

**CONSULTANT SERVICES FOR  
CONSTRUCTION MATERIAL TESTING SERVICES CONTRACT  
AGREEMENT**

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

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the County of Cuyahoga, Ohio ("COUNTY"), and the consulting firm known as Professional Service Industries, Inc., an Ohio Corporation with principal offices located at 1901 S. Meyers Road, Suite 400, Oakbrook Terrace, Illinois 60181, ("CONSULTANT").

**WITNESSETH:**

**WHEREAS**, the COUNTY has determined to engage the CONSULTANT to perform professional services relating to Construction Material Testing to be authorized on a Task Order basis by the COUNTY for this Construction Material Testing Services contract; and

**WHEREAS**, on or about March 8, 2013, the County Executive, under Deputy Chief Approval No. DC2013-13 authorized the Director of the Office of Procurement and Diversity to advertise for Construction Material Testing Services (RFQ 25982), where said Request For Qualification RFQ 25982 and related County documents are incorporated herein by reference (RFQ 25982); and

**WHEREAS**, the Department of Public Works of Cuyahoga County, Ohio, has requested the employment, by the COUNTY, of the CONSULTANT, which, pursuant to a review process, was determined to be the most suitable for RQ 25982; 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 CONSULTANT's proposal dated April 9, 2013 (Revised May 8 and May 14, 2013), 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 items of service should there be any variance between the language of the aforementioned proposal and the provisions of this Agreement.

### **Section 2 - Duration of the Agreement:**

The duration of the agreement will be three (3) years from the authorization date of the agreement.

### **Section 3 - Administrative Procedures:**

The COUNTY and the CONSULTANT agree to adhere to the following procedure for all work authorized under this Agreement:

- A.) The COUNTY will identify a task order and a general scope of services and ask the CONSULTANT to develop a detailed scope of services.
- B.) The COUNTY and the CONSULTANT will negotiate a fee for the scope of services. As part of the fee negotiation, the CONSULTANT will provide an itemized cost breakdown for the fee. If applicable, subconsultant fees shall also be itemized.
- C.) The COUNTY will issue a Notice to Proceed to the CONSULTANT to perform the task order in the form of a standard authorization letter (which can be transmitted via e-mail). The Notice to Proceed will generally include the following:
  - 1.) The authorized task order and scope.
  - 2.) A schedule of completion/project work schedule
  - 3.) The negotiated fee for the task order. In addition, the details regarding progress reports and fee payments will be included.

Section 4 - Schedule of Completion/Project Work Schedule:

The CONSULTANT shall start work on authorized task orders as outlined in the Notice to Proceed for the task order. The Notice to Proceed will also contain a schedule of completion/project work schedule for the authorized Task Order. Any modifications to be made to the schedule of completion/project work schedule of an authorized task order will only be made by mutual agreement from both the COUNTY and the CONSULTANT.

Mutually approved schedule of completion/project work schedule for authorized task orders shall be incorporated into this Agreement as if fully rewritten herein. Any permission for the extension of a task order's duration shall not constitute a change in scope.

**ARTICLE TWO - GENERAL CONDITIONS, TERMINATION OF AGREEMENT, INSURANCE AND MISCELLANEOUS ITEMS**

Section 1 - General Conditions, the COUNTY's Responsibilities:

The COUNTY shall:

- A.) Provide written approvals, as specified in Article One of this Agreement, or as mutually agreed to by the COUNTY and CONSULTANT, in a timely manner. Reports, plans and specifications shall be approved by the COUNTY as to scope, form, content and method of presentation prior to final acceptance by the COUNTY; and
- B.) Make available to the CONSULTANT all existing highway and structural plans and any other pertinent data on file in the office of the COUNTY which are applicable to the work covered in this Agreement; and

Section 2 - General Conditions, the CONSULTANT's Responsibilities:

The CONSULTANT shall:

- A.) Provide at its own expense all technical and professional services, labor, equipment and materials required for the execution of this Agreement, except as enumerated otherwise and elsewhere in this Agreement. Any work covered under this Agreement which requires the stamp of a registered professional shall be stamped with the appropriate seal of the registered or certified professional in the State of Ohio; and

- B.) Accept responsibility for recommendations, plans and specifications embodied in the final products of this Agreement and where applicable properly endorse the final products with the signature and seal of a registered professional in the State of Ohio who was responsible and in charge of the subject Task Order and the final products; and
- C.) Comply with all Federal, County, State and municipal laws, ordinances, resolutions and policies applicable to the work to be done under this Agreement. The CONSULTANT shall obtain Federal, State, County and/or local licenses, permits and/or clearances necessary to fulfill their obligations of this Agreement; and
- D.) Agree that all work 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, various municipalities or any other agency (public or private) who may be involved in the development and/or construction of this project; and
- F.) Monitor the qualifications, capabilities and capacities of its subconsultants to perform those items of the scope of services which have been delegated to them. Should the CONSULTANT be required to change or add subconsultants through the course of this agreement, the CONSULTANT must receive written approval from the COUNTY. The CONSULTANT will be required to notify the COUNTY why a change or addition is required, how the change, addition or deletion will affect their original proposal and how this 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 Changes" of this Agreement; and
- G.) 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 work covered by the terms of this Agreement, without the specific written permission of the COUNTY; and
- H.) Maintain vendor registration with the Cuyahoga County Inspector General throughout the life of the contract.

### 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 to 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:

The CONSULTANT shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

#### **Mandatory Insurance Requirements**

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

- A.) **Workers Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For CONSULTANT's with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;  
\$1,000,000 each employee for bodily injury by disease;  
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- B.) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;  
\$1,000,000 personal & advertising injury;  
\$2,000,000 general aggregate;  
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- C.) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Note: If the services required under this Contract include the repairing, servicing, parking or storing of vehicles, then the following insurance coverage shall also be required:

Garagekeepers Legal Liability Insurance with a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

- D.) **Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;  
\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

- E.) **Pollution Legal Liability Insurance** (including Contractors Pollution Liability Insurance, if applicable) with a limit of liability not less than:

\$1,000,000 per claim;  
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis, however, if written on a claims made-basis, the claims-made retroactive date on the policy shall be prior to the commencement of any work related to this Contract.

#### **Insurance Coverage Terms and Conditions**

- A.) The insurance policies of the CONSULTANT required for this contract, with the exception of the All Risk Equipment Insurance and Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- (i) Thirty (30) days prior notice of cancellation or material change;
  - (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- B.) The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- C.) These insurance provisions shall not affect or limit the liability of the CONSULTANT stated elsewhere in this Contract or as provided by law.
- D.) The CONSULTANT shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
- E.) The COUNTY reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the COUNTY.
- F.) If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.
- G.) The CONSULTANT shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the COUNTY shall not constitute a waiver of any rights of the parties under this Contract.

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; and
- B.) The COUNTY reserves the right to inspect the CONSULTANT's and/or their subconsultant'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 Director of Public Works and/or such members of his/her staff as designated; and

- D.) The COUNTY reserves the right to use all or any part of the reports, plans, specifications, 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 by the CONSULTANT, any reuse without written adaptation or verification will be at the sole risk of the COUNTY and without liability or legal exposure to the CONSULTANT; and
- 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; and
- F.) All plans, reports, specifications and any other records developed by the CONSULTANT solely 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 except for subcontractors working under this Agreement. All of the above shall be delivered to the COUNTY upon completion of this Agreement. Notwithstanding the above, CONSULTANT may retain a copy of any documents upon which it relied for its records; and
- G.) During the performance of this 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 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; and
- 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.

### **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 a negotiated fee for each authorized task order as full compensation for services, labor, material, and equipment necessary to do the work specified in the Notice to Proceed for the task order, 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 total maximum fee for all task orders authorized under this Agreement shall not exceed TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00).

#### **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.) For each authorized task order, partial payments of fees shall be made as the work progresses. However, the maximum compensation paid by the COUNTY shall not exceed the percentages of the total compensation outlined in the Notice to Proceed for the relevant task order. Invoices will be prepared and submitted to the COUNTY 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. Each invoice must also list all subconsultant charges and provide copies of sub-consultant invoices; and
- 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; and

- C.) Invoices for any portion of the work authorized under this Agreement shall not be submitted more frequently than monthly; and
- D.) If the CONSULTANT has not processed an invoice to the COUNTY for three consecutive months, the CONSULTANT must submit a written progress report updating the COUNTY accordingly.

### 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 and schedule 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 any authorized tasks unless they have been so directed by the Director of Public Works. A change in scope of services is defined as any of the following:

- A.) The addition, deletion or substantial alteration of items of work for each authorized Task Order that was not included in the scope of services documents, scope meeting minutes or addenda to the scope meeting minutes, and/or Notice to Proceed. Such substantial changes are beyond the control of the CONSULTANT; and
- B.) A substantial revision to any reports, sheet layouts, plans, specifications, cost estimates, etc. which have been previously approved by the COUNTY or are a result of a radical change in policy; and
- 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, EMPLOYERS, 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.

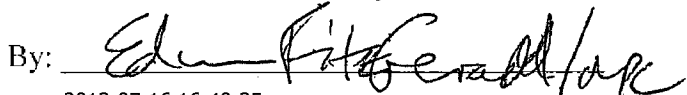
Professional Service Industries, Inc.

By: 

Name/ Title **DAVID B. SABOC**  
Vice President

COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive

By: 

2013-07-16 16:40:35  
Edward FitzGerald, County Executive