

July 19, 2019

Wendy Deats, AICP  
Town Planner  
Town of Thompson's Station  
1551 Thompson's Station Road West  
Thompson's Station, TN 37179

**Re: Professional Service Agreement for Bridge Replacement  
Fry Road over Murfrees Fork Creek  
Bridge ID No. 940A3270001**

Dear Ms. Deats,

On behalf of CEI Services, Inc. (CEI), herein referred to as CONSULTANT, I am pleased to submit this letter form of Agreement to the Town of Thompson's Station, Tennessee, herein referred to as CLIENT, to provide professional engineering and construction administration services for the above referenced project. CEI has the experience and excellent working relationships with TDOT and area Contractors that will help produce a successful project for Thompson's Station. We will be actively involved with this project from the planning stages through final construction and close-out of the project.

It is our understanding that the purpose of this project is to replace an existing substandard 2-span steel beam and concrete bridge on Fry Road over Murfrees Fork Creek. The project will be funded under the TDOT Bridge Grant Program and will include minor improvements to both roadway approaches. It is expected to replace the existing structure with a two-lane TDOT standard slab-type bridge of equal or longer span and similar height. The design and construction of the project will meet all current Standards and Specifications of the Tennessee Department of Transportation.

Based on the current site conditions (dead end road) and our discussions at the site on July 17, 2019, it is presently planned to locate the new structure downstream of the existing bridge which will remain open while the new bridge and roadway approaches are being constructed. From field observations, it appears the existing structure's abutments encroach into the stream. The latest TDOT inspection report seems to concur with our observations. The TDOT report recommends a possible bridge length improvement of 58 feet which we find to be a reasonable estimate based on our observations of the channel width. From this, our initial opinion of probable construction cost is approximately \$375,000. This cost includes construction of new bridge, new roadway approaches, removal of existing bridge and roadway approaches, traffic and erosion control, guardrail, riprap, etc...

For your convenience, we have structured this proposal as a Letter Agreement. This will allow us to begin our services promptly upon your Notice to Proceed. We estimate that we can proceed forward with this project within a week after your Notice to Proceed. This letter and the following attachments constitute our entire proposal to the Town of Thompson's Station to perform the work.

The Scope of Service to be provided for this project is as follows:

See Exhibit "A" - Scope of Services

The Compensation for services provided under this Agreement is as follows:

See Exhibit "B" - Compensation

Agreement Terms and Conditions

See Terms and Conditions

Thank you for allowing CEI Services to assist the Town of Thompson's Station with this project. We look forward to working with you and your staff throughout the course of this work. To accept this Agreement, please sign and date in the space below and return a copy to our office. A scanned and emailed copy will be acceptable.

Sincerely,

**CEI SERVICES, INC.**



Thomas B. Sommers, P.E.  
President

AGREED AND ACCEPTED:

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "A" – SCOPE OF SERVICES

1. Perform topographic and property boundary surveys as needed for designing the new structure and roadway approaches. Obtain survey information of the valley cross-sections upstream and downstream of the crossing necessary for performing hydraulic analysis and preparation of a "No Rise" certificate.
2. Measure and document existing bridge geometry and dimensions for use in preparing Corrective Effective hydraulic model required at this project site.
3. Collect information on visible utilities and obtain utility owner contact information needed for plan preparation. Additionally, we will send utility notifications to affected utilities as required by TDOT during the design phase of the project.
4. Provide hydraulic analysis of the existing and proposed project site in accordance with TDOT and FEMA requirements. The U.S. Army Corps of Engineer's HEC-RAS software will be used for analysis. Prepare a required hydraulic report and submit to TDOT with the Preliminary plans.
5. This project is located in a FEMA studied stream and published flood elevations have been determined at various cross-sections along Murfrees Fork Creek. Hydraulic analysis will include obtaining the original HEC-2 stream model from FEMA (where available) that was used to prepare the current FIS Study. We will then prepare a Duplicate Effective Model, Corrected Effective Model, Existing Conditions Model, and Proposed Conditions Model as required by FEMA, and prepare a No-Rise certification or Letter of Map Revision as needed.

**EXCLUSION:** Availability of the FEMA flood model is not known until a request and payment for the model is submitted to FEMA. If this model is then determined to be unavailable, the CONSULTANT will be required to recreate the model using the current FIS and the nearest published FEMA Cross Sections that may, or may not be in close proximity to the bridge site. *This will require additional work including field surveying, coordination with property owners for access, and other field reconnaissance and documentation. If required, this work will be considered additional services.* Availability of the FIS model is NOT known at this time.

6. Provide preliminary plan and profile of the roadway improvements and the proposed bridge. Submit preliminary plans to TDOT and the Town of Thompson's Station for review, comment, and approval prior to proceeding with final construction plans.
7. Provide final construction plans for the roadway and structure, approach guardrails, typical roadway cross sections, erosion control plans, traffic control plans, tabulated quantities, and project notes.
8. Prepare permit applications and exhibits for the Town's use in obtaining regulatory approval. At this time we anticipate TDEC and a Corps of Engineers permit will be required.
9. Assist in securing necessary plan approval and construction authorization from TDOT.
10. Provide right-of-way and/or easement acquisition quantities and a description of any necessary ROW acquisitions where needed. The Town shall provide legal counsel to prepare any necessary legal documents (deeds) and shall be responsible for execution and recording of said documents.
11. Provide an opinion of probable construction cost.
12. Prepare construction bid documents, proposal contract book, and project specifications.

13. Provide assistance to the Town in advertising the project for construction bids including preparation of an Advertisement to Bid for use in local newspaper.
14. Provide plans and specifications to area construction e-plan rooms and reporting agencies for notifying possible bidders.
15. Maintain plan holders list and respond to bidder's RFI's as needed while the project is out for bids. Prepare any addendums during bidding if needed.
16. Attend and assist the Town with one bid opening.
17. Provide bid evaluation, tabulation, and recommendation for award after opening of bids.
18. Provide design certification to TDOT as required after bidding.
19. Prepare and assist the Town with required LPA and ROW agreement forms for submittal to TDOT after bidding.
20. Prepare and submit all other required documents after bid opening to the Regional TDOT State-Aid office for their use in preparing the State/Town construction contract.
21. Attend pre-construction conference prior to starting construction. Provide meeting notification to applicable attendees as needed including utilities, contractor, and TDOT.
22. Review and process shop drawings (if any) submitted by the Contractor.
23. Respond to any Requests for Information (RFIs) from the selected Contractor if needed.
24. Assist the Town with coordination of utility adjustments where necessary. Design of any utility relocations will be performed by others, normally the owner of the utility.
25. Field stake and layout the proposed structure for the Contractor as per the Bridge Grant Program.
26. Provide starting notice and bridge stakeout notes and sketches to TDOT as required.
27. Provide construction observations as required by TDOT Bridge Grant Program. Currently estimate 8 site visits will be performed during construction.
28. Review steel placement, formwork, and concrete placement for conformance with plans.
29. Maintain construction observation reports for each visit to the project site with any measurements and photographs as required under the Bridge Grant Program.
30. Observe, review, and monitor Contractor's concrete field testing procedures and methods and record results for temperature, slump, and air entrainment.
31. Process and respond to change orders, if any, during construction.
32. Obtain required material certifications used in constructing the project to verify that the materials used meet the requirements of the plans and specifications.

33. Obtain and review records of concrete cylinder breaks, steel bar lists, and other material delivery tickets (guardrail, granular backfill, riprap, etc.).
34. Prepare and assist the Town with pay requests (invoices) from the Contractor. CEI will process the Contractor's invoices and make recommendations for payment. Up to three pay requests will be processed.
35. Attend one final inspection at site with TDOT, Contractor, and Town staff. Prepare and submit to TDOT the final Construction Certification and final pay request with supporting documentation.
36. Submit final records and project documentation to the Department of Transportation at end of project to include material tickets, and certifications, steel bar lists, etc...
37. Prepare and submit letter of over-run/under-run as required under the Bridge Grant Program.

**Exclusion:** See Exclusion above regarding FEMA flood model. If the FEMA flood model is not available from the FEMA Engineering Library, an addendum/supplement to this Scope of Work and the CONSULTANT Fee will be required.

**Additional Services:** Any services not specifically provided for in the above scope, as well as any changes in the scope that the CLIENT requests, will be considered additional services and will be performed at current hourly rates. Additional services can be performed by CONSULTANT or a sub-consultant to CONSULTANT, and may include, but are not limited to, the following:

- Additional environmental studies (wetlands, etc.)
- Endangered Species, Historic Preservation, or Ecology studies
- Phase 1 archaeology studies
- Traffic counts or turning movement counts
- Utility relocation plans or physically locating underground utilities
- Right-of-Way Services consisting of:
  - Property appraisals
  - Surveys and legal descriptions for land transfers
  - Property sale negotiations
  - Property closing services
- Environmental permits beyond those listed in the scope of services
- Pre-bid conferences
- Attendance at public review meetings and/or public hearings

## EXHIBIT "B" – COMPENSATION

The CLIENT agrees to compensate CONSULTANT for the services performed as outlined in Exhibit A expressed as a percentage of the total construction cost, subject to the minimum fee provided below as follows:

<u>Total Construction Cost</u>	<u>Fee Percentage Rate</u>
\$0 to \$250,000	13.0%
\$250,000 to \$500,000	12.0%
Over \$500,000	11.5%

Total construction cost (cost upon which compensation will be determined) shall be based on all costs associated with both the bridge construction and the roadway approach construction at the site; but, shall exclude administrative costs, engineering fees, permit fees, and any legal or recording fees. Our preliminary opinion of probable construction cost is \$375,000.

State Aid Bridge Grant projects require a substantial amount of design, administrative, and construction phase services regardless of the size of the structure or project. Additionally, we strive to design the most cost effective project for the CLIENT. Because of this, a minimum compensation must be set for the CONSULTANT to provide all of the required services.

For this project, a minimum compensation (fee) shall be established at **\$45,000.00**

This minimum fee is based on experience with projects of this type, the tasks required to complete this project, and the direct costs and subconsultant costs anticipated for this specific location. Note also that this fee is the *minimum*, and could increase based on the Fee Percentage Rates shown in the table above after the project is bid for construction.

The fee includes all direct costs and expenses (see Exclusions below), as well as required sub-consultant service fees, costs, and expenses. Additionally, the fee is based on the assumption that the structure will be designed, advertised, and bid for construction one time. Redesigns requested by CLIENT after final approval of plans would require additional fees charged at customary hourly rates or on a negotiated fee basis.

CLIENT agrees to compensate CONSULTANT based on percent of completion of the listed tasks at the end of each month. CONSULTANT will invoice the Client on a monthly basis for services provided through the last day of each month. CONSULTANT invoices are prepared on the first day of each month. Payment of invoice is due when the invoice is received by the CLIENT.

### Exclusions:

1. The fee **does not** include any costs related to re-creating the FIS hydraulic model of Murfrees Fork Creek if the original FEMA model is not available. (see exclusion in Exhibit A)
2. The fee **does not** include any required permit application fees or plan review fees. These costs are to be paid by the CLIENT directly to the regulatory agency.
3. The fee **does not** include designing a girder bridge or any geotechnical investigations.

**CEI SERVICES, INC.**

**TERMS AND CONDITIONS**

**Article 1. Consultant's Scope of Services**

- 1.1 **Nature of Services:** CONSULTANT shall, upon CLIENT's written authorization, perform consulting tasks and services which may include, but shall not be limited to, the following:
  - 1.1.1 Provide consulting services required to perform certain tasks as described in Exhibit "A" - Scope of Services.
- 1.2 **Notice to Proceed:** The CONSULTANT will begin work upon receipt of a written Notice to Proceed or Purchase Order by the CLIENT.
- 1.3 **Documents Provided by CLIENT:** CONSULTANT shall be entitled to use and rely, without reverification, upon the accuracy, reliability and completeness of any data, reports, drawings, surveys, test results and all other information and all other information provided by CLIENT or its employees, agents, officers, or consultants in conjunction with CONSULTANT's performance of Services pursuant to this Agreement.
- 1.4 **Standard of Care:** The standard of care for all design professional services performed by CONSULTANT and its sub-consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Services rendered hereunder.
- 1.5 The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the CONSULTANT's control and without its fault or negligence. Such causes may include, but are not limited to: acts of God, the CLIENT's omissive and commissive failures; natural or public health emergencies; labor disputes; and severe weather conditions.

**Article 2. Compensation**

- 2.1 CLIENT agrees to pay the CONSULTANT as compensation for the services defined in Exhibit "A", as set out in Exhibit "B" - Compensation, attached hereto and made a part of this Agreement.
- 2.2 Once each month, the CONSULTANT may submit to the CLIENT an invoice for services rendered and expenses incurred.
- 2.3 CLIENT shall pay all invoices no later than thirty (30) days after receipt, provided CONSULTANT submits all claims for compensation upon forms and in a manner approved by the CLIENT. Payments are due at the address appearing on the invoice. Invoices not paid within 30 days will accrue interest from the 31st day at a rate of 1% per month (12% per annum).

**Article 3. General Terms**

- 3.1 This Agreement shall become effective on the date hereof and remain in effect for the duration of the Project defined in Article 1.1.
- 3.2 Both parties agree that CEI is and shall at all times during the term of this Agreement be an independent contractor of CLIENT. This Agreement and the relationship of the parties shall not be deemed to create or be one of employment, agency, partnership, joint venture or any other association.
- 3.3 The CONSULTANT shall not have control over and shall not be responsible for, direct or have control over the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Project site, for safety precautions and programs incident to the Contractor's work in progress, nor for failure of Contractor to comply with laws and requirements applicable to CONTRACTOR's furnishing and performing its work. CONSULTANT shall not have control of or be responsible for acts or omissions of any contractor, engineer, consultant or other person engaged separately and directly by the CLIENT. Notwithstanding any other provisions of this Agreement, the maximum liability of the CONSULTANT to the CLIENT for any claim, damages or other action arising out of this Agreement shall be the amount of fees due and payable to the CONSULTANT pursuant to this Agreement.

**Article 4. Assurances and Indemnifications**

- 4.1 Ownership and Reuse of Documents: The drawings and specifications are instruments of service; and as such, the documents, tracings, and field notes originating with the CONSULTANT are and remain the property of the CONSULTANT whether the work for which they were prepared is executed or not.

All documents, including Drawings and Specifications prepared by CONSULTANT pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT, and CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

- 4.2 Opinions of Costs or Cost Estimates: Because the CONSULTANT does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The CONSULTANT cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the CLIENT wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. CONSULTANT's services required to bring costs within any limitation established by the CLIENT will be paid for as additional services.

- 4.3 Limitation of Liability. To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, employees, agents, and consultants to CLIENT and anyone claiming by, through or under CLIENT, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to CONSULTANT's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total CONSULTANT's compensation pursuant to this Agreement.

Under no circumstances shall the CONSULTANT be liable for extra costs or other consequences due to changed conditions or for costs related to the failure of contractors to perform work in accordance with the plans and specifications.

- 4.4 Indemnification: CONSULTANT shall indemnify CLIENT, its officers, directors, shareholders, partners, and employees from all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of the performance of CONSULTANT's services to the extent caused by CONSULTANT's negligence.

CLIENT shall indemnify CONSULTANT, its officers, directors, shareholders, partners, and employees from all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of the performance of CONSULTANT's services to the extent caused by CLIENT's negligence.

- 4.5 No Personal Liability: Notwithstanding any other provision of this Agreement to the contrary, CONSULTANT's officers, directors, shareholders, partners, employees, or agents shall not be personally liable, regardless of the cause of action asserted including breach of contract, warranty, guarantee, products liability, negligence, tort, strict liability, or any other cause pertaining to CONSULTANT's performance or non-performance of the Agreement. CLIENT will look solely to CONSULTANT for its remedy for any claim arising out of or related to this Agreement.

## **Article 5. Termination**

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice to the other party as follows:

- 5.1 The CLIENT may, by written notice, terminate this agreement in whole or in part at any time for the CLIENT's convenience and either party may terminate this Agreement should the other party fail substantially to perform in accordance with the terms hereof through no fault of the party initiating such termination. Upon receipt of such notice, services shall be: (1) immediately discontinued (unless the notice directs otherwise), and (2) all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated in performing this Agreement where completed or in process copied and delivered to the CLIENT. If such information has not been finalized by the CONSULTANT, CONSULTANT shall not be responsible for its accuracy and any use of said information shall be at CLIENT's sole risk.

- 5.2 If Agreement is terminated, CONSULTANT shall be compensated for all services performed, including those services performed by CONSULTANT's sub-consultants prior to termination, together with reimbursable expenses then due.

#### **Article 6. Special Provisions and Attachments**

- 6.1 Attachments: This Letter Agreement includes the following attached items and are made a part of this Agreement:
- 6.1.1 Exhibit "A" - Scope of Services
  - 6.1.2 Exhibit "B" - Compensation
  - 6.1.3 Terms and Conditions (this document)
- 6.2 Schedule of Work: The CONSULTANT will be prepared to begin the work under this Agreement immediately after a letter of notification to proceed is received from the CLIENT. CONSULTANT will use its best efforts to complete the Services in a timely fashion to meet CLIENT's requirements.
- 6.3 Controlling Law: This Agreement shall be governed by and construed according to the law of Tennessee.
- 6.4 Waiver: A party's non-enforcement of any provision of this Agreement shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- 6.5 Severability: Any provision or part of this Agreement held to be void or unenforceable under any applicable laws or regulations shall be deemed stricken, and all the remaining provision shall continue to be valid and binding upon CLIENT and CONSULTANT.
- 6.6 Consequential Damages: Notwithstanding anything else in this Agreement to the contrary, neither CONSULTANT nor CLIENT shall be liable to the other or to their respective employees, officers, directors, agents, insurers, partners or consultants, for any claims for or entitlement to any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project whether arising in contract, tort, negligence, strict liability, products liability, warranty, or any other cause arising out of the performance or non-performance of the Agreement by CONSULTANT or CLIENT.
- 6.7 Mediation: The parties, as a condition precedent to commencing litigation (other than for the non-payment of CONSULTANT's fees), shall endeavor to resolve their claims by mediation which, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.