



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

April 8, 2011

TO: Capital Investment Committee

FROM: Mark Hilty, Water Management Director
Eric S. Stuckey, City Administrator
David Parker, P.E., City Engineer

SUBJECT: Consideration of Professional Services Agreement with Gresham Smith & Partners for Engineering Services for the West Main Street Sanitary Sewer and Water Distribution Infrastructure Rehabilitation and Replacement Project (COF Contract 2011-0063).

Purpose

The purpose of this memo is to recommend approval of a Professional Services Agreement with Gresham Smith & Partners (GS&P) for Engineering Services for the design of sanitary sewer and water infrastructure improvements in the vicinity of West Main Street and 8th Avenue.

Background

The sanitary sewer infrastructure in the subject area is primarily 8" diameter clay pipe that has an unspecified age. Based on structure information from the County Assessor's office, it appears that the line between Fair Street and West Main Street is in excess of 90 years old. There are three permanent structures that were built over the sanitary sewer lines in this area. These structures are located at 709 Fair Street, 712 W. Main Street, and 725 W. Main Street. County Assessor data indicates that these structures were built in 1930, 1920, and 1974 respectively. A fourth structure was built over the sanitary sewer line in 1941 at 704 Fair Street however due to line failure, the sanitary sewer was rerouted in 2008. Other issues in the area include an exposed sanitary sewer service line at 720 W. Main Street that crosses a concrete and stone lined ditch approximately 18 inches above the invert. Figures 1, 2 and 3 attached to this memorandum depict the current alignments.

The tributary area to the rerouted Fair Street line is approximately 110 acres with commercial, residential and institutional uses. The sewer in the vicinity of the problem area in general follows the alignment of an urbanized creek.

The Water Management Department has received 10 sanitary sewer related service requests in the area over the past 5 years from 5 different property owners all of which on a localized level have been addressed. The service requests in general are related to sanitary sewer main blockages due to obstructions and sanitary sewer backups due to infiltration and inflow during intense rain events. This in addition to recent conversations with various property owners in the area has prompted action to address these ongoing issues.



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Based on field information gathered, the infrastructure in this area requires replacement or rehabilitation to alleviate the ongoing problems. Complicating factors include large infrastructure for the urbanized creek, homes in low lying areas that conflict with sanitary sewer alignment, elevation challenges in rerouting gravity sanitary sewer, shallow bedrock, and potential for other utility conflicts.

These factors require stepping back and looking at a wider area to address the easement encroachments and to construct a long term solution to address the immediate problem and to replace or rehabilitate some of the aging infrastructure tributary to the problem area. Staff and GS&P, in considering costs and constructability have developed a conceptual layout of the proposed work presented in Figure 4. Staff believes that this alternative, using a hybrid of replacement and rehabilitation, best serves the City by addressing the local problem while addressing emerging infiltration and inflow in portions of the tributary area.

Financial Impact

The engineering services for this project, inclusive of design, survey, construction administration and post-construction as-builts is \$132,400.

Recommendation

Staff recommends approval of the Professional Services Agreement with Gresham Smith & Partners for an amount not to exceed \$135,000.

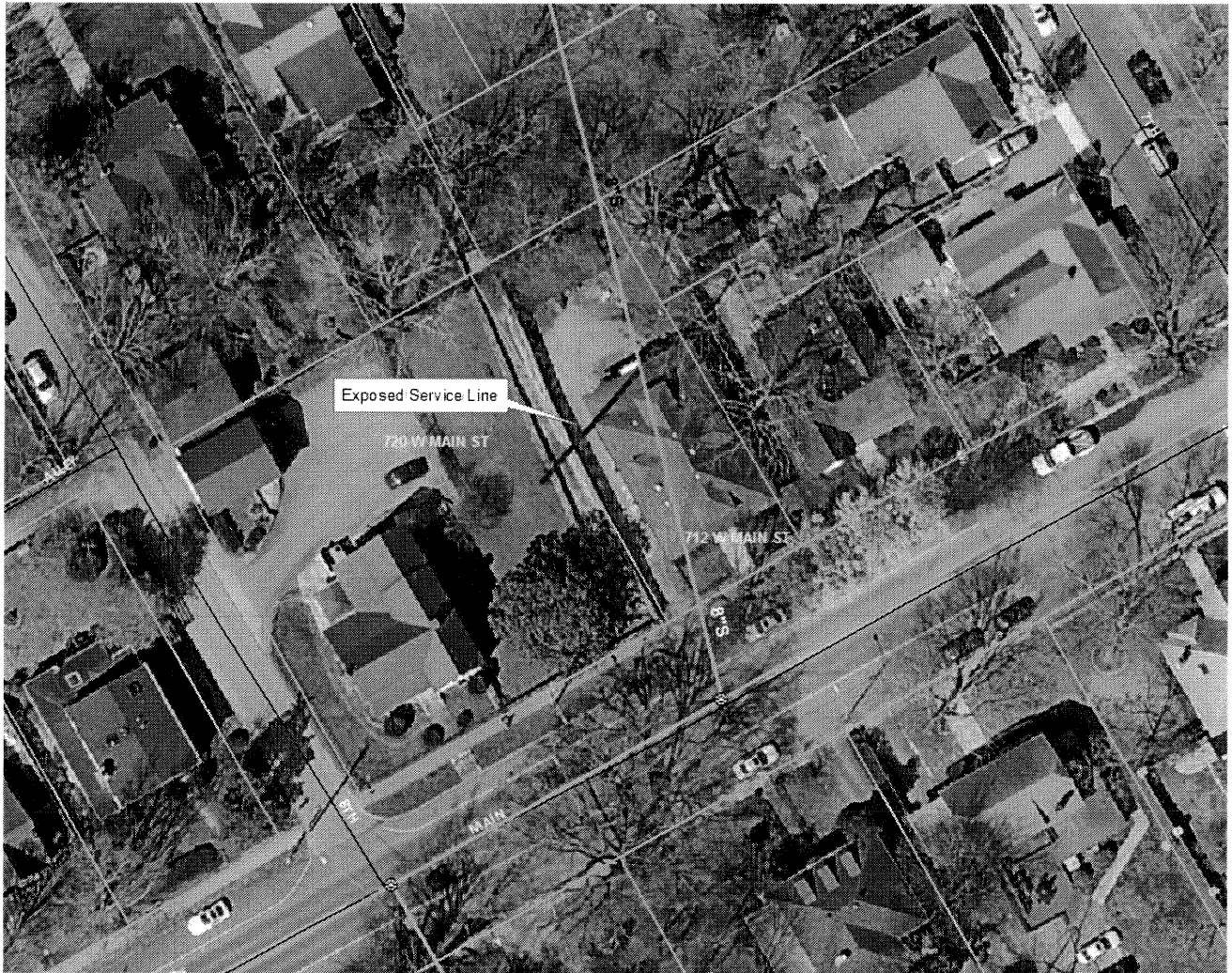


Figure 1



Figure 2



Figure 3



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March 22, 2011

Mr. Mark S. Hilty, P.E.
Director, Water Management Department
City of Franklin
405 Hillsboro Road
Franklin, TN 37064

**Subject: Proposal for Engineering Services
 West Main Water and Sewer Rehabilitation
 City of Franklin, Tennessee**

Dear Mark:

On behalf of Gresham, Smith and Partners we are pleased to have the opportunity to submit this professional services proposal to provide engineering services for the above referenced project.

We have enclosed an engineering services proposal (Exhibit A) to perform this work. If you find this proposal acceptable, please sign both copies and return one to our office. We look forward to working with you on this important project.

Sincerely,
Gresham, Smith and Partners

Jason Griffin, P.E.
Principal
Water Services

Attachments as stated.

Copy: Eric Gardner, City of Franklin
 Joe Whitson, GS&P
 Mike Flatt, GS&P
 Carl Munkel, GS&P
 Ken Stewart, GS&P
 File 19259.12/00.0

Design Services For The Built Environment

1400 Nashville City Center / 511 Union Street / Nashville, Tennessee 37219-1733 / Phone 615.770.8100 / www.gspnet.com



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EXHIBIT A - Proposal for Engineering Services

Introduction

Gresham, Smith and Partners (hereinafter referred to as “Engineer”) proposes to provide professional consulting services for the City of Franklin (hereinafter referred to as “Owner”) related to engineering services (hereinafter referred to as “Project”). Our understanding of the Project as well as our scope of services, compensation, and schedule for completing the Project is presented hereafter.

Project Understanding

According to City officials, the sewer line in the area generally bounded by Nineth Avenue, Highway 96 W, Seventh Avenue, and Columbia Avenue is 75 years old. The sewer in this area is in dire need of rehabilitation and in some areas replacement. Video inspection is limited due to the poor condition of the pipe in this area. Accordingly, system hydraulics is not efficient and in some areas requires realignment.

The affected sewer lines are 8-inch diameter or smaller. A 12-inch diameter sewer to replace the existing 8-inch sewer is proposed along Nineth Avenue from Columbia Avenue to Fair Street, then along Fair Street to the new section of 12-inch sewer near the intersection with Seventh Avenue. The remaining sewer line in the project area will be rehabilitated using trenchless technology such as cured-in-place-pipe (CIPP) lining. Point repairs will likely be required.

Replacement of the 8-inch diameter sewer with a proposed 12-inch sewer will result in considerable asphalt disturbance along Nineth Avenue and Fair Street. Thus repaving of the streets will be required. Replacement of the water lines paralleling the gravity sewer in these disturbed areas should also be considered as cost will be minimal. Replacement of the remaining water line in the project area should be considered due to potentially improved hydraulics as well as addressing future maintenance issues.

Based on the information provided by City officials, it is the Engineer’s opinion that a 12-inch sewer along Nineth Avenue from Columbia Avenue to Fair Street, then along Fair Street to the new section of 12-inch sewer near the intersection with Seventh Avenue will be sufficient for future growth. Rehabilitation of the existing 8-inch sewer line and replacement of the existing 6-inch and 8-inch water lines will be sufficient for the project area growth needs. City officials will verify the adequacy of the water line sizes. Our proposal is based on these improvements.

Our proposal includes a sewer system evaluation study (SSES), land surveying, design phase, permitting, bid phase, construction phase, change-order, and post-construction phase services. Resident Project Observation will be provided by the Owner.



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Scope of Services

The Engineer will perform the following basic services:

Sewer System Evaluation Study (SSES)

- Provide sub-consultant services to investigate the existing conditions of the sewer system scoped herein. Services will be limited to smoke testing, televising, and dye tracing to identify location of services.

Surveying

- Perform 30-foot wide topographic survey within the ROW of sections of Ninth Avenue, Highway 96 W, Seventh Avenue, Eighth Avenue, and West Main Street as well as survey the sewer along the driveway for the apartment complex. Refer to the attached figure for the project scope area. Survey will include all existing structures and identified utilities including measurement of invert elevations of gravity pipe structures. Surveying cost is based on the preliminary route review findings that the proposed utilities will be installed within the ROW. Therefore, no surveying shall be conducted outside the ROW except as identified herein. No deed research will be performed nor will property parcel corners be located for ROW strip survey.

Design Phase

- Generate construction documents for approximately 3,200 LF of gravity sewer replacement/rehabilitation and 2,700 LF of water line replacement in accordance with the Owner's standard specifications and TDEC regulations.
- Develop a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI). This document must be submitted to receive a Notice of Coverage after a contractor has been selected.
- Submit plans and specifications to obtain TDEC Division of Water Supply and Division of Water Pollution Control approval.
- Prepare bidding documents.

Easement Descriptions

- Develop utility easement descriptions as required. Based on the preliminary routing previously described we anticipate one (1) easement description will be required. If routing changes, thus requiring additional easement descriptions, the Engineer will provide a cost to the Owner.

Bid Phase

- Provide the Advertisement for Bid to the Owner for public notification.
- Issue required Engineer addendums. Addendums required by the Owner shall be considered additional services.
- Distribute bidding documents to Bidders.
- Process requests for information (RFI's).
- Conduct bid opening.
- Administer the award of a construction contract.



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Addendums

- Issue Owner required addendums. Bid phase services include time for the Engineer to issue addendums caused by the oversight on part of the Engineer. Addendums which are issued due to additions or changes to the construction documents on part of the Owner are considered additional services for which the Engineer will provide a cost.

Construction Phase

- Conduct a pre-construction conference.
- Process submittals and shop drawings.
- Review and process pay estimate requests.
- Review and process change order requests. Change order requests related to work directive changes or changes in scope shall be considered additional services.
- Coordinate and conduct construction progress meetings.
- Conduct project closeout activities.
- Construction phase services are based on an anticipated construction schedule of 180 calendar working days.

Change Orders

- Process Owner change order directives. Construction phase services include time for the Engineer to process change orders caused by the oversight on part of the Engineer. Change orders which are processed due to additions or changes to the construction documents on part of the Owner are considered additional services for which the Engineer will provide a cost.

Post-Construction Phase

- Generate electronic record drawings based on Contractor and Owner field record drawings.

Services Not Included in Fee Proposal

Professional and engineering services not included within this proposal consist of: soil testing, geotechnical investigation, drainage design, landscape architecture, resident project observation, and easement acquisition.

Owner Responsibilities

The Owner shall provide the Engineer with the required gravity sewer and water line diameter, GIS mapping of existing utilities, and coordinate private property entry for surveying of easement property and utility structures that may extend beyond right-of-way. The Owner shall also coordinate utility locating with the Engineer's surveyors to ensure that all existing utilities are marked prior to surveying.



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Deliverables

- Sanitary Sewer Evaluation Study (SSES): The Engineer will provide sub-consultant services to identify the condition of the existing sewer and services.
- Preliminary Design: The Engineer will provide the Owner with four (4) sets of construction drawings for review and comment.
- Final Design: The Engineer will submit two (2) sets of construction documents to the Owner for review and approval.
- TDEC Approval: The Engineer will submit four (4) sets of construction documents to the Agency for review and approval.
- SWPPP Permitting: The Engineer will submit required documents to obtain approval for construction activity.

Fee

The Engineer proposes to complete the Scope of Services defined herein for an hourly rate schedule according to the budgets and maximum hours presented. Hourly rates are presented in Exhibit B: Standard Hourly Rates Schedule & Reimbursable Expenses Schedule. Estimated reimbursable expenses are expected to be \$2,000.

<u>Basic Services</u>	<u>Budget</u>	<u>Max. Hours</u>
SSES	\$ 5,000	56
Surveying	\$ 10,000	111
Design Phase	\$ 89,000	1,047
Easement Descriptions	\$ 400	5
Bid Phase	\$ 6,000	75
Addendums	To be provided	N/A
Construction Phase	\$ 18,000	200
<i>(Note: Construction phase services are based on a calendar day schedule of 180 days.)</i>		
Change Orders	To be provided	N/A
Post-Construction Phase	\$ 4,000	48
Total	\$132,400	1,542

In the event Owner requests that Engineer provide additional services beyond those stated herein, Engineer will provide the extra services and invoice Owner according to Exhibit B: Standard Hourly Rates Schedule & Reimbursable Expenses Schedule.

All accounts unpaid after 30 days from the date of original invoice will be subject to a service charge of 1-1/2% per month.



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Schedule

Engineer proposes to provide the Basic Services necessary to complete the project in a timely manner according to the schedule presented. The proposed schedule is based on the orderly and continuous progression of the project through completion. In the event that issues arise beyond the Engineer's control, the proposed schedule shall be adjusted accordingly.

<u>Task</u>	<u>Milestone Date</u>	<u>Duration</u>
Notice to Proceed:	March 24, 2011	
SSES:	March 2011	
Surveying:	April 2011	
Preliminary Design:	May 2011	30 days
Owner Review:	June 2011	
Final Design:	September 2011	60 days
Owner Approval:	September 2011	7 days
Agency Reviews:	October 2011	45 days
Bidding Documents:	November 2011	
Advertisement for Bid:	December 2011	
Pre-Bid Conference:	December 2011	
Bid Opening:	December 2011	
Award Contract:	January 2012	
Pre-Con Meeting:	February 2012	
Start Work:	March 2012	180 days
Project Completion:	October 2012	

The outlined schedule meets the December 2012 completion requirement.



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If you find this proposal to be acceptable, please sign and date all three copies in the space provided and return two copies to our office. The introduction letter, signed Exhibit A: Proposal for Engineering Services, Exhibit B: Standard Hourly Rates Schedule / Reimbursable Expenses Schedule, and the City of Franklin, Tennessee Professional Services Agreement represent the entire understanding between the Owner and Engineer and may only be modified in writing by both parties.

Accepted,

City of Franklin

Gresham, Smith and Partners

Name

Name

Signature

Signature

Title

Title

Date

Date



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EXHIBIT B - Standard Hourly Rates & Reimbursable Expenses Schedule

The following classifications and associated unit rates are general and will be used as guidelines for the services of professional disciplines offered: They are subject to be updated up to twice annually.

Professional Services

Classification	Rate/Hour
Principal-in-Charge	\$155
Project Manager	\$115
Project Engineer	\$90
Intern Engineer	\$75
Senior Project Engineer	\$120
Survey Manager	\$125
Project Surveyor	\$100
Mechanical Engineer	\$145
Electrical Engineer	\$135

Technical Services

Classification	Rate/Hour
Project Coordinator	\$80
CADD Technician II	\$65
CADD Technician III	\$80
Surveying Party Chief	\$70
One Man Robotic Crew	\$90
Survey CADD Technician I	\$60
Administrative Assistant	\$60
Clerical	\$50
Construction Administrative Assistant	\$65
Resident Project Representative	\$80

Expenses

	Rate
Automobile Travel	\$0.50/mile
Other travel and subsistence expenses (lodging, meals, air travel, etc.)	At Cost
Printing, overnight mail, courier, long distance, postage, copies, etc.	At Cost

Sub-Consultant Services	At Cost
Agency Review Fees	At Cost

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No 2011-0063**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **GRESHAM SMITH & PARTNERS (GS&P)** hereinafter referenced as Consultant, who mutually agrees 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:

**WEST MAIN STREET WATER AND
SANITARY SEWER REHABILITATION PROJECT**

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 receive payment for work performed based on the **FEE SCHEDULE** as presented in **Attachment A** in an **Amount Not to Exceed One Hundred Thirty-Five Thousand and No/100 Dollars (\$135,000.00)**. 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 paragraph.

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 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.
- 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.

OFFICE OF ENFORCEABLE CONSTRUCTION COSTS
GRAVITY SEWER REPLACEMENT - 9th Avenue Tunnel
WEST MAIN WATER AND SEWER
CITY OF FRANKLIN, TN
March 3, 2011

Item	Description	Quantity	Unit	Unit Price	Total Price
1	24-inch HOBAS Gravity Sewer w/ Steel Tunnel Liner - 48" square man entry tunnel	1080	LF	\$900.00	\$972,000.00
2	8-inch SDR 35 PVC Gravity Sewer	495	LF	\$200.00	\$99,000.00
3	Gravity Sewer Replacement, 8-inch PVC		LF	\$200.00	\$0.00
4	Pre-Lining Clean and Quick-Pull TV, 8-inch Sewer Line	1715	LF	\$2.00	\$3,430.00
5	Heavy Cleaning, 8-inch Sewer Line	24	HR	\$175.00	\$4,200.00
6	Service Connection Replacement (exist. Gravity Sewer)	30	EA	\$1,000.00	\$30,000.00
7	Point Repair of 8-inch Line (Up to 10 LF to Replace)	20	EA	\$2,200.00	\$44,000.00
8	Additional 8-inch Line Replacement at Point Repair Location	100	LF	\$78.00	\$7,800.00
9	8-inch Cured-in-Place Pipe Lining	1355	LF	\$32.00	\$43,360.00
10	Clear Protruding Service Laterals	10	EA	\$1,500.00	\$15,000.00
11	Cured-in-Place Service Laterals	10	EA	\$4,000.00	\$40,000.00
12	Root Removal for Cured-in-Place Service Laterals	10	EA	\$200.00	\$2,000.00
13	Service Lateral Reinstatement	30	EA	\$10.00	\$300.00
14	New Clean-out	30	EA	\$1,800.00	\$54,000.00
15	Post-Lining Quick-Pull TV, 8-inch Sewer Line	2795	LF	\$2.00	\$5,590.00
16	Residential E-One Packaged Grinder Station	3	EA	\$4,000.00	\$12,000.00
17	1-1/4 inch Force Main	400	LF	\$25.00	\$10,000.00
18	4-foot Diameter Manhole (6-feet deep)	8	EA	\$4,500.00	\$36,000.00
19	Additional Manhole Depth for 4-foot Diameter Manhole	22	VLF	\$300.00	\$6,600.00
20	Additional Concrete for Manhole Bases/labs not listed on Drawings to be used per Engineer's direction	6	CY	\$155.00	\$930.00
21	Manhole Rehabilitation - 4-foot diameter	4	EA	\$3,000.00	\$12,000.00
22	Additional Manhole Rehabilitation Depth Over 6-feet - 4-foot diameter	20	VLF	\$260.00	\$5,200.00
23	Manhole Replacement - 4-foot diameter	1	EA	\$5,000.00	\$5,000.00
24	Additional Manhole Replacement Depth Over 6-feet - 4-foot diameter	7	EA	\$500.00	\$3,500.00
25	Manhole Watertight Frame and Cover	8	EA	\$750.00	\$6,000.00
26	Manhole Standard Frame and Cover	1	EA	\$650.00	\$650.00
27	Replace Existing Frame and Cover w/ Watertight Frame and Cover	3	EA	\$750.00	\$2,250.00
28	Replace Existing Frame and Cover w/ Standard Frame and Cover	1	EA	\$650.00	\$650.00
29	Undercutting and Replacing of Unsuitable Bedding Material	3	TON	\$5.00	\$15.00
30	Fill abandoned sewer line with non-shrink grout	200	LF	\$100.00	\$20,000.00
31	Concrete Encasement	20	LF	\$100.00	\$2,000.00
32	Asphalt Surface Replacement	1715	LF	\$47.00	\$80,605.00
33	Aggregate Surface Replacement	20	LF	\$17.00	\$340.00
34	Concrete Curb & Gutter Replacement	1715	LF	\$14.00	\$24,010.00
35	Concrete Sidewalk Replacement	1715	LF	\$18.00	\$30,870.00
36	Landscaping	1	LS	\$5,000.00	\$5,000.00
37	Erosion and Sediment Control	1	LS	\$10,000.00	\$10,000.00
38	Water Line Replacement - See separate sheet				\$168,400.00
Total Cost					\$1,749,200.00

Length of Construction
SSES
Surveying
Geotechnical - Core Pavement, 30' deep holes, soil testing - 12 holes
Engineering Design per RUS Guidelines
Resident Project Representative (\$15,000 per month)
Resident Project Representative Expenses (\$1,000 per month)
Contingencies (approximately 5% of project cost)
Total

6 months
\$5,000.00
\$10,000.00
\$18,275.00
\$131,500.00
\$90,000.00
\$6,000.00
\$102,954.47
\$2,130,929.47

OPINION OF PROBABLE CONSTRUCTION COST
 GRAVITY SEWER REPLACEMENT - 9th Avenue Gravity
 WEST MAIN WATER AND SEWER
 CITY OF FRANKLIN, TN
 March 3, 2011

Item	Description	Quantity	Unit	Unit Price	Total Price
1	12-inch SDR 35 PVC Gravity Sewer - Trenched and installed in the middle of the road	1450	LF	\$400.00	\$580,000.00
2	8-inch SDR 35 PVC Gravity Sewer	541	LF	\$200.00	\$108,200.00
3	Gravity Sewer Replacement, 8-inch PVC		LF	\$200.00	\$0.00
4	Pre-Lining Clean and Quick-Pull TV, 8-inch Sewer Line	1205	LF	\$2.00	\$2,410.00
5	Heavy Cleaning, 8-inch Sewer Line	24	HR	\$175.00	\$4,200.00
6	Service Connection Replacement (exist. Gravity Sewer)	30	EA	\$1,000.00	\$30,000.00
7	Point Repair of 8-inch Line (Up to 10 LF to Replace)	20	EA	\$2,200.00	\$44,000.00
8	Additional 8-inch Line Replacement at Point Repair Location	100	LF	\$78.00	\$7,800.00
9	8-inch Cured-in-Place Pipe Lining	1205	LF	\$32.00	\$38,560.00
10	Clear Protruding Service Laterals	10	EA	\$150.00	\$1,500.00
11	Cured-in-Place Service Laterals	10	EA	\$4,000.00	\$40,000.00
12	Root Removal for Cured-in-Place Service Laterals	10	EA	\$200.00	\$2,000.00
13	Service Lateral Reinstatement	10	EA	\$10.00	\$100.00
14	New Clean-out	30	EA	\$1,800.00	\$54,000.00
15	Post-Lining Quick-Pull TV, 8-inch Sewer Line	1205	LF	\$2.00	\$2,410.00
16	Residential E-One Packaged Grinder Station	3	EA	\$4,000.00	\$12,000.00
17	1-1/4 inch Force Main	400	LF	\$25.00	\$10,000.00
18	4-foot Diameter Manhole (6-feet deep)	6	EA	\$4,500.00	\$27,000.00
19	Additional Manhole Depth for 4-foot Diameter Manhole	22	VLF	\$300.00	\$6,600.00
20	Additional Concrete for Manhole Baseslabs not listed on Drawings to be used per Engineer's direction	6	CY	\$155.00	\$930.00
21	Manhole Rehabilitation - 4-foot diameter	5	EA	\$3,000.00	\$15,000.00
22	Additional Manhole Rehabilitation Depth Over 6-feet - 4-foot diameter	20	VLF	\$260.00	\$5,200.00
23	Manhole Replacement - 4-foot diameter	1	EA	\$5,000.00	\$5,000.00
24	Additional Manhole Replacement Depth Over 6-feet - 4-foot diameter	7	EA	\$500.00	\$3,500.00
25	Manhole Watertight Frame and Cover	6	EA	\$750.00	\$4,500.00
26	Manhole Standard Frame and Cover	1	EA	\$650.00	\$650.00
27	Replace Existing Frame and Cover w/ Watertight Frame and Cover	5	EA	\$750.00	\$3,750.00
28	Replace Existing Frame and Cover w/ Standard Frame and Cover	1	EA	\$650.00	\$650.00
29	Undercutting and Replacing of Unsuitable Bedding Material	3	TON	\$5.00	\$15.00
30	Fill abandoned sewer line with non-shrink grout	570	LF	\$100.00	\$57,000.00
31	Concrete Encasement	20	LF	\$100.00	\$2,000.00
32	Asphalt Surface Replacement	2400	LF	\$47.00	\$112,800.00
33	Aggregate Surface Replacement	20	LF	\$17.00	\$340.00
34	Concrete Curb & Gutter Replacement	2400	LF	\$14.00	\$33,600.00
35	Concrete Sidewalk Replacement	2400	LF	\$18.00	\$43,200.00
36	Landscaping	1	LS	\$5,000.00	\$5,000.00
37	Erosion and Sediment Control	1	LS	\$10,000.00	\$10,000.00
38	Water Line Replacement - See separate sheet				\$168,400.00
	Total Cost				\$1,442,315.00

Length of Construction	6 months
SSES	\$5,000.00
Surveying	\$10,000.00
Engineering Design per RUS Guidelines	\$95,000.00
Resident Project Representative (\$15,000 per month)	\$90,000.00
Construction Administration (\$3,000 per month)	\$18,000.00
Contingencies (approximately 5% of project cost)	\$85,000.00
Total	\$1,751,315.00

OPINION OF PROBABLE CONSTRUCTION COST
GRAVITY SEWER REPLACEMENT - Original Request
WEST MAIN WATER AND SEWER
CITY OF FRANKLIN, TN
March 3, 2011

Item	Description	Quantity	Unit	Unit Price	Total Price
1	12-inch SDR 35 PVC Gravity Sewer	1159	LF	\$400.00	\$463,600.00
2	8-inch SDR 35 PVC Gravity Sewer	495	LF	\$200.00	\$99,000.00
3	Gravity Sewer Replacement, 8-inch PVC	720	LF	\$200.00	\$144,000.00
4	Pre-Lining Clean and Quick-Pull TV, 8-inch Sewer Line		LF	\$2.00	\$0.00
5	Heavy Cleaning, 8-inch Sewer Line		HR	\$175.00	\$0.00
6	Service Connection Replacement (exist. Gravity Sewer)	30	EA	\$1,000.00	\$30,000.00
7	Point Repair of 8-inch Line (Up to 10 LF to Replace)		EA	\$2,200.00	\$0.00
8	Additional 8-inch Line Replacement at Point Repair Location	480	LF	\$78.00	\$0.00
9	8-inch Cured-in-Place Pipe Lining		LF	\$32.00	\$15,360.00
10	Clear Protruding Service Laterals		EA	\$150.00	\$0.00
11	Cured-in-Place Service Laterals		EA	\$4,000.00	\$0.00
12	Root Removal for Cured-in-Place Service Laterals		EA	\$200.00	\$0.00
13	Service Lateral Renstatement		EA	\$10.00	\$0.00
14	New Clean-out	30	EA	\$1,800.00	\$54,000.00
15	Post-Lining Quick-Pull TV, 8-inch Sewer Line	2795	LF	\$2.00	\$5,590.00
16	Residential E-One Packaged Grinder Station	3	EA	\$4,000.00	\$12,000.00
17	1-1/4 inch Force Main	400	LF	\$25.00	\$10,000.00
18	4-foot Diameter Manhole (6-feet deep)	8	EA	\$4,500.00	\$36,000.00
19	Additional Manhole Depth for 4-foot Diameter Manhole	22	VLF	\$300.00	\$6,600.00
20	Additional Concrete for Manhole Bases/labs not listed on Drawings to be used per Engineer's direction	6	CY	\$155.00	\$930.00
21	Manhole Rehabilitation - 4-foot diameter	1	EA	\$3,000.00	\$3,000.00
22	Additional Manhole Rehabilitation Depth Over 6-feet - 4-foot diameter	4	VLF	\$260.00	\$1,040.00
23	Manhole Replacement - 4-foot diameter	5	EA	\$5,000.00	\$25,000.00
24	Additional Manhole Replacement Depth Over 6-feet - 4-foot diameter	27	EA	\$500.00	\$13,500.00
25	Manhole Watertight Frame and Cover	8	EA	\$750.00	\$6,000.00
26	Manhole Standard Frame and Cover	1	EA	\$650.00	\$650.00
27	Replace Existing Frame and Cover w/ Watertight Frame and Cover	3	EA	\$750.00	\$2,250.00
28	Replace Existing Frame and Cover w/ Standard Frame and Cover	1	EA	\$650.00	\$650.00
29	Undercutting and Replacing of Unsuitable Bedding Material	3	TON	\$5.00	\$15.00
30	Fill abandoned sewer line with non-shrink grout	200	LF	\$100.00	\$20,000.00
31	Concrete Encasement	20	LF	\$100.00	\$2,000.00
32	Asphalt Surface Replacement	1715	LF	\$47.00	\$80,605.00
33	Aggregate Surface Replacement	20	LF	\$17.00	\$340.00
34	Concrete Curb & Gutter Replacement	1715	LF	\$14.00	\$24,010.00
35	Concrete Sidewalk Replacement	1715	LF	\$18.00	\$30,870.00
36	Landscaping				
37	Erosion and Sediment Control	1	LS	\$100,000.00	\$100,000.00
38	Water Line Replacement - See separate sheet	1	LS	\$50,000.00	\$50,000.00
Total Cost					\$1,405,410.00

Length of Construction	8 months
SSES	\$5,000.00
Surveying	\$10,000.00
Engineering Design per RUS Guidelines	\$102,000.00
Resident Project Representative (\$15,000 per month)	\$120,000.00
Resident Project Representative Expenses (\$1,000 per month)	\$8,000.00
Construction Administration (\$3,000 per month)	\$24,000.00
Contingencies (approximately 5% of project cost)	\$85,000.00
Total	\$1,759,410.00

Item	Description	Quantity	Unit	Unit Price	Total Price
1	6-inch Water Line Replacement - PC350 DIP including fittings	1600	LF	\$40.00	\$64,000.00
2	8-inch Water Line Replacement - PC350 DIP including fittings	1100	LF	\$47.00	\$51,700.00
3	6-inch Gate Valve	6	EA	\$1,100.00	\$6,600.00
4	8-inch Gate Valve	4	EA	\$1,400.00	\$5,600.00
5	Fire Hydrant Assembly	3	EA	\$2,500.00	\$7,500.00
6	Reconnect Service Line	30	EA	\$850.00	\$25,500.00
7	Connect to Existing Water Line	5	EA	\$1,500.00	\$7,500.00
	Total				\$168,400.00