

**CLERMONT COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
CONSULTANT AGREEMENT**

_____ - _____

This AGREEMENT is entered into on this _____ day of _____, 2020, by and between the Clermont County Transportation Improvement District ("CCTID") and _____ with an office at _____, OH _____ referred to as the "CONSULTANT." CCTID and CONSULTANT are collectively referred to as the "PARTIES."

(A) The CCTID, which is authorized by ORC Chapter 5540 to: (1) finance, construct, maintain, repair, and operate street, highway, and other transportation projects (including, but not limited to, air and rail projects); and (2) construct, reconstruct, improve, alter, and repair roads, highways, public places, buildings, and other infrastructure, recognizes that it is a priority that it engage and cooperate to the greatest extent practical in cooperative efforts, relating to transportation improvement activities within Clermont County, Ohio and its environs, in conjunction with other local political subdivisions, such as a municipal corporation, or township, or other county wherever practical and feasible.

(B) The CCTID, in cooperation with the County of Clermont, Ohio (the "COUNTY"), the Clermont County Engineer's Office ("CCEO"), and other local political subdivisions, including, but not limited to, _____ located in the COUNTY (the "LOCAL GOVERNMENT MEMBERS"), and in coordination with the Ohio Department of Transportation ("ODOT") is in the process of developing local transportation improvement projects as part of the CCTID Transportation Improvement Program or "CCTID Program," including, but not limited to, the Project known as the "_____ " as more specifically described and included for the purposes of this AGREEMENT (the "PROJECT").

(C) The various projects undertaken by the CCTID pursuant to ORC Chapter 5540, including the PROJECT, are essential and necessary governmental functions that will contribute to the improvement of the prosperity, health, safety, and welfare of the people of the State, the

COUNTY and the LOCAL GOVERNMENT MEMBERS, their environs and is consistent with and will promote industry, commerce, distribution, and research activity in the State, the COUNTY and the LOCAL GOVERNMENT MEMBERS and their environs.

(D) Certain consultant services, to wit: professional engineering services are required by the CCTID relating to the PROJECT as more specifically described herein and in the Scope of Service and Fee Proposal/Schedule for the PROJECT that is attached hereto and incorporated herein as Attachment A (the "SERVICES") and the CCTID has selected the CONSULTANT to perform the SERVICES and the maximum prime compensation shall not exceed (\$, .00.

(E) The CONSULTANT is qualified to render the SERVICES, which are professional in nature, and is willing to enter into this AGREEMENT with the CCTID to provide the services described herein in accordance with the following terms and conditions.

In consideration of the mutual promises, terms and conditions contained herein, the CCTID and CONSULTANT agree as follows:

I. SCOPE OF SERVICE, SERVICES DESCRIPTION AND INTERPRETATION

1. Subject to the terms and conditions set forth in this AGREEMENT, the CONSULTANT shall undertake and diligently perform the SERVICES to the satisfaction of the CCTID in accordance with the terms and conditions of this AGREEMENT, including all Attachments and documents incorporated by reference herein.

2. The CONSULTANT will perform the SERVICES as authorized by the CCTID and as described in and in accordance with the Scope of Service and Fee Proposal for the PROJECT that is attached hereto as Attachment A, and, as applicable, the current ODOT "Specifications for Consultant Services" (as applicable and specifically excluding the ODOT insurance requirements set forth in Section 2.13), and the ODOT Project Development Process (PDP), all of which are incorporated into this AGREEMENT as if fully rewritten herein. To the extent applicable to the SERVICES, CONSULTANT agrees that it must provide SERVICES in accordance with the current ODOT "Construction and Materials Specifications." Any terms and

conditions contained in Attachment A are ineffective to vary or amend the terms and conditions in this AGREEMENT.

3. It is intended that the AGREEMENT and any Attachment(s), including Attachment A, or documents incorporated by reference herein be construed harmoniously wherever possible in order to carry out the full intent of the parties. But if there is a conflict or inconsistency between any provision(s) of the AGREEMENT and those contained in an attachment or document incorporated herein, the provision(s) granting greater rights or remedies to the CCTID, or imposing the greater duty, standard, responsibility or obligation on the CONSULTANT shall govern.

II. TERM AND COMPENSATION

This AGREEMENT will be effective from the date of the authorization letter from the CCTID to the CONSULTANT through _____, **2020**, inclusive, unless otherwise terminated, extended by a duly authorized and fully executed written amendment or extended by a duly authorized time extension granted by the CCTID.

The compensation to be paid to the CONSULTANT for the performance of the SERVICES specified herein, as further authorized by the CCTID, shall be in accordance with the CONSULTANT's Proposal, hereinafter referred to as the "Scope of Services and Fee Proposal " which is attached hereto as Attachment A and any related change orders that are issued hereunder. The CCTID and the CONSULTANT agree that the compensation for the performance of the SERVICES specified in this AGREEMENT shall be on the basis as set forth in this AGREEMENT and the Scope of Services and Fee Proposal, set forth in Attachment A.

Payments shall be actual costs plus a net fee (profit) of ___ **percent** (___%), however the maximum prime compensation shall not exceed the amount _____ () including any "if authorized" and reimbursable expenses, unless otherwise authorized in writing by the CCTID. The agreed payment set forth above includes all SERVICES set forth in Attachment A, the Scope of Services and Fee Proposal, or reasonably inferable to accomplish the SERVICES, as authorized by the CCTID.

III. WARRANTY OF SERVICE

The CONSULTANT warrants and represents that:

1. the CONSULTANT has the full and unrestricted right, power and authority to enter into this AGREEMENT and to perform CONSULTANT's obligations in accordance with the terms of this AGREEMENT;
2. the CONSULTANT, and any approved Subconsultants as set forth in Clause X, will diligently perform the SERVICES in a professional and conscientious manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances;
3. the CONSULTANT, its employees and approved Subconsultants have the proper expertise, qualifications, certifications, skills, training and professional education to render the SERVICES required by this AGREEMENT; and
4. the CONSULTANT is duly organized and validly existing person or entity qualified to do business in Ohio, and has all requisite legal power and authority to execute this AGREEMENT and to carry out its terms, conditions and provisions.

If the CONSULTANT is a corporation, all required corporate action needed to authorize the execution, delivery and performance by the CONSULTANT of this AGREEMENT and the transactions contemplated hereby have been taken and are in full force and effect. This AGREEMENT has been duly executed and delivered and constitutes the valid, legal and binding obligation of CONSULTANT, enforceable in accordance with the terms hereof. There are no suits, threatened or pending, nor claims against the CONSULTANT that might materially adversely affect the ability of the CONSULTANT to meet and carry out its obligations under this AGREEMENT. CONSULTANT's execution of this AGREEMENT will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

IV. SCHEDULE FOR DELIVERY

All SERVICES that are required to be provided by the CONSULTANT under this AGREEMENT must be provided in accordance with this AGREEMENT and any Attachments or documents incorporated by reference herein, and as approved by the CCTID. The PARTIES acknowledge that TIME IS OF THE ESSENCE in connection with the performance of the SERVICES and the delivery of any work or work product to be delivered or produced in accordance with this AGREEMENT.

V. BILLING AND PAYMENT

1. The CONSULTANT shall submit a monthly invoice to the CCTID for the SERVICES rendered that certifies the related work has been completed in accordance with the percent of completion of work set forth in Attachment A. The invoices shall be in a form acceptable to the CCTID and contain all supporting documentation reasonably requested by the CCTID.

2. Upon proper billing and certification by the CONSULTANT and approval of said billing by the CCTID, payments for the SERVICES rendered will be made by the CCTID directly to the CONSULTANT. Payments will be made based upon review and documentation that the SERVICES are being satisfactorily completed in accordance with this AGREEMENT. The CCTID will only pay for those SERVICES authorized in accordance with the terms hereof.

3. In taking actions on CONSULTANT's billings and certifications, the CCTID is entitled to rely on the accuracy and completeness of the information CONSULTANT furnishes. Thus, any failure to object to the CONSULTANT's billing, and all payments made hereunder shall not in any way be deemed as an acceptance of incomplete, improper, or defective SERVICES or as a verification of amounts actually due if the billing is inaccurate in any respect. CONSULTANT's receipt of final payment hereunder will constitute a waiver of all claims by CONSULTANT arising out of or relating to the SERVICES provided hereunder, except those claims previously made in writing and pending at the time of final payment hereunder.

4. CONSULTANT agrees that it must get specific authorization for all extra or changed SERVICES claims it has relating to an increase in the sum authorized for SERVICES under the AGREEMENT, and that such authorization must be in writing by the CCTID Secretary-Treasurer or Chair, and be given before CONSULTANT begins the extra or changed SERVICES in question. If CONSULTANT fails to get such prior written authorization, CONSULTANT agrees that it waives the right to payment for such extra or changed SERVICES.

5. CONSULTANT agrees that it is responsible for establishing and maintaining an acceptable cost accounting system that satisfies the requirements of Title 48 Code of Federal Regulations, Part 31.

6. The CCTID may conduct interim and final audits to determine allowable costs actually experienced during the AGREEMENT. In conducting audits under this AGREEMENT, the CCTID will apply the cost principles and procedures set forth in Title 48 of the Code of Federal Regulations and any other special criteria set forth in this AGREEMENT.

VI. DUPLICATE BILLING

1. The CONSULTANT agrees that claims made to CCTID for payment for SERVICES will not duplicate claims made by the CONSULTANT to other sources of public funds for the same SERVICES.

.2 The CONSULTANT agrees that it must repay the CCTID the full amount of any payment received for duplicate billings, erroneous billings, or false or deceptive claims. The CONSULTANT recognizes and agrees the CCTID may withhold any money due and recover through any appropriate method any money erroneously paid under this AGREEMENT if evidence exists of less than full compliance with this AGREEMENT.

VII. AVAILABILITY AND RETENTION OF RECORDS AND AUDIT RESPONSIBILITY

All records relating to the SERVICES provided and supporting documentation for invoices submitted to the CCTID by the CONSULTANT shall be retained and made available by

the CONSULTANT for audit by the CCTID and its designees for a minimum of three (3) years after final payment under this AGREEMENT or a duly authorized and fully executed written amendment. If an audit is initiated during this time period, the CONSULTANT shall retain such records until the audit is concluded and all issues resolved. The CONSULTANT agrees to accept responsibility for receiving, replying to and/or complying with any audit exception by appropriate federal, state, or local audit related to the provision of SERVICES under this AGREEMENT.

VIII. DISCLOSURE

The CONSULTANT hereby covenants that it has disclosed any information that it possesses about any business relationship or financial interest that the CONSULTANT has with the CCTID, the Clermont County Engineer's Office, the COUNTY, or the LOCAL GOVERNMENT MEMBERS and their respective trustees, commissioners, officers, employees, or their businesses, or any business relationship or financial interest that the CCTID, the COUNTY, or the LOCAL GOVERNMENT MEMBERS and their respective trustees, commissioners, officers or employees or their businesses has with the CONSULTANT or in the CONSULTANT's business.

IX. CONFLICT OF INTEREST

1. This AGREEMENT does not preclude or restrict the CONSULTANT from contracting for SERVICES with parties other than the CCTID, the Clermont County Engineer's Office, the COUNTY, or the LOCAL GOVERNMENT MEMBERS, provided that the other contractual SERVICES shall not be permitted to impede the CONSULTANT's ability to timely perform the SERVICES required under this AGREEMENT. The CONSULTANT warrants that at the time of entering into this AGREEMENT it has no interest in any contract that would impede its ability to professionally and independently perform the SERVICES under this AGREEMENT.

2. The CONSULTANT further warrants that it is aware of no improper personal financial or other beneficial interest on the part of any member of the CCTID, its employees or officers, or any employee or officer of the CCTID, the Clermont County Engineer's Office, of

the COUNTY, or of the LOCAL GOVERNMENT MEMBERS involved in the development of the specifications, the negotiation, or the performance of this AGREEMENT. The CONSULTANT has no knowledge of any situation that would constitute a conflict of interest. It is understood that a conflict of interest occurs when an employee or officer will gain financially or receive personal benefit or favors as a result of procuring, signing, negotiation or implementation of this AGREEMENT.

3. The CONSULTANT will report the discovery of any potential conflict of interest to the CCTID. Should a conflict of interest be discovered during the term of this AGREEMENT, the CCTID may exercise any right it may have under the AGREEMENT including termination.

X. ASSIGNMENTS AND SUBCONTRACTS

The PARTIES expressly agree that neither this AGREEMENT nor any portion thereof may be assigned by the CONSULTANT without the prior written approval of the CCTID. The CONSULTANT may not subcontract any of the SERVICES agreed to in this AGREEMENT without the express written consent of the CCTID. All subcontracts shall be subject to the same terms, conditions, and covenants contained within this AGREEMENT. The CONSULTANT shall at all times remain primarily responsible for the SERVICES and shall cause all SERVICES performed by the approved Subconsultant to be performed in accordance with this AGREEMENT. The CONSULTANT is responsible for making direct payment to all Subconsultants for any and all SERVICES provided by such Subconsultant. Wherever "Subconsultants" are referred to in this AGREEMENT, it is to be taken as reference to Subconsultants permitted under this Clause X.

XI. ERRORS AND OMISSIONS

1. SERVICES provided by the CONSULTANT under this AGREEMENT must be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

2. The CONSULTANT is responsible for the accuracy of the SERVICES and must promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation. Acceptance of the SERVICES by the CCTID

does not relieve the CONSULTANT of responsibility for correcting or remedying any of its negligent acts, errors or omissions, or clarifying any ambiguities.

3. During construction or any phase of work performed by others based on SERVICES provided by the CONSULTANT, the CONSULTANT must confer with the CCTID when requested or necessary to interpret the information, and/or to correct any negligent act, error or omission. The CONSULTANT must also prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even if final payment hereunder has been made.

4. The CONSULTANT must give immediate attention to these changes so there will be a minimum of delay. If there is any negligent act, error or omission which the CCTID determines to be the CONSULTANT's responsibility in any phase of the SERVICES and for which any correction, repair or reconstruction may involve additional field or office work, the CONSULTANT shall be promptly notified and is required to perform all necessary corrective SERVICES without undue delay or additional costs to the CCTID.

5. The CONSULTANT will be responsible for damages including but not limited to direct and indirect damages incurred as a result of its negligent act, error or omission, and for losses or costs to repair or remedy construction. The CCTID's acceptance of SERVICES does not relieve the CONSULTANT of responsibility for subsequent correction.

XII. TERMINATION

1. **Termination for Convenience.** In addition to any other rights provided herein, the CCTID shall have the right, any time, for convenience and without cause, to terminate, in whole or in part, further performance of SERVICES by delivery of written notice to the CONSULTANT. The CONSULTANT shall comply with the terms of the notice and shall not incur any further costs either after the date of notice or after the designated termination date, except as directed by the CCTID to complete designated portions of the SERVICES. Upon receipt of a termination notice, the CONSULTANT shall comply with its terms and shall reduce, minimize or eliminate any activities for which the CONSULTANT intends to seek any compensation from the CCTID.

2. Within five (5) days of receiving a termination notice, the CONSULTANT must prepare and submit to the CCTID a work plan to complete the remainder of the SERVICES the CCTID wishes to have performed prior to any designated termination date. This work plan shall include the SERVICES to be completed. In so-doing, CONSULTANT must prepare and submit to the CCTID a final written work cost estimate for the SERVICES to be performed. Other than the payment authorized in the approved work plan, the CONSULTANT expressly understands that it shall not be entitled to other compensation, lost profits, mobilization or demobilization costs, or other termination costs. Within five (5) business days of its receipt, the CCTID will review the proposed work plan and specify any required changes to the CONSULTANT. At its sole discretion, the CCTID may approve a work plan for a period extending beyond a designated termination date. The CONSULTANT shall make any required changes and upon written approval of the work plan by the CCTID, shall proceed to complete the SERVICES as specified in the work plan. If the parties are unable to agree on the work plan to complete the SERVICES, the CCTID may issue a written order to the CONSULTANT to perform the SERVICES the CCTID approves in the work plan.

3. On or before the designated termination date, the CONSULTANT must turn over all documentation in accordance with the CCTID's instructions.

4. Within fifteen (15) days of the termination date, the CONSULTANT shall submit to the CCTID a final progress report, including a final invoice. The final invoice will contain a certificate that the invoiced amount is the final claim for payment of all SERVICES and that payment by the CCTID will constitute a release of any and all claims for payment by the CONSULTANT. Within ten (10) days of its receipt, the CCTID shall review the final progress report and request any additional information that it requires. Receipt and approval by the CCTID of a satisfactory final progress report, such approval not to be unreasonably withheld, shall be required prior to approval of the final invoice, such approval to occur within sixty (60) days after CCTID receipt.

5. **Termination and Other Actions for Cause.** For the purposes of this AGREEMENT, an event of default includes the CONSULTANT filing a petition in bankruptcy, making a general assignment for the benefit of its creditors, having a petition in bankruptcy filed

against the CONSULTANT or a receiver appointed on account of its insolvency, or default in the performance of any express obligation to be performed by it under this AGREEMENT. If an event of default occurs, the CCTID may, without prejudice to any other rights or remedies the CCTID may have: a) hold in abeyance further payments to the CONSULTANT; b) stop any SERVICES of the CONSULTANT or its Subconsultants related to such failure; and/or c) terminate this AGREEMENT by delivery of written notice to the CONSULTANT specifying the nature of the default and the date of termination.

6. Upon receipt of a termination notice, the CONSULTANT shall comply with its terms and shall reduce, minimize or eliminate any activities for which it intends to seek any compensation from the CCTID under this AGREEMENT. If, prior to the designated termination date specified in the notice, or within any extension of that period to which the parties have agreed, the CCTID may cancel the notice and authorize performance of SERVICES to continue; otherwise, the termination shall take effect on the designated termination date.

7. In the event of such termination by the CCTID, the CCTID may take possession of documentation and finish SERVICES by whatever method the CCTID may deem expedient. In the event of any termination, the CONSULTANT shall deliver to the CCTID all documentation and Work Product, in whatever form, furnished to the CONSULTANT by the CCTID.

8. Any CONSULTANT claims for compensation after termination for cause shall be strictly limited to any SERVICES satisfactorily performed by the CONSULTANT and authorized by the CCTID prior to the termination date. CONSULTANT agrees that any such claims it has will be reduced and offset by any damages or losses suffered by the CCTID as a result of the CONSULTANT's default and termination. The CONSULTANT expressly understands that it shall not have a right to other compensation, lost profits, mobilization or demobilization costs, or other termination costs. At the CCTID's sole discretion, it may choose to utilize a termination work plan in the same manner specified in Clause XII.2, Termination for Convenience.

9. **Termination Not a Limit on Remedies.** Nothing in this section shall be construed as a limitation on the remedies available to the parties hereto under the law or the terms of the AGREEMENT arising out of the other parties' breach.

10. **Termination for Work Suspension.** If the PROJECT is delayed or suspended for more than 120 days for reasons beyond the control of the CONSULTANT, or if the CCTID is the sole cause for such delay or suspends the CONSULTANT's SERVICES for more than 120-days, the CONSULTANT may terminate the AGREEMENT by delivering a ten business day advance written notice to the CCTID specifying the nature of the default and the date of termination. If the CCTID does not cure or commence to cure the delay or suspension in question within seven business days of its receipt of such notice, the CONSULTANT may then proceed to terminate its SERVICES under the AGREEMENT.

11. If the CONSULTANT breaches this AGREEMENT it remains liable to the CCTID the COUNTY, and/or the LOCAL GOVERNMENT MEMBERS for any damages sustained by the CCTID, the COUNTY, and/or the LOCAL GOVERNMENT MEMBERS by virtue of such breach or other non-performance of the terms of the AGREEMENT by the CONSULTANT, notwithstanding any payments that may have been made to CONSULTANT hereunder. The CCTID may withhold compensation to the CONSULTANT for the purpose of off-set until such time as the amount of damages or other losses to the CCTID arising from the CONSULTANT's breach of the AGREEMENT is paid to the CCTID or otherwise resolved.

12. **Return of Materials and Information.** Upon termination of this AGREEMENT, or at any time upon the CCTID's written request, the CONSULTANT shall promptly return to the CCTID all copies of any data, records, information or materials provided to CONSULTANT by the CCTID in connection with this AGREEMENT. Notwithstanding the foregoing, the CONSULTANT may keep copies or notes as part of its confidential, work-paper record of the SERVICES it has performed under this AGREEMENT. Upon payment for the SERVICES performed before the date of termination, the CONSULTANT must furnish to the CCTID all works in progress or portions thereof, including all incomplete works (and work product) developed or created by the CONSULTANT in connection with the SERVICES.

13. **Payment Following Termination.** Within seven (7) days after termination of this AGREEMENT, the CONSULTANT shall submit to the CCTID an itemized invoice for any fees or expenses theretofore accrued. Upon payment of accrued amounts so-invoiced, CCTID shall have no further liability or obligation to the CONSULTANT under this AGREEMENT for any further fees, expenses or other payments of any nature whatsoever for the SERVICES.

XIII. COMPLIANCE AND NON-DISCRIMINATION

1. **Compliance.** The CONSULTANT certifies that it (and all Subconsultants who will provide direct or indirect SERVICES under this AGREEMENT) will comply with all requirements of the AGREEMENT and all applicable state and federal laws and regulations, including its ongoing compliance with any and all applicable Ohio Campaign Finance laws, including but not limited to all applicable sections of Ohio Revised Code Chapters 3517 and 109 and related restrictions and disclosures, applicable OMB circulars, Ohio Administrative Code rules or any other applicable rules and regulations in performing its SERVICES hereunder. The CONSULTANT accepts full responsibility for payment of any and all unemployment compensation premiums, all income tax deductions, pension deductions, and any and all other taxes or payroll deductions required for the performance of the SERVICES by the CONSULTANT's employees, if any.

2. **Non-Discrimination.** The CONSULTANT certifies that it is an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulations including but not limited to Title VI, and Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act, as amended, DOT Order 1050.2A's Appendix A and E as applicable, and the Ohio Civil Rights Law. During the performance of this AGREEMENT, the CONSULTANT will not discriminate against any employee, contract worker, or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. The CONSULTANT will take affirmative action to ensure that during employment, all employees are treated without regard to race, color, religion, sex, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of

birth. These provisions also apply to any contract workers. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that the CONSULTANT complies with all applicable federal and state non-discrimination laws. The CONSULTANT and any person claiming through the CONSULTANT agree not to establish or knowingly permit any such practice or practices or discrimination or segregation.

XIV. RELATIONSHIP

Nothing in this AGREEMENT is intended to, or shall be deemed to constitute a partnership, association or joint venture with the CONSULTANT in the conduct of the provisions of this AGREEMENT. The CONSULTANT is expected to perform the SERVICES without the benefit of direct day-to-day control from CCTID. The CONSULTANT will exercise its own discretion and professional judgment in providing the SERVICES hereunder, and the CONSULTANT will perform work and labor under the supervision of CONSULTANT and not the CCTID. The CONSULTANT shall at all times have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on the CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS, and their respective boards, chairmen, trustees, members, officers, employees, agents and volunteers.

XV. INDEMNIFICATION

The CONSULTANT shall save, protect, defend, indemnify and hold harmless the CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS, and their respective boards, chairmen, trustees, members, officers, employees, agents and volunteers from and against any and all liabilities, losses, penalties, damages, settlements, or costs of every kind and character, to the extent they arise out of or in connection with the wrongful or negligent acts, errors or omissions of the CONSULTANT, its employees, officers, agents, Subconsultants or independent contractors, that are related either directly or indirectly to the performance of SERVICES and work under this AGREEMENT. The

CONSULTANT agrees to pay all damages, costs and expenses of the CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS, and their respective boards, chairmen, trustees, members, officers, employees, agents and volunteers in defending any action arising out of the aforementioned wrongful or negligent acts, errors or omissions. The PARTIES expressly agree that this provision shall survive the termination or expiration of this AGREEMENT.

XVI. INSURANCE

1. It shall be the responsibility of the CONSULTANT to protect itself, its employees and agents, and the CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS, and their respective boards, chairmen, trustees, members, officers, employees, agents and volunteers from any and all liability claims that may arise from operations carried out in the performance of this AGREEMENT, due to the negligent or wrongful acts, errors or omissions of the CONSULTANT, its employees, officers, agents or independent contractors.

2. If the CONSULTANT subcontracts any portion of this AGREEMENT, the CONSULTANT shall be responsible for guaranteeing that the Subconsultant, for the portion of the AGREEMENT that is subcontracted, is adequately covered to the insurance limits as specified herein or as otherwise acceptable to the CCTID, and that the insurance for the Subconsultant meets the same requirements as for the CONSULTANT, such as naming all of the required parties as additional insured. The CONSULTANT is responsible for obtaining the necessary proofs of insurance coverage from the Subconsultant and submitting these to the CCTID.

3. During the term of this AGREEMENT, the CONSULTANT will provide, pay for and maintain in full force and effect the insurance coverages and terms and conditions as required and described in Attachment B. The CONSULTANT shall add the CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS, and their respective boards, chairmen, trustees, members, officers, employees, agents and volunteers as additional insured on any insurance policies as may be required under the terms hereof, except for professional liability insurance policy/policies or Workman's compensation,

and provide a certificate of insurance from the insurers certifying that such has been done at or before the signing of this AGREEMENT.

4. The additional insured endorsement on the Subconsultant's liability policy shall state that coverage is afforded by the additional insureds with respect to claims arising out of services performed by or on behalf of the CONSULTANT. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance under this policy shall not be reduced by the existence of other insurance.

XVII. AVAILABILITY OF FUNDS

This AGREEMENT is conditioned upon the availability of federal, state, or local funds that are appropriated or allocated for payment of this AGREEMENT. If funds are not allocated and available for the continuance of the function performed by the CONSULTANT hereunder, the CCTID may without liability to CONSULTANT terminate this AGREEMENT at the end of the period for which funds are available. The CCTID will notify the CONSULTANT at the earliest possible time of any SERVICES that will or may be affected by a shortage of funds. No penalty shall accrue to the CCTID if this provision is exercised and the CCTID shall not be liable for any future payments due or for any damages as a result of termination under this Clause XVII.

XVIII. DRUG-FREE WORKPLACE

The CONSULTANT certifies and affirms that it comply with all applicable state and federal laws, and the provisions of the ODOT Specifications and this AGREEMENT regarding a drug-free workplace. The CONSULTANT will make a good faith effort to ensure that all employees performing duties or responsibilities under this AGREEMENT, while working on state, county or private property, will not purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

XIX. OWNERSHIP RIGHTS

1. **Work Product.** For the purposes of this AGREEMENT, “work or work product” includes, but is not limited to, any work developed or produced during the performance of this

AGREEMENT by the CONSULTANT or the CONSULTANT's employees, independent contractors, agents or Subconsultants, whether individually or jointly with the CCTID. The CONSULTANT expressly acknowledges that all right, title and interest to all work or work product developed or produced under this AGREEMENT and all copies thereof are the sole property of the CCTID. All work or work product may be used by the CCTID in whole or in part or in a modified form for such purposes as it deems advisable, without further employment or payment of additional compensation to CONSULTANT or its Subconsultants. The CONSULTANT may retain copies of work or work product for information and reference only.

2. **Property Ownership.** The CONSULTANT understands and agrees that all right, title and interest in and to any programs, systems, data, information and other materials furnished to the CONSULTANT by the CCTID hereunder are and shall remain the sole and exclusive property of the CCTID.

3. **General Knowledge.** The CONSULTANT shall be free to use for the performance of services to others its pre-existing general knowledge, skills and experience, and any pre-existing ideas, concepts, know-how, and techniques and modifications thereto within the scope of its consulting practice that are used in the course of providing the SERVICES hereunder.

XX. PUBLIC INFORMATION

Although some or all information about or generated under this AGREEMENT may fall within the public domain, the CONSULTANT will not release information about or related to this AGREEMENT to the general public or media verbally, in writing, or by any electronic means without prior approval from the CCTID, unless the CONSULTANT is otherwise required to release requested information by law. Except where approval has been granted in advance, the CONSULTANT will not seek to publicize and will not respond to unsolicited media queries requesting AGREEMENT terms and conditions, the Scope of Service, the government-furnished documents that may be provided to the CONSULTANT to fulfill the AGREEMENT SERVICES, the deliverables required under the AGREEMENT, the results obtained under the AGREEMENT, or the impact of AGREEMENT activities. If contacted by the media about this AGREEMENT, the CONSULTANT agrees to notify the CCTID in lieu of responding directly.

Nothing in this Clause XX is meant to restrict the CONSULTANT from using contract information and results to market to specific clients or prospects, or to preclude or interfere with the CONSULTANT's compliance with the laws of Ohio, other applicable laws, or in accordance with the provisions of the ODOT Specifications.

XXI. CHANGES AND ADDITIONAL SERVICES

1. This AGREEMENT shall not be amended or modified in any manner except by an instrument, in writing, duly authorized and executed by the PARTIES to this AGREEMENT. CONSULTANT agrees that it must get specific authorization for all extra or changed SERVICES claims it has relating to an increase in the amount for SERVICES authorized under this AGREEMENT, and that such authorization must be in writing by the CCTID, by its Secretary-Treasurer or Chair, and be given before CONSULTANT begins the extra or changed SERVICES in question. If CONSULTANT fails to get such prior written authorization, CONSULTANT agrees that it waives the right to payment for such extra or changed SERVICES.

2. The CONSULTANT has no obligation to commence work in connection with any change in the Scope of Service until the PARTIES agree to the change in writing. If the CONSULTANT performs work that is not covered by or exceeds the Scope of Services and Fee Proposal (Attachment A), such work shall not be deemed SERVICES for which the CCTID is required to compensate the CONSULTANT unless such additional work is either (1) the subject of an amendment of change order to this AGREEMENT or (2) performed under a separate written agreement signed by the CCTID and in accordance with the provisions of this AGREEMENT.

XXII. GOVERNING LAW

The PARTIES acknowledge and agree that this AGREEMENT and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of Ohio. The PARTIES further acknowledge and agree that any legal action brought pursuant to the AGREEMENT will be filed in the courts located in Clermont County, Ohio, and Ohio law will apply.

XXIII. INTEGRATION

This instrument and its attachment(s) embody the entire AGREEMENT of the PARTIES. There are no promises, terms, conditions or obligations other than those contained herein; and this AGREEMENT shall supersede all previous communications, representations or contracts, either written or oral, between the PARTIES to this AGREEMENT.

XXIV. SEVERABILITY

If any term or provision of this AGREEMENT or the application thereof to any person or circumstance shall, is held invalid or unenforceable, the remainder of this AGREEMENT or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Instead, each and every term and provision of this AGREEMENT not held invalid or unenforceable shall be valid and enforced to the fullest extent permitted by law.

XXV. WAIVER

Any waiver by either party of any provision or condition of this AGREEMENT shall not be construed or deemed to be a waiver of any other provision or condition of this AGREEMENT, nor a waiver of a subsequent breach of the same provision or condition.

XXVI. SURVIVAL OF TERMS

In addition to any provisions that may expressly provide for survival following expiration or termination of this AGREEMENT, those provisions of the AGREEMENT which by their very nature are incapable of being performed or enforced prior to expiration or termination of this AGREEMENT or which suggest at least partial performance or enforcement following such expiration or termination, shall survive any such expiration or termination of this AGREEMENT or an individual Schedule.

XXVII. NOTICES

All notices provided for in this AGREEMENT, including, but not limited to, notices of default hereunder and termination of this AGREEMENT, shall be in writing and shall be deemed

to have been properly given (a) upon receipt if delivered in person or by a nationally recognized overnight courier service with receipt confirmed or (b) as of the third business day after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the CCTID:

If to CONSULTANT:

Either party may change its address for the purpose of receiving notices under this AGREEMENT by written notice to the other party in the manner set forth above.

XXVIII. DUTY TO CONTINUE SERVICES

Disputes shall not interfere with the progress of the job in that CONSULTANT shall continue to proceed as ordered by the CCTID. SERVICES provided shall proceed as ordered by CCTID, subject to claim.

XXIX. SIGNATURES

The terms of this AGREEMENT are hereby agreed to by both PARTIES, as shown by the signatures of representatives of each. Each party represents that the signatories hereto have been duly authorized to execute this AGREEMENT on behalf of the party.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed as of the day and year first written above.

CONSULTANT:

**CLERMONT COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT:**

By: _____
Authorized Agent - Signature

By: _____
Authorized Agent - Signature

Authorized Agent's Name - Printed

Authorized Agent's Name - Printed

Authorized Agent's Title

Authorized Agent's Title

ATTACHMENT A
Consultant's Scope of Services and Fee Proposal

ATTACHMENT B

INSURANCE SCHEDULE

The total insurance coverage and related provisions, specified hereinafter, have been selected to provide the minimum protection to the CCTID intended by the indemnity provisions set forth in Clause XV. The CONSULTANT shall be required to maintain in full force and effect, from the date of the first authorization to proceed until the CCTID's acceptance of the SERVICES, at least the following minimum coverage. Insurance shall be maintained as specified below, for the minimum limits as indicated. Insurance shall be written by insurance companies with an A.M. Best rating of "A-" or better, authorized to transact business in the State of Ohio under the laws of the State and licensed by the Ohio Department of Insurance as either admitted or non-admitted insurers, and satisfactory to the CCTID.

The insurance coverages specified herein are intended to protect the CCTID from claims for personal and bodily injury, death, disease, and damage to tangible property including loss of use, arising in any manner from negligent acts, errors, or omissions of the CONSULTANT, its employees, agents, Subconsultants, their employees or agents, or any other representatives of the CONSULTANT involved in the prosecution of the SERVICES.

The CCTID, its officers, trustees and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, Subconsultants or any agent of any of them, and the obligations of the indemnity agreement recited above shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified.

Certificates of insurance shall be provided in the same manner and form as the insurance policies as set out above.

No invoice for any type of compensation will be honored by the CCTID without appropriate evidence of prerequisite insurance coverage.

A. PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance is required for the PROJECT unless otherwise agreed to by the CCTID.

The CONSULTANT shall obtain or maintain a professional liability insurance policy to insure against negligent acts, errors or omissions on this PROJECT in an amount not less than \$1,000,000 per claim and \$2,000,000 aggregate. The policy shall also include coverage for pollution liability and contractors pollution liability. The policy, as stated above, shall cover the period from the date of the first authorization to proceed until the CCTID's acceptance of the SERVICES plus include a discovery period of not less than two years. The discovery period shall be measured from substantial completion of the PROJECT. All design professionals and all Subconsultants providing SERVICES, including environmental and geotechnical services, shall be included in the policy as named insureds, or in the alternative be covered by the policy.

B. WORKER'S COMPENSATION AND EMPLOYEES LIABILITY

The CONSULTANT shall obtain worker's compensation insurance in compliance with Ohio's Worker's Compensation laws, and any other applicable workers' compensation or disability laws.

C. COMMERCIAL GENERAL LIABILITY INSURANCE

The CONSULTANT shall obtain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. The policy shall provide thirty (30) days notice of cancellation to the CCTID.
2. The CCTID, the Clermont County Engineer's Office, the COUNTY and the LOCAL GOVERNMENT MEMBERS and all of their respective boards, chairmen, trustees, members, officers, employees, agents, and volunteers shall be additional insureds. The form of the additional insured endorsement will be ISO CG 20 33 03 97 (Form B) or its equivalent.

D. AUTOMOBILE LIABILITY

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of

coverage:

1. Contractual Liability coverage shall be included to cover the assumed liability of the indemnity recited in Clause XV.
2. The policy shall provide thirty (30) days notice of cancellation to the CCTID.
3. The CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS and all of their respective boards, chairmen, trustees, members, officers, employees, agents, and volunteers shall be additional insureds.

E. AIRCRAFT LIABILITY

1. When necessary to use aircraft for the performance of the CONSULTANT's SERVICES under the terms of the AGREEMENT, either by the CONSULTANT or subconsultant, the CONSULTANT shall carry aircraft liability in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to the CCTID.
3. The CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS and all of their respective boards, chairmen, trustees, members, officers, employees, agents, and volunteers shall be additional insureds.

F. UMBRELLA LIABILITY

Coverage in excess of the underlying liability policies in an amount not less than \$5,000,000 Combined Single Limit shall be written on an occurrence form, and the following extensions of coverage included:

1. A thirty (30) day notice of cancellation to the CCTID.
2. Following form of primary general and automobile liability coverage.
 - a. The CCTID, the Clermont County Engineer's Office, the COUNTY, the LOCAL GOVERNMENT MEMBERS and all of their respective boards, chairmen, trustees, members, officers, employees, agents, and volunteers shall be additional insureds.
 - b. Products and Completed Operations (coverage to be included).
 - c. Explosion, Collapse and Underground (exclusions removed).
 - d. Contractual Liability (coverage to be included).

- e. Aircraft Liability (a \$6,000,000 Aircraft Liability Policy is an acceptable alternative if the CONSULTANT's Umbrella Insurer will not provide following form aircraft coverage).

G. ALL LIABILITY INSURANCE MAINTAINED BY THE CONSULTANT SHALL BE PRIMARY WITHOUT RIGHT OF CONTRIBUTION FROM ANY INSURANCE CARRIED BY THE CCTID.

H. UNLESS OTHERWISE APPROVED IN WRITING BY THE CCTID, THE CONSULTANT SHALL CAUSE EACH AGREEMENT BETWEEN THE CONSULTANT AND ANY SUBCONSULTANT OR SUBCONTRACTOR TO: (A) CONTAIN AN INDEMNIFICATION PROVISION FOR THE BENEFIT OF THE CCTID, THE CLERMONT COUNTY ENGINEER'S OFFICE, THE COUNTY, THE LOCAL GOVERNMENT MEMBERS AND ALL OF THEIR RESPECTIVE BOARDS, CHAIRMEN, TRUSTEES, MEMBERS, OFFICERS, EMPLOYEES, AGENTS AND VOLUNTEERS IN THE FORM SET FORTH IN THIS CLAUSE XV OF THIS AGREEMENT; (B) REQUIRE EACH SUBCONSULTANT OR SUBCONTRACTOR TO MAINTAIN INSURANCE OF THE TYPES REQUIRED BY THIS AGREEMENT AND HAVING AT LEAST THE LIMITS AND OTHER CHARACTERISTICS AS ARE REQUIRED BY THIS AGREEMENT WITH RESPECT TO THE CONSULTANT'S INSURANCE; AND (C) REQUIRE EACH SUBCONSULTANT OR SUBCONTRACTOR TO COMPLY WITH THE REQUIREMENTS OF THIS AGREEMENT.