

AGREEMENT

between

THE INCORPORATED VILLAGE OF HAMERSVILLE, OHIO

and

McGILL AND SMITH
Consulting Engineers

for

Professional Services

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AGREEMENT
for
PROFESSIONAL SERVICES

THIS AGREEMENT, made as of 12th day of July, in the year
Nineteen Hundred and Seventy Seven, by and between
The Incorporated Village of Hamersville, Ohio
(hereinafter called the OWNER), and McGill & Smith, Consulting Engrs.
(hereinafter called the ENGINEER), WITNESSETH, that whereas the OWNER
intends to construct facilities for the collection and treatment
of sanitary, commercial and industrial waste throughout the Corporate
limits of the Village of Hamersville, Ohio.

_____(hereinafter called the Project).
NOW, THEREFORE, the OWNER and the ENGINEER, in consideration of the
mutual covenants hereinafter set forth, agree as follows:

SECTION 1 - BASIC SERVICES OF THE ENGINEER:

1.1. General:

1.1.1. The ENGINEER agrees to perform professional services in con-
nection with the Project as hereinafter stated.

1.1.2. The ENGINEER will serve as the OWNER's professional engineer-
ing representative in those phases of the Project to which this Agree-
ment applies, and will give consultation and advice to the OWNER during
the performance of his services.

1.2. Plan of Study and Step One Application:

During the Plan of Study phase the ENGINEER will:

1.2.1. Consult with the OWNER to determine the OWNER's requirements
for the Project.

1.2.2. Advise the OWNER as to the necessity of his providing or ob-
taining services from others of the types described in paragraph 3.3,
and act as the OWNER's representative in connection with any such
services.

1.2.3. Prepare a Plan of Study on the Project, in sufficient detail
to outline the area to be sewered to the Environmental Protection
Agency and to provide the EPA with sufficient data to authorize a
Step One Grant Application.

1.2.4. Furnish five copies and assist in obtaining EPA approval of
the above study.

1.2.5. Assist the OWNER in filing a Step One Grant Application for
submittal to the Environmental Protection Agency.

1.3. Facilities Plan and Step Two Grant Application:

After assurance of a Step One Grant by the EPA the ENGINEER will:

1.3.1. Advise the OWNER as to the necessity of his obtaining further services from others of the types described in paragraph 3.3 and act as the OWNER's representative in connection with any such services.

1.3.2. On the basis of the approved Plan of Study and the data obtained as a result of such further services, prepare a Facilities Plan consisting of Design Criteria, Drawings, Outline Specifications, Environmental Assessment Statements, Cost Effective Analysis and any additional data required for approval of the Environmental Protection Agency as outlined in the Plan of Study.

1.3.3. Prepare a preliminary cost estimate for the Project.

1.3.4. Furnish five copies and assist in obtaining EPA approval of the above Facilities Plan.

1.3.5. Assist the OWNER in filing a Step Two Grant Application to the Environmental Protection Agency.

1.4. Final Design Phase:

After assurance of a Step Two Grant and written authorization to proceed with the final design phase, the ENGINEER will:

1.4.1. On the basis of the approved Facilities Plan, prepare for incorporation in the Contract Documents, detailed drawings and plans to show the character and scope of the work to be performed by contractors on the Project (hereinafter called the "Drawings"), and instructions to bidders, general conditions, special conditions and technical provisions (hereinafter called the "Specifications").

1.4.2. Furnish to the OWNER engineering data for and assist in the preparation of the required documents so that the OWNER may secure approval of such governmental authorities as have jurisdiction over design criteria applicable to the Project.

1.4.3. Advise the OWNER of any adjustment of the cost estimate for the Project caused by changes in scope, design requirements or construction costs and furnish a revised cost estimate for the Project based on the completed Drawings and Specifications.

1.4.4. Prepare proposal forms and notice to bidders and assist in the preparation of the Contract Documents.

1.4.5. Furnish ten copies of the Drawings and Specifications in final form.

1.4.6. Assist the OWNER in filing a Step Three Grant Application to the Environmental Protection Agency.

1.5. Bidding or Negotiating Phase:

After written authorization to proceed with the bidding or negotiating phase, the ENGINEER will:

1.5.1. Assist the OWNER in obtaining and evaluating bids or negotiating proposals and preparing construction contracts.

1.5.2. Consult with the OWNER concerning, and participate in all decisions as to, the acceptability of subcontractors and other persons and organizations proposed by the General contractor for those portions of the work as to which such acceptability is required by the bidding documents.

1.6. Construction Phase:

The construction phase will commence with the award of the construction contract and will terminate upon written approval of final payment by the ENGINEER. During the construction phase the ENGINEER will:

1.6.1. Advise and consult with the OWNER and act as his representative as provided in Articles 1 through 42, inclusive, of the Standard General Conditions of the Construction Contract, National Society of Professional Engineers document #1910-8, January, 1967 edition; the extent and limitations of the duties, responsibilities and authority of the ENGINEER as assigned in said Standard General Conditions shall not be modified without the ENGINEER's written consent; all of the OWNER's instructions to the Contractor shall be issued through the ENGINEER who shall have authority to act on behalf of the OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.6.2. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work; he will not be responsible for the construction means, methods, techniques, sequences or procedures or the safety precautions incident thereto; his efforts will be directed toward providing assurance for the OWNER that the completed Project will conform to the requirements of the Contract Documents, but he will not be responsible for the Contractor's failure to perform the construction work in accordance with the Contract Documents; and during such visits and on the basis of his on-site observations as an experienced and qualified design professional, he will keep the OWNER informed of the progress of the work, will endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor, and may disapprove or reject work as failing to conform to the Contract Documents.

1.6.3. Check and approve shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which the Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; and assemble maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection as required by the Contract Documents.

1.6.4. Issue all instructions of the OWNER to the Contractor; prepare routine change orders as required; he may, as the OWNER's representative, require special inspection or testing of the work (whether or not fabricated, installed or completed); he will act as interpreter of the terms and conditions of the Contract Documents and judge of the performance thereunder by the OWNER and the Contractor and will make decisions on all claims of the OWNER and the Contractor relating to the execution and progress of the work and all other matters and questions related thereto; but the ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.6.5. Based on his on-site observations as an experienced and qualified design professional and on his review of the Contractor's applications for payment and supporting data, determine the amount owing to the Contractor and approve in writing payment to the Contractor in such amounts; such approvals of payment to constitute a representation to the OWNER, based on such observations and review, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any qualifications stated in his approval), but by approving an application for payment the ENGINEER shall not be deemed to have represented that he has made any examination to determine how or for what purposes the Contractor has used the moneys paid on account of the Contract Price.

1.6.6. Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in accordance with the Contract Documents and the Contractor has fulfilled all of his obligations thereunder so that the ENGINEER may approve, in writing, final payment to the Contractor.

1.6.7. The ENGINEER shall not be responsible for the acts or omissions of the Contractor, any subcontractor or any of the Contractor's or subcontractor's agents or employees or any other person performing any of the work under the construction contract.

SECTION 2 - ADDITIONAL SERVICES OF THE ENGINEER:

2.1. General:

If authorized in writing by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which will be paid for by the OWNER as indicated in paragraph 5.1.2.

2.1.1. Preparation of applications and supporting documents for governmental grants, loans or advances in connection with public works projects, excepting EPA Grant Applications which are a part of this agreement.

2.1.2. Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

2.1.3. Additional services due to significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction.

2.1.4. Substantial revisions of previously approved studies, reports, design documents, Drawings or Specifications.

2.1.5. Preparing documents for alternate bids requested by the OWNER for work which is not executed.

2.1.6. Preparing detailed renderings, exhibits or scale models for the Project.

2.1.7. Furnishing additional copies of reports and additional prints of Drawings and Specifications.

2.1.8. Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by OWNER.

2.1.9. Additional services resulting from the Project involving more than one general construction contract, or separate construction contracts for different building trades, or separate equipment contracts.

2.1.10. Preparing special change orders requested by the OWNER.

2.1.11. Making an inspection of the Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contract.

2.1.12. Furnishing the OWNER, on request, a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, Drawings and other data furnished by the Contractor to the ENGINEER and which the ENGINEER considers significant.

2.1.13. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or neglected work of the Contractor, (3) prolongation of the construction contract time by more than 20%, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default under the construction contract due to delinquency or insolvency.

2.1.14. Extensive assistance in the initial start-up and test operation of equipment or systems and the preparation of manuals of operation and maintenance.

2.1.15. Additional services and costs necessitated by out-of-town travel required of the ENGINEER other than visits to the Project as required by Section 1.

2.1.16. Additional services in connection with the Project including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

2.1.17. Preparing to serve and serving as an expert witness for the OWNER in any litigation or other proceeding involving the Project.

2.2. Resident Project Services:

2.2.1. If requested by the OWNER or recommended by the ENGINEER and approved in writing by the other, one or more full-time Resident Project Representatives will be furnished and directed by the ENGINEER in order to provide more extensive representation at the Project site during the construction phase. Such resident project representation will be paid for by the OWNER as indicated in paragraph 5.1.2.

2.2.2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be set forth in Exhibit A which is to be identified, attached to and made a part of this Agreement before such services begin.

2.2.3. Through the more continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if one is to be furnished) the ENGINEER will endeavor to provide further protection for the OWNER against defects and deficiencies in the work, but the furnishing of such resident project representation shall not make the ENGINEER responsible for the Contractor's failure to perform the construction work in accordance with the Contract Documents.

SECTION 3 - THE OWNER'S RESPONSIBILITIES:

The OWNER will:

- 3.1. Provide full information as to his requirements for the Project.
- 3.2. Assist the ENGINEER by placing at his disposal all available information pertinent to the site of the Project including previous reports and any other data relative to design and construction of the Project.
- 3.3. Furnish the ENGINEER property, boundary, right-of-way, topographic and utility surveys; core borings, probings and subsurface explorations; hydrographic surveys, laboratory tests and inspections of samples and materials, and other special consultations not covered in paragraph 2.1.; all of which the ENGINEER may rely upon in his preparation of the Drawings and Specifications.
- 3.4. Guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform his work under this Agreement.
- 3.5. Examine all studies, reports, sketches, estimates, Specifications, Drawings, proposals and other documents presented by the ENGINEER and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the ENGINEER.
- 3.6. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.
- 3.7. Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing service as the OWNER may require to ascertain how or for what purpose the Contractor has used the moneys paid to him under the construction agreement.
- 3.8. Designate in writing a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement.
- 3.9. Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 3.10. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.
- 3.11. If the Project involves more than one general contract, or separate construction contracts for different building trades or separate equipment contracts, ensure that the General Conditions of all such contracts are substantially identical.
- 3.12. Furnish, or direct the ENGINEER to provide at the OWNER's expense, necessary additional services as stipulated in Section 2 of this Agreement, or other services as required.

SECTION 4 - PERIOD OF SERVICE:

4.1. The services called for in the Plan of Study phase of this Agreement shall be completed and the report submitted within 60 days following authorization for the ENGINEER to proceed.

4.2. After acceptance by the OWNER of the Plan of Study, indicating any specific modifications or changes in scope desired by the OWNER, upon written authorization from the OWNER, and EPA approval of the Step One Grant, the ENGINEER will proceed with the performance of the services called for in the Facilities Plan phase of this Agreement, and shall submit preliminary design documents and cost estimates within 90 days following authorization for the ENGINEER to proceed.

4.3. After acceptance by the OWNER of the preliminary design documents and cost estimates, indicating any specific modifications or changes in scope desired by the OWNER, upon written authorization from the OWNER, and EPA approval of the Step Two Grant, the ENGINEER will proceed with the performance of the services called for in the final design phase of this Agreement, so as to deliver completed detailed construction Drawings, Specifications and cost estimates for all authorized work on the Project within 240 days thereafter.

4.4. Unless sooner terminated as provided in paragraph 6.1., this Agreement shall remain in force: (1) for a period which may reasonably be required for the design, award of contracts and construction of the Project, including extra work and any required extension thereto; or (2) in case construction is not commenced, for a period of 12 months after the completion of the services called for in that phase of the work last authorized. However, the provisions of paragraph 6.4. shall remain in effect after termination of the other provisions of this Agreement.

SECTION 5 - PAYMENTS TO THE ENGINEER:

5.1. Payments for Services and Expenses of the ENGINEER:

5.1.1. The OWNER will pay the ENGINEER for basic services performed under Section 1:

5.1.1.1. A lump sum fee as follows:

Services under Section 1.2	<u>800.00</u>
Services under Section 1.3	<u>14,000.00</u>
Services under Section 1.4, 1.5 and 1.6	Lump sum fee to be mutually agreed upon after preparation of the Facilities Plan, which will establish the scope of the Project.

or

5.1.1.2. A fee on the basis of payroll costs of salaries and wages as defined in paragraph 5.3.1. times a factor as provided in paragraph 5.2.2. and the actual costs of reimbursable expenses as defined in paragraph 5.3.2.

5.1.2. The OWNER will pay the ENGINEER for additional services performed under paragraphs 2.1.1. through 2.1.16., inclusive, and paragraph 2.2.1. on the basis of payroll costs of salaries and wages as defined in paragraph 5.3.1. times a factor as provided in paragraph 5.2.2. and the actual costs of reimbursable expenses as defined in paragraph 5.3.2.

5.1.3. The OWNER will pay the ENGINEER for preparing to serve and serving as an expert witness at the rate of \$250.00 per day or any portion thereof and the actual costs of reimbursable expenses as defined in paragraph 5.3.2.

5.2. Methods and Times of Payment:

5.2.1. Payments on account of said fee for basic services provided in paragraphs 5.1.1.1. and 5.1.1.2. shall be made as follows:

5.2.1.1. At the execution of this Agreement a primary payment of none as a minimum payment for the basic services hereunder which shall be credited to the final payment to be made hereunder.

5.2.1.2. Progress payments shall be made in proportion to services performed. The compensation for basic services shall amount to the following percentage of the total fee at completion of each phase of the work:

- | | |
|--|--------------------|
| (1) Preliminary Report Phase (Plan of Study) | <u>LS</u> percent. |
| (2) Preliminary Design Phase Facilities Plan, Step I | <u>LS</u> percent. |
| (3) Final Design Phase, Step II | <u>70</u> percent. |
| (4) Bidding or Negotiating Phase | <u>5</u> percent. |
| (5) Construction Phase, Step III | <u>25</u> percent. |

5.2.2. Payments for basic and additional services of the ENGINEER based on payroll costs of salaries and wages times a factor shall provide for general overhead and profit and shall be based on the following factors:

5.2.2.1. The factor shall be 2.25 for basic services described in Section 1 hereunder, performed by personnel assigned to the regularly established offices of the ENGINEER.

5.2.2.2. The factor shall be 2.25 for additional services as described in paragraphs 2.1.1. through 2.1.16., inclusive, performed by personnel assigned to the regularly established offices of the ENGINEER.

5.2.2.3. The factor shall be 2.25 for additional services performed in connection with resident Project representation furnished in accordance with paragraph 2.2.1.

5.2.3. Payments for basic services, additional services, and reimbursable expenses shall be made monthly upon presentation of the ENGINEER'S detailed statement.

5.3. General:

5.3.1. The payroll cost of salaries and wages used as a basis for payment under paragraph 5.2.2. shall mean the cost of salaries and wages paid to principals and employees engaged directly on the Project, including but not limited to, engineer, architects, surveyors, designers, draftsmen, specification writers, estimators, stenographers and clerks, plus cost of social security contributions.

5.3.2. Reimbursable expenses shall mean the actual expenses of transportation and subsistence of principals, employees and consultants when traveling in connection with the Project, consultants' fees, field office expenses, Resident Project Representative's subsistence and transportation, toll telephone calls and telegrams, reproduction of reports, Drawings and Specifications, and similar Project related items.

5.3.3. All moneys not paid the ENGINEER when due hereunder shall bear interest at the legal rate in force at the principal place of business of the ENGINEER.

5.3.4. If the ENGINEER'S most recent cost estimate for the Project or the lowest bona fide contractor's proposal is in excess of any limit stated herein, the OWNER shall give written approval of an increase in the limit, or he shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required.

5.3.5. If this Agreement is terminated upon completion of any phase of the ENGINEER'S services, the progress payments to be made in accordance with paragraph 5.2.1.2. on account of that and all prior phases shall constitute total payment for services rendered; if termination. In the event of any termination, the ENGINEER shall be paid all terminal expenses resulting therefrom plus payment for additional services then due.

5.3.6. If, prior to termination of this Agreement, any work designed or specified by the ENGINEER during any phase of the work is suspended in whole or in part for more than three months, or abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed on account of it prior to receipt of such notice from the OWNER as provided in paragraph 5.3.5. for termination during any phase of the work.

SECTION 6 GENERAL CONSIDERATIONS:

6.1. Termination:

See Special Provisions - Section 7.

6.2. Ownership of Documents:

All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER may at his expense obtain a set of reproducible record prints of drawings and copies of other documents.

6.3. Estimates:

Since the ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that bids or the Project construction cost will not vary from cost estimates prepared by him.

6.4. Arbitration:

See Special Provisions - Section 7.

6.5. Successors and Assigns:

The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

SECTION 7 - SPECIAL PROVISIONS:

EPA Regulations, Dec. 29, 1976, Appendix C-1, 40CFR Part 35.

1. General. (a) The Owner and the Engineer agree that the following provisions shall apply to the EPA grant-eligible work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

(b) The work under this agreement is funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor the U.S. Environmental Protection Agency (hereinafter, "EPA") is a party to this agreement. This agreement which covers grant-eligible work is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939 in effect on the date of execution of this agreement. As used in these clauses, the words "the date of execution of this agreement" mean the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(c) The rights and remedies of the Owner provided for in these clauses are in addition to any other rights and remedies provided by law or under this agreement.

2. Responsibility of the Engineer. (a) The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the Engineer under this agreement. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(b) The Engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of this agreement.

(c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the technical adequacy of his work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(d) The Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the Engineer's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the Owner, Owner-furnished data or any third party. The Engineer shall not be responsible for any time delays in the project caused by circumstances beyond the Engineer's control. Where new or advanced processes, methods or technology (see 40 CFR 35.908) are recommended by the Engineer and are utilized, the Engineer shall be liable only for gross negligence to the extent of such utilization.

3. Scope of Work. The services to be rendered by the

Engineer shall include all services required to complete the task or Step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E in effect on the date of execution of this agreement) to the extent of the scope of work as defined and set out in the engineering services agreement to which these provisions are attached.

4. Changes. (a) The Owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Engineer of the notification of change unless the Owner grants a further period of time before the date of final payment under this agreement.

(b) No services for which an additional compensation will be charged by the Engineer shall be furnished without the written authorization of the Owner.

(c) In the event that there is a modification of EPA requirements relating to the services to be performed under this agreement subsequent to the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

5. Termination. (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: PROVIDED, That no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience: PROVIDED, That such termination is for good cause (such as legal or financial reasons, major changes in the work or program requirements, initiation of a new Step) and that the Engineer is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the Engineer's default. If termination for default is effected by the Engineer, or if termination for convenience is

effected by the Owner, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Engineer in performing this agreement, whether completed or in process.

(e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work taken over by the Owner for completion will be completed at the Owner's risk, and the Owner will hold harmless the Engineer from all claims and damages arising out of improper use of the Engineer's work.

(f) If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.

6. Remedies. (a) Pursuant to the authority contained in 40 CFR, Part 35, Subpart E, appendix C-1, paragraph 6, as amended and published in the Congressional Record, the parties agree that all claims, counterclaims, disputes and other matters in question between the Owner and the Engineer, arising out of or relating to this agreement or the breach thereof will be decided by arbitration in the manner herein provided, and pursuant to the provisions of Chapter 2711 of the Revised Code of Ohio.

(b) Notice of demand for arbitration must be given in writing to the other party to this agreement and to the EPA Regional Administrator within a reasonable time after the claim, dispute, or other matter in question has arisen; but in no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations in Ohio.

(c) The notice of demand for arbitration shall specify the name and address of the person chosen by the demanding party as arbitrator, and shall specify the claim, dispute or other matter in question for which arbitration is demanded.

(d) Within ten (10) normal working days of the receipt of a demand for arbitration, the party receiving such demand shall cause notice in writing to be served on the demanding party of the name and address of the person chosen by the

party who has received such demand as such party's arbitrator.

(e) Within ten (10) normal working days of the appointment of the second arbitrator, the arbitrators chosen by the parties shall appoint a third person as an additional arbitrator.

(f) The said arbitrators so appointed shall commence hearings within ten (10) working days after the appointment of the third arbitrator and shall cause notices of such hearing to be given to the parties hereto and to the EPA Regional Administrator by certified mail addressed to the said parties. Such hearings shall be held at such place as may be designated by a majority of the arbitrators.

(g) The arbitrators shall have the power to adjourn any hearing or hearings to a future date or dates, but such adjournments shall not be made for periods that will postpone the completion of this arbitration for more than two weeks.

(h) At the hearings under this arbitration the said arbitrators shall receive all evidence that may be submitted to them by the parties hereto and shall not be bound by the strict rules of evidence in force in the courts of Ohio, but may receive any evidence that to said arbitrators or a majority thereof has any bearing upon the matters in controversy or that will enable the said arbitrators to arrive at a fair and proper decision.

(i) The said arbitrators shall within fifteen (15) days after the completion of the taking of testimony under this arbitration determine all matters submitted to them and make an award. Such award shall be executed in duplicate, and one copy thereof shall be delivered to each party and to the EPA Regional Administrator. It shall not be necessary for all of such arbitrators to join in such determination and award, but the determination and award of a majority of such arbitrators shall be final and binding upon the parties and shall be a complete bar to any claims or demands in favor of either party against the other.

(j) The costs and expenses of such arbitration, including reasonable compensation to the arbitrators and to any stenographer employed by them, shall be paid by one or both parties as determined by a majority of the arbitrators.

(k) The arbitration shall be held and the award made in Clermont County, Ohio, as provided by Section 2711.08, Revised Code of Ohio.

7. Payment. (a) Payment shall be made in accordance with the payment schedule incorporated in this agreement as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. If no such payment schedule is incorporated in this agreement, the payment provisions of paragraph (b) of this clause shall apply.

(b) Monthly progress payments may be requested by the

Engineer and shall be made by the Owner to the Engineer as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. When such progress payments are made, the Owner may withhold up to ten percent of the vouchered amount until satisfactory completion by the Engineer of work and services within a Step called for under this agreement. When the Owner determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Owner, he shall release to the Engineer such excess amount.

(c) No payment request made pursuant to paragraph (a) or (b) of this clause shall exceed the estimated amount and value of the work and services performed by the Engineer under this agreement, which estimates shall be prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the Owner.

(d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the Engineer from the operation of the release in stated amounts to be set forth therein.

8. Project Design. (a) In the performance of this agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13 in effect on the date of execution of this agreement, except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908 in effect on the date of execution of this agreement.

(b) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer.

(c) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of Section 204(a) (6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by

the words "or equal." With regard to materials, if a single material is specified, the Engineer must be prepared to substantiate the basis for the selection of the material.

(d) The Engineer shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

(e) The Engineer shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. Audit; Access to Records. (a) The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this agreement. The Engineer shall also maintain the financial information and data used by the Engineer in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) in effect on the date of execution of this agreement and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and the Ohio Environmental Protection Agency or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Engineer will provide proper facilities for such access and inspection.

(b) The Engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of \$10,000.

(c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The Engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above, provided that the Engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Engineer.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on EPA grant work under this agreement and until three years from date of final EPA grant payment for the project. In addition,

those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. Price Reduction for Defective Cost or Pricing Data.

(a) If the Owner or EPA determines that any price, including profit, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the Engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be subject to the Remedies clause of this agreement.

11. Subcontracts. (a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically authorized by the Owner during the performance of this agreement. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.

(b) The Engineer may not subcontract services in excess of thirty percent (or _____ percent, if the Owner and the Engineer hereby agree) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. Labor Standards. To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the Engineer agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

(a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);

(b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);

(c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA; and the Engineer further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. Equal Employment Opportunity. In accordance with EPA policy as expressed in 40 CFR 30.420-5, the Engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of Small and Minority Business. In accordance with EPA policy as expressed in 40 CFR 35.936-7, the Engineer agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. Covenant Against Contingent Fees. The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the Owner 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 commission, percentage, brokerage, or contingent fee.

16. Gratuities. (a) If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Engineer, or any agent or representative of the Engineer, to any official, employee or agent of the Owner, of the State or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this agreement, the Owner may, by written notice to the Engineer, terminate the right of the Engineer to proceed under this agreement or may pursue such other rights and remedies provided by law or under this agreement: PROVIDED, That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this agreement.

(b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Engineer in providing any such gratuities to any such officer or employee.

17. Patents. If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this agreement, including Appendix B of said Part 30. In such case, the Engineer shall report the discovery or invention to EPA