




MEMORANDUM

May 12, 2014

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
David Parker, City Engineer/CIP Executive
Paul Holzen, Director of Engineering
Jeff Willoughby, Stormwater Coordinator
Tom Ingram, Staff Engineer 3
Jonathan Marston, Staff Engineer 3

SUBJECT: Consideration of Professional Services Agreement (PSA) with Civil & Environmental Consultants, Inc. (CEC) for the Stream Restoration Feasibility Study for Jordan Branch in The Meadow at Cool Springs (COF Contract 2014-0119)

Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) to consider a Professional Services Agreement (PSA) with Civil & Environmental Consultants, Inc. (CEC) to provide engineering design and additional technical services in the preparation of a Stream Restoration Feasibility Study for the section of Jordan Branch located within The Meadow at Cool Springs subdivision.

Background

For several years, the City of Franklin has received complaints from residents about erosion of Jordan Branch, which flows behind several houses in The Meadow at Cool Springs subdivision. The stream originates near the city limits between Brentwood and Franklin, directly adjacent to the Nashville Golf & Athletic Club. The Tennessee Department of Environment and Conservation (TDEC) lists Jordan Branch as impaired for siltation.

Several City staff members have visited the site and are in agreement that this stream is in poor condition. A photo that is representative of the current stream condition can be found on page 2 of Attachment A.

This feasibility study will assist staff in determining the appropriate level and type of restoration work for this section of Jordan Branch. It also allows for the opportunity to engage project stakeholders at an early stage in this project's life cycle.

Financial Impact

The cost, as negotiated with CEC, for the engineering design and additional technical services is in an amount not to exceed \$21,500. This project is currently included in the FY2015 Stormwater Budget for Drainage Improvements.

Recommendation

Approval of the Professional Services Agreement with CEC (COF Contract No. 2014-0119) for an amount not to exceed \$21,500 is recommended.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No 2014-0119**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **CIVIL & ENVIRONMENTAL CONSULTANTS, INC. (CEC)** hereinafter referenced as Consultant, who mutually agree as follows:

DECLARATIONS. City desires to retain Consultant to provide engineering, related technical, and other services in connection with City’s project hereinafter referenced as Project. The Project is described as follows:

**Stream Restoration Feasibility Study for Jordan Branch
In The Meadow at Cool Springs**

1. **SCOPE OF SERVICES.** Consultant shall provide engineering and related technical services for the Project in accordance with the **SCOPE OF SERVICES**. The **SCOPE OF SERVICES** as found in **Attachment A** shall be considered as an integral part hereof.

2. Consultant shall be paid on a time and materials basis for work performed for the not-to-exceed costs for Tasks 3.1, 3.2 and 3.3 as contained in **Attachment A** for a total amount not to exceed of **TWENTY-ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$21,500.00)**. The **FEE SCHEDULE** shall be considered as an integral part hereof

3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____ 201__.

BY: _____
Consultant’s Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

ARTICLE 2. CITY'S RESPONSIBILITIES. City, or its authorized representative, will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from engaging

independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

3.5 **INDEMNIFICATION.** Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.

3.5.1 **SURVIVAL.** The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 **LIMITATIONS OF RESPONSIBILITY.** Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, **SCOPE OF SERVICES**; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, **SCOPE OF SERVICES**.

ARTICLE 4. TERMINATION BY THE CITY. The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 **Termination for Convenience.** The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The

Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
 - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 5. SCOPE OF SERVICES. Consultant shall provide the Services as described in Attachment A, SCOPE OF SERVICES.

5.1 By mutual agreement, this contract and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

ARTICLE 6. SCHEDULE.

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the fee and the time of performance of Consultant's services as indicated in Attachment A shall be adjusted equitably.

ARTICLE 7. USE OF DOCUMENTS, DATA.

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 **USE OF DATA SYSTEMS:** Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 **DISCLOSURE OF DOCUMENTS/DATA.** City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.

7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to City are only for

convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's Consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.

- d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

ARTICLE 9. PAYMENT.

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope Of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.
- 9.3 **TRAVEL; EXPENSES**
The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at www.gsa.gov [click on 'per diem rates' under the 'etools' category].

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1 **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because

of race, color, sex, national origin, disability or marital status. The City and Consultant will take affirmative action to ensure that contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be 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.

10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

10.2.1 The Consultant shall insert the foregoing provision in all contracts

relating to this Project.

10.3 **NO THIRD PARTY RIGHTS CREATED.** City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

ARTICLE 11. EXTENT OF AGREEMENT:

11.1 **APPLICABLE LAW/CHOICE OF FORUM AND VENUE.** This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

11.2 **ENTIRE AGREEMENT.** This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

12.1 If a dispute should arise relating to the performance of or payment for the services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.

12.2 **BREACH.** Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

ARTICLE 13. SURVIVAL.

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.



Civil & Environmental Consultants, Inc.

Celebrating 25 Years

March 17, 2014

Mr. Paul Holzen, P.E., LEED AP
Director of Engineering
City of Franklin
109 3rd Avenue South
Franklin, TN 37064
Delivered via email: paul.holzen@franklintn.gov

Dear Mr. Holzen:

Subject: Proposal for Professional Engineering Services
Feasibility Study for Jordan Branch/Spencer Creek in The Meadow
subdivision off Sliders Knob & Bakers Bridge Avenue
City of Franklin, Williamson County, Tennessee
CEC Project 140-624

Civil & Environmental Consultants, Inc. (CEC) is pleased to submit this proposal to the City of Franklin as discussed and requested at our meeting on February 21, 2014. Our preparation of this proposal is based on our meeting on February 21 and a site visit made by CEC on February 13, 2014.

1.0 BACKGROUND

CEC understands that the City of Franklin has had complaints for several years regarding erosion of Jordan Branch/Spencer Creek which flows behind several houses before flowing under Cliffe Run in The Meadow subdivision located off of Bakers Bridge Avenue. The stream originates near the corporate boundary between Brentwood and Franklin at the edge of The Meadow subdivision adjacent to a golf course. Google Maps lists the stream as Jordan Branch, but the Tennessee Department of Environment and Conservation (TDEC) GIS lists it as Spencer Creek and impaired for siltation. Below is a photograph of the stream taken on February 13, 2014.



As the photograph shows, the channel is severely entrenched with eroding and undercut banks. The trees are in danger of falling and many could possibly fall on or very near houses. Relatively large portions of backyards are likely going to be “uprooted” when the trees do fall. Stormwater channels designed to convey flow from the subdivision to the stream are “head-cutting” which is also contributing to the loss of backyards in the form of eroding channels between lots.

2.0 PURPOSE

The purpose of this project is to prepare a feasibility study to determine potential ways to mitigate the eroding stream channel. Several stakeholders will need to be involved in the process of determining a solution including, but not limited to: the City of Franklin, The Meadow subdivision Home Owner’s Association, the stream’s adjacent property owners, the upstream golf course located in Brentwood, the City of Brentwood potentially, TDEC, and the Corps of Engineers.

3.0 SCOPE OF SERVICES

CEC proposes the following scope of services:

3.1 Project Map/H&H/Collaboration Meeting with City/Presentation Development

- CEC proposes to develop a working map of the site based on GIS information obtained from the City of Franklin. This map will be used to aid in communicating with the stakeholders during the feasibility study process. CEC believes this level of mapping is sufficient for a feasibility study versus investing in a comprehensive field run topographic survey at this stage. However, a field-run topographic and boundary survey will be necessary before a final solution can be designed.
- CEC will perform preliminary hydrologic and hydraulic calculations to assess the contributing drainage area and design flow rates in the channel during the 2- through 500-Year, 24-Hour design storms.
- CEC will meet with the City staff to collaborate about the known issues and potential solutions. A summary of the discussion will be prepared and sent to the City.
- CEC will develop a presentation (e.g. PowerPoint) defining the problems with the stream (using several photos) and incorporating information gathered from the City. The presentation will also include a preliminary list of project constraints. The purpose of this presentation will be to communicate the issues to the stakeholders.

3.2 Stakeholder Meetings

CEC will perform the following tasks:

- CEC will organize a meeting at the site with the regulatory agencies (i.e. TDEC, Corps) to review the existing condition of the stream and the constraints. One of the goals of this meeting will be to convey to the regulatory agencies the impaired state of the stream and the permitting approach to various mitigation options. CEC will prepare meeting minutes and distribute to the participants. CEC will update the presentation developed in Task 3.1 as appropriate based upon the outcomes of this meeting.
- CEC will present the presentation prepared in Task 3.1 at a public meeting organized by the City and be available to answer questions and discuss potential mitigation solutions. CEC will summarize the public comments and send to the City to document the meeting.

3.3 Feasibility Study Report and Recommendations

The purpose of this task will be to document and consider information gathered during the feasibility study process and develop recommendations for the next steps toward resolving the erosion problems with the stream. Planning level design and construction costs may be included; however, the cost of permitting may be a significant but unknown cost. The permitting cost may be better understood after meeting with the permitting agencies, or they may not be known until an application is submitted. For example, if the mitigation decided upon is encapsulating all or a portion of the stream in a culvert, the cost of constructing this will be highly dependent upon how the permitting agencies view the encapsulation.

4.0 SCHEDULE

CEC can begin work within two weeks of receiving your authorization to proceed.

5.0 COST

Our not-to-exceed costs are based on the scope of services described above and will be billed on a Time & Materials (T&M) basis. If CEC encounters conditions that require additional services and costs beyond what is presented in the proposal, CEC will provide a written revised scope of services and revised costs for the City of Franklin's approval prior to proceeding. The estimated cost to perform the scope of services outlined above is provided below:

Task	Not-to-Exceed Cost
3.1 Project Map/H&H/Collaboration Meeting with City/Presentation Development	\$8,800
3.2 Stakeholder Meetings	\$6,900
3.3 Feasibility Study Report and Recommendations	\$5,800
Total	\$21,500

Invoicing of professional services will be in accordance with the attached fee schedule. Reimbursable expenses, including subcontracted services, are included in our estimated costs and will be invoiced according to the attached fee schedule.

Mr. Paul Holzen, P.E., LEED AP
CEC Project 140-624
Page 5 of 5
March 17, 2014

6.0 CLOSING

CEC appreciates the opportunity to submit this proposal to you. We believe the scope of services outlined will address the City of Franklin's needs in a cost effective manner. If you have any questions or comments, please call me at 333-7797.

Very truly yours,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Steven E. Casey, P.E., CPESC
Senior Project Manager



Jeff Duke, PWS, CPESC
VP Ecological Services

Cc: Jeff Willoughby, jeff.willoughby@franklintn.gov
Jonathan Marston, jonathan.marston@franklintn.gov

Enclosures

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
 405 DUKE DRIVE • SUITE 270
 FRANKLIN, TENNESSEE 37067
 PHONE: 615-333-7797 • FAX: 615-333-7751
 E-MAIL: nashville@cecinc.com

Fee Schedule

January 1, 2014 through December 31, 2014

PROFESSIONAL SERVICES

Classification	Rate/Hour
Vice President.....	\$215
Principal	\$200
Senior Project Manager	\$175
Project Manager III	\$150
Project Manager II	\$140
Project Manager I	\$130
Assistant Project Manager	\$105
Project Consultant / Geologist / Hydrogeologist / Biologist / Scientist	\$95
Staff Consultant / Geologist / Hydrogeologist / Environmental Specialist.....	\$90
CAD Designer.....	\$90
Draftsperson / CADD Operator.....	\$60
Senior Field Technician.....	\$77
Construction Observer / Environmental Technician.....	\$75
Senior Land Surveyor	\$135
Project Land Surveyor / GPS Specialist.....	\$95
Survey Technician IV	\$80
Survey Technician III.....	\$75
Survey Technician II.....	\$68
Survey Technician I.....	\$61
Administrative Assistant.....	\$62
Administrative Manager	\$70

DIRECT EXPENSES

Company or Personal Automobile Mileage	\$0.56 /mile*
Computer / CADD Usage	\$15/hour
Other Travel Related Expenses	Cost plus 10%
Printing and Reproduction	Cost plus 10%
Telephone and Shipping	Cost plus 10%
Miscellaneous Services.....	Cost plus 10%

SUBCONTRACT SERVICES

Services @ Cost Plus 12%

* Will be modified to current IRS Rate

SCHEDULE OF TERMS AND CONDITIONS ENVIRONMENTAL SERVICES

1.0 PROPOSAL ACCEPTANCE

The following terms and conditions ("TERMS") shall apply to and are an integral part of the attached proposal between Civil & Environmental Consultants, Inc. (CEC) and the CLIENT named in the attached proposal ("CLIENT"). CLIENT's acceptance of the proposal includes acceptance of the TERMS and any terms and conditions proposed by the CLIENT will be deemed to materially alter the TERMS and are hereby objected to and rejected by CEC. Acceptance of this proposal, including acceptance of the TERMS, shall occur upon the notification of CEC by CLIENT, in writing or orally, to commence performance in accordance with the proposal and the TERMS.

2.0 WARRANTY

The CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys or explorations are made, and that site conditions may change with time. Data, interpretation, and recommendations by CEC will be based solely on information available to CEC. CEC is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

CLIENT acknowledges that whenever a Project involves hazardous or toxic materials and/or investigations of chemicals in the environment, there are inherent uncertainties involved (such as limitations on laboratory analytical methods, variations in subsurface conditions and the like) which may adversely affect the results of the Project, even though the services are performed with skill and care. CEC shall perform the services consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the services are performed. No other warranty, expressed or implied, is made.

3.0 SUBCONTRACTED SERVICES

CEC will select reputable subcontractors for test borings and/or other explorations or services based on oral or written competitive prices. The contractor's invoices shall be billed in accordance with our proposal. Nothing in this paragraph shall require that services or equipment be obtained through competitive bidding or be available from more than one source.

4.0 SERVICES OF OTHERS

On occasion, CEC engages the specialized services of individual consultants or other companies to participate in a project. When considered necessary, the cost of such services will be billed in accordance with our proposal.

5.0 SITE ACCESS AND SITE CONDITIONS

CLIENT will grant or obtain free access to the site for all equipment and personnel for CEC to perform the work set forth in this AGREEMENT. The CLIENT will notify any and all possessors of the project site that CLIENT has granted CEC free access to the site. CEC will take reasonable precautions to limit damage to the site, but it is understood by CLIENT that, in the normal course of work, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.

The CLIENT is responsible for the accuracy of locations for all subterranean structures and utilities. CEC will take reasonable precautions to avoid known subterranean structures, and the CLIENT waives any claim against CEC, and agrees to defend, indemnify, and hold CEC harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, CLIENT agrees to compensate CEC for any time spent or expenses incurred by CEC in defense of any such claim with compensation to be based upon CEC's prevailing fee schedule and expense reimbursement policy.

6.0 SAMPLES

All soil, rock and/or water samples shall be discarded 30 days after submission of our report, unless CLIENT advises us otherwise. Upon request, we will ship or deliver the samples or store them for CLIENT for an agreed upon storage charge. If such samples contain hazardous materials, oil, or asbestos, CLIENT will pay all costs associated with their storage, transport, and/or disposal.

7.0 BILLING AND PAYMENT

7.1 General: Invoicing for labor will be performed in accordance with the provisions outlined in the proposal to which these Terms and Conditions are a part. Invoices shall generally be submitted every four weeks for services performed during the previous four weeks. Payment shall be due within 30 days of invoice date. Payment shall be made as follows:

1. Lockbox (regular mail):
Civil & Environmental Consultants, Inc.
P.O. Box 644246
Pittsburgh, PA 15264-4246

2. Electronic Payments:
Bank Wire Information:
Bank: PNC Bank
Pittsburgh, PA 15222

Account Name: Civil & Environmental Consultants, Inc.
333 Baldwin Road
Pittsburgh, PA 15205

PNC Bank Routing #043000096

Bank Telephone Number: 412-762-1836

Civil & Environmental Consultants, Inc. – Account #2272405

If CLIENT objects to all or any portion of any invoice, CLIENT will so notify CEC in writing within fourteen (14) calendar days of the invoice, identify the cause of disagreement, and pay within thirty (30) days that portion of the invoice, if any, not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.

Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. CLIENT will pay an additional charge of 1-1/2 (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by the CLIENT to CEC per CEC's current fee schedules. In the event CLIENT fails to pay CEC within thirty (30) days after invoices are rendered, CLIENT agrees that CEC will have the right to suspend this AGREEMENT, without incurring liability to CLIENT, after giving seven (7) days written notice to CLIENT.

- 7.2 Litigation Services: If litigation services are not part of the proposal to which these Terms and Conditions are attached and are requested by CLIENT, the scope and invoicing terms for the requested litigation services will be identified in a separate proposal. The labor rate paid for senior CEC personnel (project manager, senior project manager, principal, or officer) for direct litigation support services shall generally be invoiced at a minimum rate of 1.5 times typical CEC rates, as specified in a separate proposal for those services.

8.0 REIMBURSABLE EXPENSES

The following items of direct non-salary expenses shall be billed according to the terms of our proposal:

- 8.1 Transportation and living expenses incurred for assignments outside the area.
- 8.2 Automobile expenses for personal or company vehicles at the allowable IRS mileage rate, plus parking and toll charges. For company vehicles, a minimum of \$85/day will be charged for use, unless the daily mileage charge for the vehicle in question exceeds \$85/day, in which case the actual daily mileage charge applies. Rental vehicles will be charged according to our proposal.
- 8.3 Long distance telephone calls, telegrams, and cables.
- 8.4 Field survey equipment usage at \$10.00/hr.
- 8.5 Computer usage and word processing at \$5.00/hour, and CADD at \$15.00/hr. connect time.
- 8.6 Shipping charges for soil and rock samples, field equipment, etc.
- 8.7 Project photographs and reproduction of drawings and reports.
- 8.8 Laboratory services, test borings, and other subcontracted services.
- 8.9 Other items directly identifiable to the project.

Our proposal does not include gross receipts taxes, business or occupation taxes or assessments that the municipality where the project is located may assess upon CEC or its subcontractors. If such taxes are or become a liability of CEC, the CLIENT agrees to reimburse CEC at cost. This tax cost reimbursement will not be subject to mark-up.

9.0 DOCUMENTS

Any letters, reports, or documents prepared by us for CLIENT, are the instruments of our engineering services. These services provided by us are solely for CLIENT's use for the project and site described in our proposal.

10.0 INSURANCE

CEC maintains Workmen's Compensation Insurance as required by state law and General Liability Insurance for bodily injury and property damage with an aggregate limit of \$1,000,000 per occurrence. CEC will furnish certificates of such insurance upon request. In the event the CLIENT desires additional coverage of this type, CEC will, upon the CLIENT's written request, obtain additional insurance (if possible) at the CLIENT's expense. Our liability to the CLIENT for bodily injury or property damage arising out of work performed for the CLIENT for which legal liability may be found to rest upon us, other than for professional errors or omissions, shall be limited to our General Liability Insurance coverage.

11.0 EVOLVING TECHNOLOGIES

The investigation, characterization, and remediation of hazardous wastes involve technologies which are rapidly evolving. Existing state-of-the-art technologies are often new and untried; future technologies may supersede current techniques. In addition, standards for remediation, including statutes and regulations, change with time. CLIENT understands that CEC's recommendations must be based upon current technologies and standards and may differ from the recommendations that might be made at a later time.

12.0 ALLOCATION OF RISK

12.1 Limitation of Remedies: Subject to all otherwise applicable statutes of limitations and repose, CLIENT agrees to limit CEC's liability to CLIENT, and to any other person or entity, for any claim arising from, or alleged to arise from any acts, errors or omissions in the performance of services under this AGREEMENT whether such claim sounds in negligence, breach of contract, strict liability, or other legal theory, except for willful misconduct or gross negligence and including any legal fees or costs awarded under this AGREEMENT, to an aggregate limit of the amount of fees paid to CEC under this AGREEMENT, or \$50,000, whichever is greater.

If CLIENT prefers not to limit our professional liability to this sum, we shall waive this limitation upon CLIENT's written request, provided that CLIENT agrees to pay for this waiver at a negotiated fee. CLIENT's request for this option must be made at the time CLIENT accepts our proposal. In the event CLIENT makes a claim against us for any act arising out of the performance of our professional services, and fails to prove such claim, then CLIENT agrees to pay all legal and other costs incurred by us in defense of such claim.

12.2 Waiver of Consequential Damages: CEC and CLIENT agree to waive any claim against each other for consequential damages.

12.3 Indemnification: CEC shall indemnify and hold harmless CLIENT from and against any and all claims, damages, or liability arising from the negligent performance of services under this AGREEMENT by CEC, including injuries to employees of CEC.

CLIENT shall defend, indemnify, and hold harmless CEC from and against any and all claims, damages, or liability arising from or related to Hazardous Materials existing at the Project Site prior to the commencement of CEC's services under this AGREEMENT, unless caused by the sole negligence or willful misconduct of CEC.

12.4 Continuing Agreement: The obligations of this section shall survive notwithstanding termination of this AGREEMENT. In the event that CLIENT requests that CEC provide additional services, CLIENT's obligations under this section shall apply to such additional services as if such additional service had to be performed as part of this AGREEMENT.

13.0 CHANGES

13.1 Unforeseen Site Conditions: CLIENT reserves the right to make reasonable changes in the work to be performed after acceptance of this AGREEMENT. CLIENT understands that unforeseen site conditions may require changes in the Scope of Work to be performed.

13.2 Unauthorized Changes: If changes are made in CEC work products by CLIENT or persons other than CEC, and these changes affect our work, any and all liability against CEC arising out of such changes is waived and you assume full responsibility for such changes unless you have given us prior notice and have received from us written consent for such changes.

13.3 CLIENT Requested Changes: Upon receipt of a change requested by CLIENT, CEC will obtain price quotations from our subcontractors and shall provide CLIENT with a quotation of the cost of having the change performed, and any increase in contract time caused by the change. CLIENT shall authorize the requested change by amending the contract price and contract time.

14.0 CONSTRUCTION OBSERVATION AND CONSTRUCTION MANAGEMENT SERVICES

If CEC is retained by the CLIENT to provide a site representative for the purpose of observing specific portions of the construction work as set forth in the PROPOSAL, then this section applies.

For the specified assignment, CEC will report observations and professional opinions to the CLIENT. No action of CEC or CEC's site representative can be construed as altering any agreement between the CLIENT and others. CEC will report any observed work to the CLIENT which, in CEC's professional opinion, does not conform with plans and specifications. CEC has no right to reject or stop work of any agent of the CLIENT. Such rights are reserved solely for the CLIENT. Furthermore, CEC's presence on the site does not in any way guarantee the completion or quality of the performance of the work of any party retained by the CLIENT to provide construction related services.

CEC will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction selected by any agent or agreement of the CLIENT, or safety precautions and programs incident thereto.

When CEC provides construction observation or management services on the job site during project construction, it is understood that, in accordance with generally accepted practices, the contractor shall be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's performance conducted by our personnel will not include review of the adequacy of the contractor's safety measures in, on or near the construction site.

CEC disclaims any and all responsibility and liability for damages that result from implementation of CEC's plans, specifications, or recommendations when CEC is not retained to observe such implementation.

15.0 NOTIFICATION OF HAZARDS

It is CLIENT's duty to notify us of any information CLIENT has with respect to the existence or suspected existence of Biological Pollutants, Hazardous Materials, oil, or asbestos in the environment, including but not limited to the air, soil, and water at the site. CLIENT will advise CEC immediately of any information which CLIENT received regarding the existence of any such Hazardous Materials or conditions at the site which might present a threat to human health and safety or the environment or impact CEC's work products. CEC shall rely on CLIENT's notification of known or suspected hazards in defining Anticipated Hazardous Materials present while performing the work.

CEC and CLIENT agree that the discovery of Unanticipated Hazardous Materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. CEC and CLIENT also agree that the discovery of Unanticipated Hazardous Materials may make it necessary for CEC to take immediate measures to protect health and safety. CLIENT agrees to compensate CEC for any equipment decontamination or other costs incident to the discovery or presence of Unanticipated Hazardous Materials.

CEC agrees to notify CLIENT when suspected Unanticipated Hazardous Materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies and third parties. CLIENT also agrees to hold CEC harmless for any and all consequences of disclosures made by CEC which are required by governing law. CEC agrees to inform CLIENT in advance of any disclosures that are required by governing law. In the event the project site is not owned by CLIENT, CLIENT agrees that, if disclosure to the property owner is required, CLIENT and not CEC shall have the responsibility for making such disclosure.

Notwithstanding any other provision of the AGREEMENT, CLIENT waives any claim against CEC, and to the maximum extent permitted by law, agrees to defend, indemnify, and save CEC harmless from any claim, liability (including but not limited to claims of a reduction (or possible reduction) in the value of property) and defense costs (including attorney and expert witness costs) for injury or loss resulting from CEC's discovery of Unanticipated Hazardous Materials. CLIENT is responsible for the disposal of all water, earth, sediment or other media, including samples taken by or on behalf of CEC, which contain Unanticipated Hazardous Materials. CLIENT shall be responsible for the cost of any required testing of Unanticipated Hazardous Materials.

16.0 DELAYS, SITE CONTROL, CONFIDENTIALITY AND DISCLOSURE

CEC does not assume, by virtue of performing work on or near the site, the responsibility or liability for any aspect or condition of the site which may now or later exist to be discovered. In particular, we do not assume the responsibility to report to any governmental or regulatory agency the existence of any conditions of the site which may present a threat to human health, safety or the environment. CEC will not intentionally divulge information regarding the proposal, our services or the report, and which is not in the public domain, except to CLIENT or those whom CLIENT designates. Notwithstanding the foregoing, you understand that we will comply with judicial orders and applicable laws and regulations regarding the reporting to the appropriate public agencies of potential dangers to the public health, safety or the environment.

17.0 RCRA COMPLIANCE

Nothing contained in this AGREEMENT shall be construed or interpreted as requiring CEC to assume the status of a generator, storer, treater, transporter, or disposal facility within the meaning of the Resource Conservation and Recovery Act of 1976, as amended, or within the meaning of any similar federal, state, or local regulation or law.

18.0 DELAYS

Delays not the fault of CEC or contractors shall result in an extension of the schedule equivalent to the length of delay. If such delays result in additional costs to CEC, the total project cost shall be equitably adjusted by the amount of such additional costs.

19.0 MEDIATION AND ARBITRATION

19.1 **Scope of Clause:** Any claim arising out of or related to this AGREEMENT, except claims which are specifically excluded from mediation and arbitration as set forth in the "Exclusions" paragraph of this section of the AGREEMENT, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. With the exception of the claims set forth in the "Exclusions" paragraph of this section of the AGREEMENT, the mediation and arbitration provisions of this section shall apply to any and all disputes between CLIENT and CEC which arise from or which are in any way related to this AGREEMENT, including, but not limited to, the interpretation of this AGREEMENT, the enforcement of its terms, and any acts, errors, or omissions of CEC in the performance of this AGREEMENT.

19.2 **Notice of Dispute:** Within forty-five (45) days of the occurrence of any incident, action, or failure to act upon which a claim for relief is based, the party seeking relief shall serve the other party with a written notice specifying the nature of the relief sought, the amount of relief sought, a description of the reason relief should be granted, and a citation of the appropriate portions of this AGREEMENT that authorize the relief requested. The Notice of Dispute requirement under this paragraph does not pertain to the claims excluded from mediation and arbitration as described in the "Exclusions" paragraph of this section of the AGREEMENT.

19.3 **Meet and Confer:** Within ten (10) days of receipt of the Notice of Dispute, the parties shall meet and confer in a good faith attempt to resolve the dispute. Participants in the meet and confer must have the authority to enter into a resolution on behalf of each party. Attorneys representing the parties may not be present at this meeting. The Meet and Confer requirement under this paragraph does not pertain to the claims excluded from mediation and arbitration as described in the "Exclusions" paragraph of this section of the AGREEMENT.

If, as a result of the parties having met and conferred, an agreement is reached resolving the dispute, the parties shall immediately execute an addendum to this AGREEMENT setting forth the terms of their agreement.

19.4 **Facilitated Mediation:** If no agreement is reached, or if the agreement does not resolve all of the issues encompassed by the Notice of Dispute, the parties shall resolve their claims by mediation

which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this AGREEMENT and the American Arbitration Association. The Request for Mediation may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

- 19.5 **Fees and Location:** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Pittsburgh, Pennsylvania, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 19.6 **Arbitration:** Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the paragraphs set forth above. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this AGREEMENT and with the American Arbitration Association.
- 19.7 **Demand for Arbitration:** A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.
- 19.8 **Limitation on Consolidation or Joinder:** Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to this AGREEMENT shall include, by consolidation or joinder or in any other manner, any person or entity not a party to this AGREEMENT under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (3) the interest or responsibility of such person or entity in the matter is not insubstantial. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.
- 19.9 **Claims and Timely Assertion of Claims:** The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.
- 19.10 **Judgment on Final Award:** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 19.11 **Non-Admissibility and Confidentiality:** The Meet and Confer and the Facilitated Mediation are conducted under the provision that evidence may not be introduced at any later proceeding of any communication, statement, document provided, expert opinion, expert report, or offer to compromise

unless such was made, provided, or disposed outside of, and not in connection with, the Meet and Confer or Facilitated Mediation. Under no circumstances may the mediator, or any documents created or maintained by the mediation, be subpoenaed, nor shall the mediator testify in any subsequent proceedings.

All communications, statements, documents provided, expert opinions, expert reports, or offers to compromise are confidential and may not be disclosed without the written consent of the party making the statement or offering the information.

- 19.12 **Cross-Claims:** If a party contends that all or part of a claim described in the Notice of Dispute is offset by a cross-claim, or if a party contends that it has a claim which arises out of the same factors upon which the Notice of Claim is based, the party must, within seven days after receipt of the Notice of Claim, provide a written Notice of Cross-claim setting forth the same information as required in a Notice of Claim. The cross-claim shall be resolved in the Meet and Confer or the Facilitated Mediation in the same manner as the claim described in the Notice of Dispute.

Any agreement reached in the Meet and Confer or the Facilitated Mediation shall bar the later assertion in any action, arbitration, or other proceeding of any cross-claim which was required to be asserted by this section unless the parties' written resolution agreement explicitly reserves such cross-claim.

- 19.13 **Exclusions:** The mediation and arbitration provisions of this section **do not apply** to claims which arise out of or relate to disputes between CEC and CLIENT concerning amounts owed CEC for performance of services and/or disputes between CEC and CLIENT concerning the payment of CEC's invoices as provided in the "Billing and Payments" section of this AGREEMENT. Rather, CEC and CLIENT agree that any court of record of Allegheny County, Pennsylvania, shall have jurisdiction and venue over any claims excluded from mediation and arbitration as provided herein.

20.0 MISCELLANEOUS

- 20.1 **Controlling Law:** The law of the Commonwealth of Pennsylvania will govern the validity of these TERMS, their interpretation and performance, as well as the contract entered into between the parties to which these TERMS relate. If any part of this AGREEMENT shall be held illegal, unenforceable, void, or voidable by any court of competent jurisdiction, each of the remainder of the provisions shall nevertheless remain in full force and effect as a separate contract and shall in no way be affected, impaired, or invalidated.
- 20.2 **Attorneys' Fees:** If any action or arbitration or other proceeding is commenced to enforce any of the terms of this AGREEMENT, the performance thereof, or of any other judgment embodying any of its provisions, the prevailing party shall be awarded reasonable attorneys' fees, costs, and expenses in addition to any other relief granted.
- 20.3 **Severability/Integration/Modification:** This AGREEMENT, including attachments incorporated herein by reference, represents the entire AGREEMENT and understanding between the parties, and any negotiations, proposals, or oral agreements are intended to be integrated herein and to be superseded by this AGREEMENT.

This AGREEMENT may not be modified or altered, except by an agreement in writing and signed by authorized representatives of both parties hereto, which specifically refers to this AGREEMENT.

- 20.4 **Definition of Hazardous Materials:** The term Hazardous Materials shall mean any toxic substances, chemicals, pollutants, or other materials, in whatever form or state, including, but not limited to smoke, vapors, soot, fumes, acids, alkalis, minerals, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant, that is known or suspected to adversely affect the health and safety of humans or of animal or plant organisms, or which are known or suspected to impair the environment in any way whatsoever and shall include, but not be limited to, those substances defined, designated, or listed in Section 4004 of the Solid Waste Disposal Act (42 USC Subsection 6903); Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Subsection 9601(14)); as listed or designated under Sections 1317 and 1321(b)(2)(a) of the Title 33 (33 USC Subsections 1317 and 1321(b)(2)(a)) or as defined, designated, or listed under any other federal, state, or local law, regulation, or ordinance concerning hazardous wastes, toxic substances, or pollution.
- 20.5 **Definition of Biological Pollutants:** The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, and viruses, and the by-products of any such biological organisms.
- 20.6 **Waste Manifests:** If during remedial construction activities waste manifests are required, CLIENT shall provide an authorized person to sign manifests or agrees to provide CEC with a written limited power of attorney to sign manifests.

21.0 DESIGN/BUILD SERVICES

If CLIENT requests CEC-led design-build services, those design-build services will be performed in accordance with separate terms and conditions that specifically address design-build services.

22.0 BIOLOGICAL POLLUTANTS

CEC's scope of services, unless specifically outlined in our written scope of services, does not include the investigation or detection of the presence of any Biological Pollutants in or around any structure. CLIENT agrees that CEC will have no liability for any claim regarding bodily injury or property damage alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants, in or around any structure. In addition, CLIENT will defend, indemnify, and hold harmless Consultant from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants in or around any structure, except for damages arising from or caused by CEC's sole negligence.

23.0 CONSENT TO ASSIGNMENT

CLIENT and CEC, respectively, each binds itself and its successors and assigns to the other and its successors and assigns with respect to all covenants of these TERMS. Neither CLIENT nor CEC shall assign, sublet or transfer any rights under or interest in these TERMS without the prior written consent of the other party, including, but not limited to (a) any interest in the proceeds of these TERMS, or any proceeds of claims arising from or under these TERMS; (b) any claims, causes of action or rights against the other party arising from or under these TERMS; (c) the control of claims or causes of action against the other party arising from or under these TERMS; and (d) any proceeds from claims or causes of action as security, collateral, or the source of payment for any notes or liabilities to any third party. This section shall not, however, apply to any subrogation rights (if any) of any insurer of either party. This section shall survive the completion or termination of these TERMS for any reason and shall remain enforceable between parties.

24.0 TERMINATION

This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if the CLIENT suspends the work for more than three (3) months. In the event of termination, CEC will be paid for services performed prior to the date of termination plus reasonable termination expenses, including the cost of completing analyses, records and report necessary to document job status at the time of termination.

25.0 FILE RETENTION

After this project is concluded, our file on the project will be closed. All documents and information within the project file will be retained by CEC, and may be sent offsite for storage. Unless you make other arrangements with us, CEC reserves the right to destroy all file information seven (7) years after the project is closed.

END OF TERMS AND CONDITIONS