

## AGREEMENT FOR CONSULTANT SERVICES

This AGREEMENT FOR CONSULTING SERVICES (“Agreement”), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between Carpenter Marty Transportation Inc., located at 6612 Singletree Drive, Columbus, Ohio, 43229 (“Consultant”), and the City of Gahanna, located at 200 South Hamilton Road, Gahanna, Ohio, 43230 (“Client”).

### ARTICLE 1 – SCOPE OF SERVICES

**1.1 Scope of Service; Statement of Work.** CONSULTANT agrees to provide to CLIENT, under the terms and conditions of this Agreement, the Scope of Services and Fee Proposal as outlined in Attachment A.

*(See Attachment “A”)*

**1.2 Method of Performing Services; Personnel.** CONSULTANT will determine the method, details, and means of performing the work to be carried out for the CLIENT. CLIENT may, however, require CONSULTANT’s personnel to observe at all times the safety policies of CLIENT.

### ARTICLE 2 – TERMS OF PAYMENT

**2.1 Services.** CLIENT shall pay the CONSULTANT as provided and not to exceed amount in Attachment A. Payments shall be due thirty (30) days from the date of invoice.

**2.2 Reimbursable Expenses.** Any direct job related expenses approved by the CLIENT shall be paid at actual costs.

### ARTICLE 3 – CLIENT RESPONSIBILITIES

- The CLIENT shall designate a representative authorized to act in its behalf with respect to general engineering services requested of CONSULTANT. All direction and authorization shall be by or through such representative.
- The CLIENT shall furnish CONSULTANT all available information, reports, studies, testing results, operating records, existing plans, and other data pertinent to the specific task and such shall be furnished at the CLIENT’s expense.

### ARTICLE 4 – OBLIGATIONS OF CONSULTANT

#### 4.1 Independent Contractor

CONSULTANT is an independent contractor and shall maintain complete control of and responsibility for its employees, subcontractors, and agents. CONSULTANT shall also be solely responsible for the means and methods for carrying out the Scope of Services and for the safety of its employees. Nothing contained in this AGREEMENT shall create any contractual relationship between CLIENT and CONSULTANT.

## **4.2 Standard of Care**

Services provided under this AGREEMENT shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. CONSULTANT shall correct services not meeting such a standard without additional compensation.

## **4.3 Insurance and Indemnification**

4.3.1 CONSULTANT agrees and shall submit evidence to CLIENT before beginning work on the PROJECT that CONSULTANT has procured and shall maintain Workers Compensation, Commercial General and Contractual Liability, Commercial Automobile Liability, and Professional Liability insurance coverage, with limits at or above those required by the CLIENT.

## **4.4 Codes, Laws, and Regulations**

CONSULTANT shall observe and comply with all federal, state, and local laws, ordinances, orders, and decrees applicable to its services and in effect at the time of its performance of services under this Agreement (including but not limited to those particularly set forth in the AGREEMENT).

## **4.5 Permits, Licenses, and Fees**

CONSULTANT shall obtain and pay for all permits and licenses required by law that are associated with CONSULTANT's performance of the Scope of Services.

## **4.6 Confidentiality**

The contents of this AGREEMENT and all information developed by the CONSULTANT, or provided to the CONSULTANT with respect to this AGREEMENT, are considered to be confidential between CLIENT and the CONSULTANT.

All services performed by the CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the CONSULTANT, pursuant to this AGREEMENT, are for the sole use of CLIENT, their agents, and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of CLIENT. Notwithstanding the foregoing, CONSULTANT may disclose confidential information to the extent that disclosure is ordered by court or other governmental agency of competent jurisdiction.

## **4.7 Copies of Data**

One legible copy each of all laboratory, field, or other notes, log book pages, technical data, computations, designs, and other instruments of service prepared under the terms of this AGREEMENT shall be delivered by CONSULTANT to CLIENT upon CLIENT's request. To ensure compatibility, electronic copies of contract drawings, maps, specifications, and reports shall be furnished in a software system and form as required by CLIENT.

#### **4.8 Nondiscrimination and Affirmative Action**

In connection with its performance under this AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap, or because he or she is a disabled veteran or veteran of the Vietnam era. CONSULTANT shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap, or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers, and layoff or termination.

#### **4.9 Maintenance of Records**

The CONSULTANT shall maintain all books, documents, papers, accounting records, and other evidence supporting the costs incurred in the fulfilling of this AGREEMENT and including tasks designated by CONSULTANT, and shall make such materials available at its offices at reasonable times during the AGREEMENT period and for three (3) years from the date of the final payment under the AGREEMENT, for inspection by CLIENT, independent authorized representatives of CONSULTANT or any government agency. Copies thereof shall be furnished if requested, but the cost of furnishing such copies shall be separately reimbursable to the CONSULTANT outside the provisions for payment for professional services.

#### **4.10 Audit and Inspection of Records**

The CONSULTANT shall permit the independent authorized representative of CLIENT and all applicable governmental agencies to inspect and audit all data and records of the CONSULTANT relating to its performance under the AGREEMENT.

#### **4.11 Suspension of Services**

CONSULTANT shall, upon written notice from CLIENT, suspend, delay, or interrupt all or a part of the Scope of Services. In such event, CONSULTANT shall resume the Scope of Services upon written notice from CLIENT, and an extension of time and/or an equitable adjustment in compensation, if appropriate, will be mutually agreed upon.

#### **4.12 Communication with CLIENT**

All of CONSULTANT's written or verbal communication with or to CLIENT, or with federal, state, or local agencies, relative to Services under this AGREEMENT must be through or with the knowledge and consent of CLIENT.

#### **4.13 Safety**

CONSULTANT is solely responsible for health and safety of its own employees and its lower-tier SUBCONSULTANTS. CONSULTANT shall comply with any CLIENT or site-controlling contractor's health and safety plan. CONSULTANT shall comply with all applicable federal, state, and local laws and regulations related to health and safety.

## **ARTICLE 5 – GENERAL CONSIDERATIONS**

### **5.1 Proprietary Information**

Except when otherwise authorized in writing by CLIENT, all drawings, specifications, technical data, and other information furnished to CONSULTANT by CLIENT or developed by CONSULTANT or others in connection with the Services rendered are, and shall remain, the property of CLIENT, and may not be copied or otherwise reproduced or used in any way except in connection with the Scope of Services, or disclosed to third parties, or used in any manner detrimental to the interest of CLIENT.

### **5.2 Successors and Assigns**

5.2.1 CONSULTANT is hereby bound, and the partners, successors, executors, administrators, legal representatives of each, and to the extent permitted by paragraph 5.2.2, the assigns of CONSULTANT are hereby bound, to the other party to this AGREEMENT and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.

5.2.2 CONSULTANT shall assign, sublet, or transfer any rights under or interest in this AGREEMENT (including, without limitation, funds that may become due or funds that are due) without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this AGREEMENT.

### **5.3 Force Majeure**

Neither party to this AGREEMENT shall be liable to the other party for delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Each party shall take reasonable steps to mitigate the impact of a force majeure. CONSULTANT will adjust the schedule and compensation under this AGREEMENT to the extent that CONSULTANT's schedule and compensation are equitably adjusted by CLIENT.

### **5.4 Authorization to Proceed**

Execution of this AGREEMENT by CLIENT shall be authorization for CONSULTANT to proceed with the Scope of Services, unless otherwise provided for in this AGREEMENT.

### **5.5 No Third-Party Beneficiaries**

This AGREEMENT gives no rights or benefits to anyone other than CONSULTANT, and has no third-party beneficiaries.

## **5.6 Jurisdiction**

This AGREEMENT shall be governed by the laws of Ohio.

## **5.7 Severability and Survival**

If any of the provisions contained in this AGREEMENT are held invalid, illegal, or unenforceable, the enforceability of the other remaining provisions shall not be impaired. Limitations of liability, indemnities, and other express representations shall survive termination of this AGREEMENT for any cause.

## **5.8 Termination**

### **5.8.1 Termination for Convenience**

All or part of this AGREEMENT may be terminated by CLIENT for its convenience. In such event, CONSULTANT will be entitled to compensation for Services competently performed up to the date of termination. CONSULTANT will not be entitled to compensation or profit on Services not performed.

### **5.8.2 Termination for Default**

CLIENT may, by written notice, terminate the whole or any part of the AGREEMENT for default in the event that CONSULTANT fails to perform any of the provisions of this AGREEMENT, or fails to make progress as would endanger performance of the AGREEMENT in accordance with its terms, or, in the opinion of CLIENT, becomes financially or legally incapable of completing the work, and does not correct such to CLIENT's reasonable satisfaction within a period of seven (7) working days after receipt of notice from CLIENT specifying such failure. If, after notice of termination, it is determined, for any reason, that CONSULTANT was not in default or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to TERMINATION FOR CONVENIENCE.

### **5.8.3** Regardless of the cause of termination, the CONSULTANT shall deliver legible copies of all completed or partially completed instruments of service, including, but not limited to, laboratory, field, or other notes, log book pages, technical data computations, and designs. All materials resulting from CONSULTANT's efforts in connection with this Agreement, including said laboratory, field, or other notes, log book pages, technical data computations, design and other documents whether existing in tangible or electronic form ("Design Documents"), shall remain the property of CONSULTANT. CONSULTANT shall grant CLIENT a license to use such Design Documents for the sole use of completing the Project. The Design Documents shall only be used on this Project and shall not be used on other projects. In the event CLIENT uses the Design Documents for other Projects then it shall be without liability to CONSULTANT. Upon actual receipt of final payment for all Services rendered and expenses incurred, if any, CONSULTANT shall transfer ownership of the Design Documents to the CLIENT as required under the terms of the PRIME AGREEMENT. The CONSULTANT will be permitted to retain reproducible copies of such materials for its files.

- 5.8.4 The rights and remedies of CLIENT provided in this Article will not be exclusive and are in addition to any other rights and remedies provided by law or equity or under this AGREEMENT.

### **5.9 Delays and Extension of Time**

- 5.9.1 If CONSULTANT is delayed in the progress of the Scope of Services for any reason, CONSULTANT shall, within 48 hours of the start of the occurrence, give written notice to CLIENT of the cause of the potential delay and estimate the possible time extension involved. Within seven (7) days after the cause of delay has been remedied, CONSULTANT shall give written notice to CLIENT of any actual time extension requested.
- 5.9.2 Within fifteen (15) days after CONSULTANT submits to CLIENT a written request for an extension of time, CLIENT will present its written opinion as to whether an extension of time is justified, and, if so, a decision as to the number of days of extension.
- 5.9.3 No extension of time will be considered for weather conditions normal to the area in which the Scope of Services is being performed. Unusual weather conditions, if determined by CLIENT to be of a severity that would stop all progress, may be considered as cause for an extension of completion time.

### **ARTICLE 6 – IDEMNITY**

CONSULTANT agrees to indemnify and hold CLIENT and CLIENT’s elected officials, officers, and directors, affiliates, agents, volunteers, and employees harmless from and loss or damage, including reasonable attorney fees, arising out of a claim or action against such parties for injuries or damage to person or property caused by the negligent acts or omissions of CONSULTANT’s personnel while in the course of performing work for CLIENT under the AGREEMENT.

### **ARTICLE 7 – SPECIAL PROVISIONS**

- 7.1 This AGREEMENT is subject to the following special provisions:

*(None)*

- 7.2 Services performed under this AGREEMENT for projects within the United States where the source of funding is a United States client, corporation, or public entity, or where project financing is derived from public funds, shall be performed by assigned project staff within the United States. CONSULTANT shall withhold and pay taxes to the appropriate agencies.
- 7.3 This AGREEMENT constitutes the entire AGREEMENT between CLIENT and CONSULTANT and supersedes all prior written or oral understandings. This AGREEMENT may only be amended, supplemented, modified, or canceled by a duly executed written amendment.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in manner and form intending to bind them as of the day and year first above written.

CLIENT

CONSULTANT

By \_\_\_\_\_

By \_\_\_\_\_

Signature

Signature

\_\_\_\_\_

Kevin P. Carpenter

Printed Name

Printed Name

\_\_\_\_\_

Principal

Title

Title

CLIENT's address for giving notices:

CONSULTANT'S address for giving notices:

\_\_\_\_\_

Carpenter Marty Transportation Inc.

\_\_\_\_\_

6612 Singletree Drive

\_\_\_\_\_

Columbus, Ohio 43229