

**CONSULTANT SERVICES FOR LBR LOAD RATING  
ENGINEERING SERVICES**

**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 KS Associates, Inc., a consulting engineering firm with principal offices located at 260 Burns Road, Suite 100, Elyria, Ohio 44035 (the "PROVIDER").

**WITNESSETH:**

**WHEREAS**, the COUNTY has determined to engage the PROVIDER to perform professional engineering services relating to the load rating of Cedar Point Road Bridge (CUY-00193-0049), Mile Road Bridge (CUY-00011-1110), Monticello Boulevard Bridge (CUY-00073-0320) and Hilliard Road Bridge (CUY-00069-0857), and

**WHEREAS**, the County Engineer of the County of Cuyahoga, Ohio, hereinafter designated and referred to as the COUNTY ENGINEER, has requested the employment, by the COUNTY, of the PROVIDER, which was determined to be the most suitable for this contract; and

**WHEREAS**, on March 2, 2011, the County Executive under Executive Approval No. EA2011-0092, authorized the Department of Public Works authority to accept the grant award and the authority to expend the grant funds for this contract; and

**WHEREAS**, the PROVIDER 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 PROVIDER 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 PROVIDER'S proposal dated January 24, 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 PROVIDER shall start work on the various phases of this Agreement within ten (10) days after receipt of a notice to proceed on a specific phase. The COUNTY ENGINEER has produced a project work schedule for the development of the work covered under this contract. Any modifications made to this schedule of completion/project work schedule will only be made by mutual agreement from both the COUNTY ENGINEER and the PROVIDER. Updates can be made by the COUNTY ENGINEER every time a task/phase milestone has been completed/approved.

The mutually approved schedule of completion/project work schedule shall be incorporated into this Agreement as fully written herein. Any permission for the extension of a task duration 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 ENGINEER shall:

- A). Provide written approvals, as specified in Article One of this Agreement, or as mutually agreed to by the COUNTY ENGINEER and PROVIDER, in a timely manner. Reports, plans and specifications shall be approved by the COUNTY ENGINEER as to scope, form, content and method of presentation prior to final acceptance by the COUNTY ENGINEER; and
- B). Make available to the PROVIDER all traffic counts, design traffic volumes, existing highway and structural plans, aerial photographs, topographic maps and any other pertinent data on file in the office of the COUNTY ENGINEER which are applicable to the work covered in this Agreement; and
- C). Upon receipt of and acceptance of the final tracings, make or otherwise arrange for the reproduction of the plans required for record and construction bidding purposes; and
- D). Prepare or arrange for the preparation of contract forms, bidding sheets, advertisements and the awarding of the construction contract; and
- E). Provide or make arrangements for field engineering, supervision and inspection of the construction contract; and

- F). Serve notice, within fourteen working days, for any required rights-of-entry which the PROVIDER may require to perform their contractual obligations of this Agreement, upon written request of the PROVIDER.

Section 2 – General Conditions, the PROVIDER's Responsibilities:

The PROVIDER 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. In addition, they shall employ registered professional surveyors, engineers, etc., as necessary, to be responsible for the gathering of data, design of and checking of the 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). Provide and make arrangements for the traffic control and/or notify the proper local authorities if the activities of the PROVIDER and/or its subconsultant shall, in any way, interfere with the flow of traffic or pose any hazards to the public; and
- C). Accept responsibility for recommendations, plans and specifications embodied in the final products of this Agreement and properly endorse the final products with the signature and seal of a registered professional engineer in the State of Ohio who was in charge and responsible for all final products; and
- D). Comply with all Federal, COUNTY, State and municipal laws, ordinances, resolutions and policies applicable to the work to be done under this Agreement. The PROVIDER shall obtain Federal, State, COUNTY and/or local licenses; permits and/or clearances necessary to fulfill their obligations of this Agreement; and
- E). Agree that all work under this Agreement shall be done under the direction and supervision of one of the officers or principals of the PROVIDER; and
- F). Agree that all employees of the PROVIDER shall cooperate with representatives of the Federal Highway Administration (FHWA), the Ohio Department of Transportation (ODOT), 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

- G). As part of its duties under this Agreement, have an officer or principal of the firm or project manager in attendance at all meetings called by recognized public agencies or civic organizations to discuss this project during the active life of this Agreement, whenever such attendance is requested by the COUNTY; and
- H). 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 PROVIDER be required to change or add subconsultants through the course of this Agreement, the PROVIDER must receive written approval from the COUNTY ENGINEER. The PROVIDER will be required to notify the COUNTY ENGINEER 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 PROVIDER'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
- I). All PROVIDERS and/or subconsultants, performing soils/foundation investigations and reports or structural design must be prequalified by ODOT for the subject work. It shall be the obligation and responsibility of the consultant to initially determine and continually monitor the qualifications, capabilities and capacity of its subconsultants; and
- J). 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.

#### 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 PROVIDER 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 PROVIDER hereby agrees to save harmless the COUNTY from all claims and liability, only to the extent caused by the negligence, errors or omissions due to the activities of themselves, their agents and/or employees and subcontractors in the performance of the services under this Agreement.

- B). The PROVIDER shall maintain a general commercial liability policy with the minimum coverage being in the amounts of 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 name the COUNTY as additional insured and shall provide for notification to the COUNTY thirty (30) days prior to the cancellation of the policy. A Certificate of Insurance shall be appended to this Agreement, by the PROVIDER, when they agree to the terms of this Agreement.
- C). The PROVIDER shall secure Worker's Compensation for all of the PROVIDER'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 PROVIDER, when they agree to the terms of this Agreement. It shall remain the responsibility of the PROVIDER to supply updated certificates to the COUNTY ENGINEER, as required. If the number of employees is insufficient to obtain such coverage, a statement to this effect shall be appended to this Agreement, by the PROVIDER, when they agree to the terms of this Agreement.

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 PROVIDER'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 COUNTY ENGINEER and/or such members of his 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 will be at the sole risk of the COUNTY and without liability or legal exposure to the PROVIDER.

- E). The PROVIDER 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 PROVIDER shall advise the COUNTY of any process or patent rights which are not held or controlled by the PROVIDER, but which in the PROVIDER's opinion may be involved in the work contemplated herein.
- F). All plans, reports, specification and any other records developed by the PROVIDER in the performance of this Agreement, shall remain the sole property of the COUNTY. The PROVIDER shall not copy or use such records except to develop contracted work associated with this Agreement. In addition, the PROVIDER 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 ENGINEER upon completion of this Agreement.
- G). During the performance of this Agreement, the PROVIDER agrees to 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, affirmation action and Small/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 PROVIDER warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the PROVIDER, 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 PROVIDER, 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 PROVIDER, its employees and subcontractors shall perform all work pursuant to this agreement as independent contractors and not as employees of the COUNTY or the COUNTY ENGINEER.

## **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 PROVIDER 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 ENGINEER reserves the right, at his 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 ENGINEER to the PROVIDER, the COUNTY agrees to pay the PROVIDER for the services provided for within this Agreement, as follows:

Part 1: CUY-00193-0049	Cedar Point Road Bridge (lump sum)	\$14,915.00
Part 2: CUY-00011-1110	Miles Road Bridge (lump sum)	\$25,743.00
Part 3: CUY-00073-0320	Monticello Boulevard Bridge (lump sum)	\$24,107.00
Part 4: CUY-00069-0857	Hilliard Road Bridge (lump sum)	\$35,219.00

It will be the responsibility of the PROVIDER to interpret, explain, clarify and answer questions about the deliverables at no additional fee to the COUNTY.

The maximum Fee for the services provided for within this Agreement shall not exceed NINETY-NINE THOUSAND NINE HUNDRED EIGHTY-FOUR DOLLARS AND ZERO CENTS (\$99,984.00).

### **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). Partial payments of fees shall be made as the work progresses and as outlined in this Agreement and the PROVIDER'S proposal dated January 24, 2011. Invoices will be prepared and submitted to the COUNTY ENGINEER 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 PROVIDER shall be required to submit invoices in a format that is recommended and acceptable to the COUNTY ENGINEER. Sample copies of this invoicing format shall be provided to the PROVIDER by the COUNTY ENGINEER.
- C). Invoices for any portion of the work contained within this Agreement shall not be submitted more frequently than monthly; and
- D). If the PROVIDER has not processed an invoice to the COUNTY for three consecutive months, the PROVIDER must submit a written progress report updating the COUNTY ENGINEER 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 4 – Scope Changes:

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

Until the COUNTY ENGINEER has agreed that a scope change is in effect, the PROVIDER 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 PROVIDER to delay or suspend work on authorized tasks unless they have been so directed by the COUNTY ENGINEER. 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 the PROVIDER'S proposal dated January 24, 2011. Such substantial changes are beyond the control of the PROVIDER.
- B). A substantial revision to any reports, sheet layouts, plans, specifications, cost estimates, etc. which have been previously approved by the COUNTY ENGINEER 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.

KS Associates, Inc.

By: Mark B Skellenger  
MARK B. SKELLINGER 5/16/11  
VICE PRESIDENT  
KS ASSOCIATES, INC.  
COUNTY OF CUYAHOGA, OHIO

By: X EF  
Edward FitzGerald, County Executive