

**CONSULTANT SERVICES OLMSTED TOWNSHIP INFLOW AND INFILTRATION  
STUDY**

**A G R E E M E N T**

Contract No. \_\_\_\_\_

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the County of Cuyahoga, Ohio (the "COUNTY"), and K.E. McCartney & Associates, Inc., an Ohio corporation with an office located at 526 East Broad Street Elyria, OH 44035, (the "CONSULTANT").

**WITNESSETH:**

**WHEREAS**, The COUNTY has determined to engage the CONSULTANT to perform engineering services and adjunct services as may be authorized on a Task basis by the COUNTY in Olmsted Township referencing an inflow and infiltration study; and,

**WHEREAS**, on or about August 1, 2011, the County Executive, under Executive Approval No. EA2011-0970, authorized the Director of the Office of Procurement and Diversity to advertise for consultant services Olmsted Township inflow and infiltration study (Request for Qualifications RQ20927), where said Request for Qualifications RQ20927 and related County documents are incorporated herein by reference (RQ20927); and

**WHEREAS**, the Department of Public Works of Cuyahoga County, Ohio has requested the employment by the COUNTY, of the PROVIDER which, pursuant to a review process, was determined to be the most suitable for this RQ20927; and,

**WHEREAS**, the CONSULTANT has agreed to the terms and conditions for the consideration indicated herein below.

**NOW THEREFORE**, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the COUNTY and the CONSULTANT hereby agree as follows:

**ARTICLE ONE – SCOPE OF AGREEMENT**

**Section 1 -- Scope of Services:**

The Scope of Services to be performed under this Agreement shall be as outlined in the RQ20927 and the CONSULTANTS proposal dated December 16, 2011, which is hereby incorporated into and made part of this Agreement as though expressly rewritten herein.

It is understood and agreed that the provisions of this Agreement shall govern regarding non-scope of service items should there be any variance between the language of the aforementioned proposals and the provisions of this Agreement.

## Section 2 – Schedule of Completion/Project Work Schedule

The CONSULTANT shall start work on the authorized tasks as outlined in the notice to proceed. Any modifications made to this study will only be made by mutual agreement from both the COUNTY and the CONSULTANT.

Mutually approved schedule of completion/project work schedule for authorized tasks shall be incorporated into this Agreement as it fully rewritten herein. Any permission for the extension of a task durations shall not constitute a change in scope.

## **ARTICLE TWO – CONDITIONS, TERMINATION OF AGREEMENT, INSURANCE AND MISCELLANEOUS ITEMS**

### Section 1 – General Conditions, the COUNTY's Responsibilities:

The COUNTY shall:

- A). Make available any CCTV, flow data, maps and any other pertinent data on file in the office of the PUBLIC WORKS which are applicable to the work covered in this Agreement and the consultant may rely upon such information; and
- B). Provide direction to the CONSULTANT for work to be done on the system.

### Section 2 – General Conditions, the CONSULTANT's Responsibilities:

The CONSULTANT shall:

- A). Provide at its own expense technical and professional services, labor equipment and materials required for the execution of this Agreement, except as enumerated otherwise and elsewhere in this Agreement. In addition, they shall employ necessary personnel responsible for the gathering of data, compiling data and reviewing work covered by this Agreement. Any work covered under this Agreement which requires the stamp of a registered or certified professional shall be stamped with the appropriate seal of the registered or certified professional in the State of Ohio; and
- B). Take into consideration Federal, COUNTY, State and municipal laws, ordinances, resolutions and policies applicable to the work to be done under this Agreement; and
- C). Accept responsibility for and endorse approvals and recommendations; and
- D). Agree that services under this Agreement shall be done under the direction and supervision of one of the officers or principals of the CONSULTANT; and

- E). Agree that all employees of the CONSULTANT shall cooperate with representatives of the COUNTY during this Study; and
- F). As part of its duties under this Agreement, have an Project Manager or principal of the firm in attendance at meetings called by the Department of Public Works to discuss this Study during the active life of this Agreement, whenever such attendance is requested by the COUNTY; and
- G). Monitor the qualifications, capabilities, and capacities of its sub-consultants to perform those items of the scope of services that have been delegated to them. Should the CONSULTANT be required to change or add sub-consultants through the course of this Agreement, the CONSULTANT must receive written approval from the PROJECT MANAGER. The CONSULTANT will be required to notify the PROJECT MANAGER why a change or addition is required, how the change, addition or deletion will affect their original proposal and how this change, addition or deletion will affect the CONSULTANT'S ability to meet any other requirements of the COUNTY before receiving written approval. Replacement of a subconsultant from those identified in their proposal does not qualify as a reason for additional compensation per " Article 3, Section 4 Scope of Changes" of this Agreement; and

It shall be the obligation and responsibility of the consultant to initially determine and continually monitor the qualifications, capabilities, and capacity of its sub-consultants

- H). The CONSULTANT is performing pursuant to this Agreement only as an independent contractor. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between the CONSULTANT and the COUNTY. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates; and
- I). Not engage the services of any person or persons in the employment of the COUNTY or any other public body in the State of Ohio for any of the services covered by the terms of this Agreement, without the specific written permission of the COUNTY; and
- J). Neither party will be liable to the other party hereunder or be deemed to be in a breach of this Agreement for any failure or delay in rendering performance arising out the causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, acts of the government, the other party hereto or third parties (excluding subcontractors or agents), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

### Section 3 – Termination of Agreement:

This Agreement may be terminated by the COUNTY at its sole discretion. In that event, the compensation to be paid the CONSULTANT by the COUNTY shall be determined by the COUNTY on the basis of work completed, usable maps and data available to the COUNTY.

#### Section 4 – Insurance:

- A). The CONSULTANT hereby agrees to save harmless the COUNTY from all claims and liability, caused by the negligence, errors or omissions due to the activities of themselves, their agents and/or employees in the performance of the services under this Agreement.
- B). The CONSULTANT shall provide a general commercial liability insurance that shall protect the consultant and Cuyahoga County. The Certificate of Insurance indicating the minimum coverage being TWO MILLION DOLLARS (\$2,000,000.00) for death or injury of any one person and TWO MILLION DOLLARS (\$2,000,000.00) for the death or injury of two or more persons in any one occurrence, together with TWO MILLION DOLLARS (\$2,000,000.00) for property damage in any one occurrence with an aggregate property damage of TWO MILLION DOLLARS (\$2,000,000.00) for two or more occurrences, said insurance to be placed with an insurance company authorized to do business in the State of Ohio. Such policy shall provide for notification to the COUNTY thirty (30) days prior to the cancellation of the policy. This will be appended to this Agreement, when they agree to the terms of this Agreement.
- C). The CONSULTANT shall secure Worker's Compensation for all of the CONSULTANT's employees as required by law. A Certificate of compliance from the State of Ohio's Bureau of Workers' Compensation shall be appended to this Agreement, by the CONSULTANT, when they agree to the terms of this Agreement. It shall remain the responsibility of the CONSULTANT to supply updated certificates to the PROJECT MANAGER, as required.

#### Section 5 – Miscellaneous:

- A). The COUNTY reserves the right to inspect any and all equipment, materials and technical data used or developed for the scope of this Agreement.
- B). The COUNTY reserves the right to inspect the CONSULTANT's facilities and to conduct interviews of personnel previously and/or currently assigned to the project to assure the quality and progress of all authorized work; and
- C). For the purpose of this Agreement, the agent for the COUNTY and liaison officer on the matter contained herein shall be the PROJECT MANAGER and/or such members as designated; and
- D). The COUNTY reserves the right to use all or any part of the reports, files, data, and other documents contemplated by this Agreement in conjunction with, supplemental to, or otherwise as the COUNTY sees fit, in connection with any studies, reports, plans and undertakings of a professional engineering character which the COUNTY now or later may undertake of its own volition or through others in connection with any or all of the improvements hereinbefore described, provided, however, that inasmuch as such

studies and/or plans are not intended or represented to be suitable for reuse without specific written adaptation or verification will be at the sole risk of the COUNTY and without liability or legal exposure to the CONSULTANT.

- E). The CONSULTANT hereby agrees that there will be no charge to the COUNTY for any patent rights, which it controls and which may be involved in the work under this Agreement unless such charges have been specified and included in the fees enumerated in Article Three of this Agreement. The CONSULTANT shall advise the COUNTY of any process or patent rights, which are not held or controlled, by the CONSULTANT, but which in the CONSULTANT's opinion may be involved in the work contemplated herein.
- F). All reports, and any other records developed by the CONSULTANT in the performance of this Agreement, shall remain the sole property of the COUNTY. The CONSULTANT shall not copy or use such records except to develop contracted work associated with this Agreement. In addition, the CONSULTANT shall not transfer any such records to any other party not involved with this Agreement. All of the above shall be delivered to the COUNTY upon completion of this Agreement. Notwithstanding the above, the CONSULTANT may retain a copy of any documents upon which it relied for its records.
- G). During the performance of the Agreement, the CONSULTANT agrees for itself, its assignees, subconsultants, and successors in interest to comply with all applicable laws, resolutions, regulations, and/or policies of the COUNTY, relative to equal employment, affirmative action and Women/Minority Business Enterprise requirements which are herein incorporated by reference and made a part of this Agreement. Failure to comply with any of the aforementioned laws, resolutions, regulations, and/or policies may result in the termination of this Agreement.
- H). The CONSULTANT warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, firm or person, other than a bonafide employee working for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, brokerage fee, or contingent fee.
- I). The CONSULTANT and its employees shall perform all work pursuant to this agreement as independent contractors and not as employees of the COUNTY.

## **ARTICLE THREE – FEES, PROGRESS REPORTS, FEE PAYMENTS AND SCOPE CHANGES**

### **Section 1 - Fees**

In consideration of the terms and obligations of this Agreement, the COUNTY agrees to pay and the CONSULTANT agrees to accept the following fees in full compensation for services, labor, material, and equipment necessary to do the work herein specified, including overhead, profit and expenses of every kind incurred in connection with the undertaking and performing of said work, except those items specifically exempted herein and furnished by the COUNTY, as part of this Agreement.

The COUNTY reserves the right, at their discretion, to fund approved increases in scope from various phases of work that will be non-performed or have unspent balances upon completion of that category of work, provided that such transfer of funds do not cause the total upset maximum fee of this Agreement to be exceeded.

Upon written notice to proceed by the COUNTY to the CONSULTANT, the COUNTY agrees to pay the CONSULTANT for the services provided for within this Agreement, as follows:

Task 1:	Lakeside Subdivision (Lump sum)	\$ 139,177
Task 2:	Greenbrooke Subdivision (Lump sum)	\$ 59,924
Task 3:	Oxford Park Subdivision (Lump sum)	\$ 47,674
Task 4:	Breezewood Subdivision (Lump sum)	<u>\$ 53,225</u>
TOTAL		\$ 300,000

It will be the responsibility of the CONSULTANT, during the term of this Agreement, to interpret, explain, clarify, and answer questions about the Study at no additional fee to the COUNTY.

### **Section 2 – Progress Reports and Fee Payment:**

The fees for the work to be performed under this Agreement, as set forth in Section 1 of this Article, shall be paid as follows:

- A). Partial payments of fees shall be made as the work progresses and as outlined in this Agreement and the CONSULTANT'S proposal dated December 16, 2011. Invoices will be prepared and submitted to the PROJECT MANAGER for payment based on the work performed since the previous invoice or notice to proceed, all of which are subject to audit by the COUNTY or others and possible revision. Each invoice shall include a written progress report that minimally contains a narrative describing what

work has been completed since the last invoice and the percentage completion of the major tasks.

- B).** The CONSULTANT shall be required to submit invoices in a format that is recommended and acceptable to the COUNTY. Sample copies of this invoicing format shall be provided to the CONSULTANT by the COUNTY.
- C).** Invoices for any portion of the work contained within this Agreement shall not be submitted more frequently than monthly; and
- D).** If the CONSULTANT has not processed an invoice to the PROJECT MANAGER for three consecutive months, the CONSULTANT must submit a written progress report updating the COUNTY accordingly; and
- E).** Invoices for those portions of work paid on the basis of costs incurred shall show the name and classification of employee, dates and hours worked, current hourly rate and overhead plus direct costs.

### Section 3 – Scope Changes:

It is understood and agreed by and between the parties hereto that only those situations, as documented by the CONSULTANT, and agreed to by the COUNTY shall constitute a scope change. Fee adjustments for documented scope changes may be appraised and adjusted by mutual agreement.

Until the COUNTY has agreed that a scope change is in effect, the CONSULTANT shall continue to proceed with the work necessary to complete the authorized aspects of this contract as hereinbefore outlined. That is, a scope change request shall not constitute a reason for the CONSULTANT to delay or suspend work on authorized tasks unless they have been so directed by the COUNTY. A change in scope of services is defined as any of the following:

- A).** The addition, deletion or substantial alteration of items of work in the project that was not included in the scope of services documents, scope meeting minutes or addenda to the scope meeting minutes, all of which are incorporated into this CONSULTANT'S proposal dated December 16, 2011. Such substantial changes are beyond the control of the CONSULTANT.
- B).** A substantial revision to any reports, cost estimates, etc. which have been previously approved by the COUNTY or are a result of a radical change in policy.
- C).** Unavoidable delays or hindrances beyond the control of the parties to this Agreement which will require extending the time frame of the Agreement.


BY ENTERING INTO THIS CONTRACT I AGREE ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. I ALSO AGREE ON BEHALF OF THE AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above mentioned.

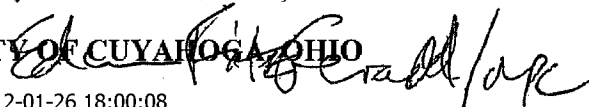
K. E. McCartney and Associates, Inc.

By: 

Printed Name, Title

 PRES.  
Edward FitzGerald, County Executive

COUNTY OF CUYAHOGA, OHIO

  
2012-01-26 18:00:08

By: \_\_\_\_\_

Edward FitzGerald, County Executive