render decisions pertaining thereto promptly.

5.3 Legal, Accounting and Insurance

The Owner will furnish its own legal, accounting and insurance counseling services as the Owner may deem appropriate for its own interests.

5.4 Observation of a Fault or Defect

If at any time during the Project, the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, prompt notice thereof shall be given to the Program Manager. The Owner, however, shall have no obligation to observe the Project to determine any fault or defects, but such shall be the responsibility of the Program Manager and the Engineer as their contracts may require.

5.5 Owner Furnished Data and Approvals

The Owner will furnish required information and approvals in a timely manner to facilitate orderly progress of the Work in cooperation with the Program Manager consistent with this Agreement and in accordance with the planning and scheduling requirements of the Project as determined by the Program Manager and approved by the Owner.

5.6 Owner Retained Engineer

The Owner will retain the Engineer, whose services, duties and responsibilities shall be described in the agreement between the Owner and the Engineer. These services, duties and responsibilities shall be compatible and consistent with this Agreement. The Owner will require that the Engineer perform his services in cooperation with the Program Manager. The terms and conditions of the Engineer's Agreement will not be modified without notification to the Program Manager.

5.7 Budget Revisions

The Owner will verify the current Project budget and will approve any subsequent revisions for the Project based on consultation with the Program Manager.

5.8 Contract Documents

Copies of Contract Documents will be furnished by the Owner to Program Manager at no cost to the Program Manager.

5.9 Owner Communications

In order to eliminate confusing and conflicting instructions to the Contractor, to the extent possible, all communications between the Owner and the Contractor and/or the Engineer shall be copied to the Program Manager.

5.10 Owner Representative

The Owner will designate, in writing, one or more officers or employees to represent the Owner with respect to the Project. Any such designation may be supplemented and replacements may be provided for by written notice thereof by Owner at any time. For purposes of this contract, the Owner's Representative shall be Scott Stokes, Public Works Director.

ARTICLE 6
PROGRAM MANAGER'S COMPENSATIONS

6.1 Compensation for Basic Services

Unless otherwise specified in a Project Addendum, the Owner shall pay the Program Manager for the Basic Services to be performed hereunder an amount equal to the Program Manager's payroll costs times a 2.60 multiplier, plus the Program Manager's Reimbursable Expenses as allowed below, provided the combined cost of such Labor Costs and Reimbursable Expenses shall not exceed \$2,110,000 which shall cover all the Program Manager's Basic Services and Reimbursable Expenses for the Basic Services for the Program. The multiplied rates are complete and include all taxes, contributions, insurance, overhead, profit, labor burden, and any other costs.

6.2 Additional Compensation

- 6.2.1** The Owner shall pay the Program Manager for services covered under Articles 4.1, 4.2 and 4.3 and 4.4 an amount equal to the Program Manager's payroll costs times a 2.60 multiplier, plus Program Manager's Reimbursable Expenses as allowed below.
- 6.2.2** Should the Owner receive additional 2016 SPLOST funds allowing projects from Tier 2 to be added to the program, Program Manager's compensation shall be increased proportionately to the increase in funds received.

6.3 Reimbursable Expenses

The Program Manager shall be compensated for Reimbursable Expenses, limited to the categories below that are reasonably necessary for the performance of Program Manager's services hereunder. These expenses will be invoiced at cost, without any mark-up, and shall be limited to the following:

1. Travel and subsistence costs for the Program Manager employees incurred for the Project for travel outside the metropolitan Atlanta area approved by the Owner.
2. Shipping and mailing of Project-related materials.
3. Printing and reproduction costs.

6.4 Program Manager's Accounting Records

Records of the Program Manager's payroll, consultant and Reimbursable Expenses pertaining to the Project shall be kept on the basis of generally accepted accounting practices and shall be available to the Owner or the

Owner's representative at mutually convenient times for a period of three (3) years after the Owner's final payment to the Program Manager hereunder.

6.5 Payments

The Program Manager shall invoice the Owner on a monthly basis for the services performed during the month and for Reimbursable Expenses incurred during the month. Payments will be made monthly not later than thirty (30) days after presentation of the Program Manager's invoice to the Owner.

6.6 Payments Withheld

In addition to other grounds set forth in this Agreement, the Owner may withhold the whole or a part of any payment due the Program Manager to such extent necessary to protect the Owner from loss on account of any of the following circumstances, regardless of when such may be discovered:

- 6.6.1 Defective services not remedied;
- 6.6.2 Claims or liens filed, or reasonable evidence that such claims or liens will be filed;
- 6.6.3 Failure of the Program Manager to make payments properly due and owing to its subcontractors or consultants;
- 6.6.4 Any material failure to perform under this Agreement; and
- 6.6.5 Any material breach of this Agreement.
- 6.6.6 When the above grounds are removed, payment shall be made for amounts withheld because of them. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of any breach or acquiescence therein. The Owner may exercise its option from time to time and as often as may be necessary.
- 6.6.7 If the Owner shall determine, by audit or otherwise, that it has made an overpayment to the Program Manager and thereafter makes written demand for repayment thereof, the Program Manager shall, within thirty (30) days of receipt of such written demand for repayment tender the amount of such overpayment to the Owner or otherwise resolve the demand for repayment to the Owner's satisfaction. If the Program Manager fails to comply with or otherwise resolve to the Owner's satisfaction any demand for repayment made pursuant to this paragraph, the amount of such

overpayment demanded shall thereafter bear interest at the prime rate in effect as of date the overpayment is demanded, until paid in full.

6.6.8 Payment for Additional Services

Payment for Additional Services shall be on the same basis and manner as provided for Basic Services once the Owner and the Program Manager reach agreement on a scope of work and staff requirements for the Additional Services.

ARTICLE 7 **INSURANCE AND INDEMNITY**

7.1 Insurance

During the course of this Agreement until completion of the services required hereunder and under all Project Addenda, the Program Manager shall procure and maintain, at its own expense, the insurance coverages set forth below in a form and from insurers acceptable to Owner and shall provide the Owner with certificates evidencing such coverages.

- General Liability -
Each Occurrence \$2,000,000
Damage to Rented Premises (each occurrence) \$300,000
Medical Expenses (any one person) \$5,000
Personal & Adv Injury \$2,000,000
General Aggregate \$4,000,000
Products- Comp/Op Agg \$4,000,000
- Automobile Liability-
Combined Single Limit \$1,000,000
- Umbrella Liability-
Each Occurrence \$2,000,000
Aggregate \$2,000,000
- Workers Compensation-
Employers' Liability, Each Accident \$1,000,000
Employers' Liability, Disease, Each Employee \$1,000,000
Employers' Liability, Disease, Policy Limit \$1,000,000
- Professional Liability-
\$2,000,000 per claim
\$4,000,000 Aggregate

ARTICLE 8
TERMINATION

- 8.1 This Agreement may be terminated by the Owner if the Program Manager fails substantially to perform in accordance with any of its obligations, duties, or responsibilities under this Agreement. The Owner shall give the Program Manager written notices of such default under this Agreement. The Program Manager shall have a period of fourteen (14) calendar days from the date of such notice to cure the default. In the event the Program Manager does not cure the default during such period, the Owner shall provide a second written notice to the Program Manager indicating that the Agreement is terminated. The Owner's right of termination set forth herein shall be in addition to, and not in limitation of, any and all other remedies available to the Owner by law, in equity, or under the terms and provisions of this Agreement.
- 8.2 This Agreement may be terminated by the Owner on not less than fourteen (14) days' written notice to the Program Manager for the Owner's convenience and without cause.
- 8.3 In the event of termination pursuant to Paragraph 8.2, and as complete and final compensation to the Program Manager in such event, the Program Manager shall be compensated only for all services performed to the termination date, together with Reimbursable Expenses then due in compliance with this Agreement. The Program Manager shall not be entitled to recover prospective profits on work unperformed or other consequential or incidental damages. All agreements between the Program Manager and its consultants and subcontractors shall provide that all such agreements may be terminated upon a termination by the Owner of this Agreement and, in such event, such parties shall be entitled only to compensation for services performed to the date of termination, including Reimbursable Expenses then due, and shall not be entitled to lost profits or other consequential or incidental damages.
- 8.4 The Program Manager agrees that it can be adequately compensated by money damages for any breach of this Agreement which may be committed by the Owner, and hereby agrees that no default, act or omission of the Owner shall entitle the Program Manager to cancel or rescind the provisions of this Agreement or, except as provided below in this paragraph, to suspend or abandon performance of all or any part of the services required by this Agreement. If the Owner fails to make payment properly due to the Program Manager for services and expenses under this Agreement, the Program Manager may, upon thirty (30) days' written notice to the Owner, suspend performance of the services under this Agreement. Unless payment in full is received within thirty (30) days of the date of the notice, the suspension shall take effect without further notice. Before resuming

services, the Program Manager shall be paid all sums properly due prior to suspension and the time schedules for completion of the Program Manager's services and the Program Manager's compensation shall be equitably adjusted.

8.5 It is understood and acknowledged that the Owner may suspend performance of the services under this Agreement upon fourteen (14) days' written notice. If the Project is suspended, the Program Manager shall be compensated for all services properly performed prior to receipt of written notice from the Owner of such suspension, together with the Reimbursable Expenses then due; provided, however, that the Program Manager shall not be entitled to any compensation or expenses under this Agreement upon suspension of the Project if such compensation, expenses, or suspension was caused by an error or omission of the Program Manager (whether negligent, intentional, or otherwise). If the Project is resumed after being suspended for more than ninety (90) consecutive calendar days, and such prior suspension was not caused by any error or omission of the Program Manager, then the Program Manager's compensation shall be equitably adjusted, if necessary, only to account for any changes in the scope of the Program Manager's services occasioned by the suspension.

ARTICLE 9 DISPUTE RESOLUTION

9.1 The parties agree that they will attempt in good faith to resolve promptly "step negotiations" between decision makers authorized by the Program Manager and the Owner to settle the controversy. "Step negotiations" means initial efforts for dispute resolution shall be at the Project level. If this level of efforts proves unsuccessful, then dispute resolution will be addressed between the Program Manager's principal executive and an executive of the Owner authorized to settle the dispute. If such efforts are unsuccessful, then either party may pursue any remedy available at law or in equity. Any such action shall be before a court of competent jurisdiction in the State of Georgia.

ARTICLE 10
ADDITIONAL PROVISIONS

10.1 Assignment of interest

The Program Manager shall not assign, mortgage, pledge or transfer this Agreement without the prior written consent of Owner. Any merger, consolidation, or other reorganization of the Program Manager or sale or other transfer of a percentage of capital stock of the Program Manager which results in a change of controlling persons, or any dissolution, sale or other transfer of substantially all of the assets of the Program Manager, shall be deemed a transfer of this Agreement. The Program Manager acknowledges that Owner may assign this Agreement freely and agrees to execute whatever documents the Owner may reasonably require to effect such assignment.

10.2 Governing Law

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Georgia.

10.3 Extent of Agreement

This Agreement represents the entire and integrated agreement between the Owner and the Program Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or supplemented only by written instrument signed by both the Owner and the Program Manager.

10.4 Severability

If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.5 Project Personnel

The Program Manager agrees to establish and maintain for the duration of this Agreement, adequate personnel to provide efficient business administration and to assure that the Program Manager services are performed in the most reasonably expeditious and economical manner in accordance with the terms of this Agreement and consistent with the interests of the Owner.

- 10.6 Time is of the essence in regard to Program Manager's performance of its obligations under this Agreement. The Program Manager shall perform all of its obligations in a professional and timely manner so as not to delay or otherwise adversely affect the rights and performance by the Engineer or the Contractor or anyone else working on the Project.
- 10.7 All Drawings, Specifications, Contract Documents and other documents in any format (including but not limited to estimates, schedules, plans, designs, calculations, sketches, reports, computer assisted design documents ("CADD"), results of programs, computer disks, diskettes or tapes, charts, photographs and other data compilations from which information can be obtained or translated), and copies thereof, furnished by or on behalf of the Owner or the Engineer, and all documents prepared by the Program Manager pursuant to this Agreement, are and shall remain the Owner's property. All such documents are to be used by the Program Manager only with respect to a Project awarded under this Agreement and are not to be used on any other project. Submission or distribution of these documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any common law, copyright, or other reserved rights of the Owner.
- 10.8 The Program Manager, with regard to the services performed by it during the term of this Agreement, shall not discriminate on the grounds of race, color, creed, gender, religion or national origin in the selection and retention of consultants and subcontractors.
- 10.9 Article and paragraph headings herein are for ease of reference only and shall not be used to interpret the meaning hereof.
- 10.10 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Program Manager.

ARTICLE 11
NOTICES

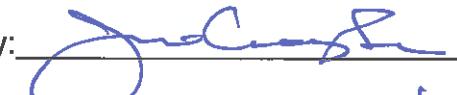
11.1 Notices

Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand, by overnight courier, or by facsimile transmission ("fax"), or mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address or to its fax number, as appropriate, as set forth below:

To Owner:	To Program Manager:
City of Smyrna	Croy Engineering, LLC
2800 King Street	200 N. Cobb Parkway
Smyrna, GA 30080	Building 400, Suite 413
Fax: 678-931-5443	Marietta, GA 30062
Attention: Scott Stokes	Fax: 770-971-0620
	Attention: Jim Croy, Sr.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal, the day and year first above written.

OWNER: PROGRAM MANAGER:

By: _____ By: 

Title: _____ Title: *Managing partner*

WITNESS:

By: _____ By: 

EXHIBIT "A"
CITY OF SMYRNA 2016 SPLOST PROJECTS

TRANSPORTATION AND INFRASTRUCTURE PROJECTS		
Project Name	Project Description	Proposed Budget
Windy Hill Road (Joint project with Cobb County, City sponsor)	Boulevard concept from South Cobb Drive to Atlanta Road that includes widening, addition of medians, intersection and pedestrian improvements.	\$ 20,000,000
Church Street Improvements	Curb & gutter, storm drainage, sidewalks and resurfacing from South Cobb Drive to Atlanta Road	\$ 900,000
Pat Mell Road Improvements	Curb & gutter, storm drainage and sidewalks from South Cobb Drive to Atlanta Road	\$ 900,000
Spring Road and Cumberland Boulevard Improvements	Intersection improvements, median and electronic message signs	\$ 4,000,000
Intersection Improvements at Roswell St / Hawthorne St / N. Matthews St	Improve the safety and function of the intersection	\$ 1,000,000
Concord Road at South Cobb Drive Intersection Improvements	Improve the safety and function of the intersection	\$ 3,000,000
Riverview Road at South Cobb Drive Intersection Improvements	Improve the safety and function of the intersection	\$ 150,000
Oakdale Road Improvements	Road improvements from Highlands Parkway to Veterans Memorial Highway	\$ 1,500,000
Dickerson Drive Improvements	Road improvements from Riverview Road to Oakdale Road	\$ 1,000,000
Pedestrian Access Improvements	Pedestrian crossing improvements at the Spring Street & Hawthorne Ave railroad crossings; Multi-use trail on Windy Hill Road from Atlanta Rd to Village Pkwy; Pedestrian crossing improvements along South Cobb Drive	\$ 2,500,000
Gann Road Culvert Replacement	Culvert replacement on Gann Road at the creek crossing	\$ 600,000
Nickajack Road Quiet Zone (Joint project with Cobb County)	Railroad quiet zone at the Nickajack Road crossing	\$ 182,250
Congestion Relief Improvements	Various improvements to relieve traffic	\$ 2,090,750
Traffic Calming	Install traffic calming devices at various locations throughout the City	\$ 200,000
Traffic and pedestrian crossing signal upgrades	Install LED filaments in traffic signals and pedestrian crossing signals	\$ 150,000
Street signage and signal pole upgrades	Replace and rehabilitate existing street signage, signal poles and mast arms	\$ 300,000
Paths / Sidewalks	Various paths and sidewalk improvements, including new sidewalks and upgrades to existing sidewalks	\$ 1,000,000
Resurfacing	Various streets will be resurfaced as needed	\$ 4,000,000
Pavement marking	Various streets will be restriped as needed	\$ 250,000
Curb and gutter	Curb and gutter will be installed or replaced as needed	\$ 500,000
Stormwater drainage rehabilitation	General stormwater drainage rehabilitation	\$ 300,000
Studies	Various engineering and land planning studies to evaluate the Smyrna transportation system	\$ 250,000
TRANSPORTATION AND INFRASTRUCTURE PROJECTS TOTAL		\$ 44,773,000

PARKS PROJECTS		
Project Name	Project Description	Proposed Budget
Parks Improvements	Various parks system improvements	\$ 3,890,000
PARKS PROJECTS TOTAL		\$ 3,890,000

PUBLIC SAFETY PROJECTS		
Project Name	Project Description	Proposed Budget
Public Safety Facility Improvements	Replace Fire Station 2	\$ 2,000,000
Public Safety Equipment	Purchase new public safety equipment	\$ 2,110,000
PUBLIC SAFETY PROJECTS TOTAL		\$ 4,110,000

CITY OF SMYRNA PROJECTS GRAND TOTAL	\$ 52,773,000
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TIER 2 PROJECTS		
Project Name	Project Description	Proposed Budget
Congestion Relief Improvements	Various improvements to relieve traffic	\$ 1,000,000
Resurfacing	Various streets will be resurfaced as needed	\$ 1,000,000
Parks Improvements	Various parks improvements	\$ 1,000,000
Public Safety Equipment	Purchase new public safety equipment	\$ 1,000,000
TIER 2 PROJECTS TOTAL		\$ 4,000,000