

## MASTER SERVICES AGREEMENT

### BETWEEN

### OWNER AND ENGINEER

THIS IS AN AGREEMENT made as of \_\_\_\_\_ between Mt. Juliet, TN ("OWNER") and CDM Smith Inc. ("ENGINEER").

ENGINEER's Services will be performed pursuant to individual Task Orders issued by OWNER and agreed to by ENGINEER. Such Task Orders will contain the specific scope of work ("Services"), the time schedule, charges and payment conditions, and additional terms and conditions that are applicable to such Task Orders. An example Task Order is attached hereto.

Execution of a Task Order by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in the Task Order. This Agreement will become effective on the date first above written.

The terms and conditions of this Agreement shall apply to each Task Order, except to the extent expressly modified. When a Task Order is to modify a provision of this Agreement, the Article of this Agreement to be modified shall be specifically referenced in the Task Order and the modification shall be precisely described.

#### 1. SCOPE OF SERVICES

##### 1.1 Task Order

- 1.1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in individual Task Orders (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

#### 2. TIMES FOR RENDERING SERVICES

##### 2.1 Period of Service

- 2.1.1 The period of service of this Agreement shall be indefinite, subject to the conditions specified in Article 5.5 of this Agreement.
- 2.1.2 The specific time period for the performance of ENGINEER's Services will be set forth in individual Task Orders.
- 2.1.3 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.1.4 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

- 2.1.5 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services under a Task Order are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance has been revised.

### **3. OWNER'S RESPONSIBILITIES**

#### **3.1 OWNER shall:**

- 3.1.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.1.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the project.
- 3.1.3 Provide all criteria and full information as to OWNER's requirements for the project described in each Task Order, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.1.4 Furnish to ENGINEER all existing studies, reports and other available data and services of others pertinent to the Task Order, obtain or authorize ENGINEER to obtain or provide additional reports and data as required, and furnish to ENGINEER services of others required for the performance of ENGINEER's services for a Task Order, and ENGINEER shall be entitled to use and rely upon all such information and services provided by OWNER or others in performing ENGINEER's services under a Task Order subject to any express limitations or reservations applicable to the furnished items.
- 3.1.5 Be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement.
- 3.1.6 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under a Task Order.
- 3.1.7 Furnish approvals and permits from all governmental authorities having jurisdiction over the Task Order and such approvals and consents from others as may be necessary for completion of the Task Order.
- 3.1.8 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any relevant, material defect or conformance in ENGINEER's Services or in the work of any Contractor employed by Owner on the Project.

3.1.9 Bear all costs incident to compliance with the requirements of this Article 3.

#### **4. PAYMENTS TO ENGINEER FOR SERVICES**

##### **4.1 Methods of Payment for Services of ENGINEER.**

- 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in each Task Order. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in each Task Order. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.
- 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Invoices are due and payable within 30 days of receipt.
- 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- 4.1.4 OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

#### **5. GENERAL CONDITIONS**

##### **5.1 Standard of Care**

- 5.1.1 The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

##### **5.2 Technical Accuracy**

- 5.2.1 Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy

without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

### **5.3 Opinions of Probable Construction Cost**

- 5.3.1 Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### **5.4 Compliance with Laws and Regulations, and Policies and Procedures**

- 5.4.1 Engineer and Owner shall comply with applicable Laws and Regulations.
- 5.4.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- 5.4.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- 5.4.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- 5.4.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- 5.4.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- 5.4.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

- 5.4.8 Engineer's services do not include providing legal advice or representation.
- 5.4.9 Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- 5.4.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 5.5 Termination

The obligation to provide further services under this Agreement may be terminated:

- 5.5.1 For cause,
  - 5.5.1.a by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - 5.5.1.b by Engineer:
    - A. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - B. upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern; and
    - C. Engineer shall have no liability to Owner on account of such termination.
  - 5.5.1.c Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 5.5.2 For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- 5.5.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete

tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**5.5.4 Payments Upon Termination:**

- 5.5.4.a In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 5.6.
- 5.5.4.b In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 5.5.4.a, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs.

**5.6 Use of Documents**

- 5.6.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.6.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations
- 5.6.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 5.6.4 Owner may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any

such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.

- 5.6.5 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

## **5.7 Controlling Law**

This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

## **5.8 Mutual Waiver of Consequential Damages**

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

## **5.9 Limitation of Liability**

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

## **5.10 Successors and Assigns**

- 5.10.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) 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.
- 5.10.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement 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 will release or discharge the assignor from any duty or responsibility under this Agreement.

5.10.3 Unless expressly provided otherwise in this Agreement:

5.10.4 Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

5.10.5 All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party

## **5.11 Notices**

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

## **5.12 Severability**

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## **5.13 Changed Conditions**

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

## **5.14 Environmental Site Conditions**

5.14.1 OWNER has disclosed to ENGINEER in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern, as defined in Article 6, located at or near the Site, including type, quantity, and location. OWNER represents to ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to ENGINEER, exist at the Site.



- 5.14.2 If ENGINEER encounters an undisclosed Constituent of Concern, then ENGINEER shall notify (1) OWNER and (2) appropriate governmental officials if ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.
- 5.14.3 It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 5.14.4 If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

## **5.15 Insurance**

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property.

## **5.16 Discovery**

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

## **5.17 Nondiscrimination and Affirmative Action**

In connection with its performance under this Agreement, ENGINEER 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. ENGINEER 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.

## **5.18 Force Majeure**

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

#### **5.19 Waiver**

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### **5.20 Headings**

The headings used in this Agreement are for general reference only and do not have special significance.

#### **5.21 Subcontractors**

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

#### **5.22 Coordination with Other Documents**

It is the intention of the parties that if the ENGINEER's Services include design services, then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

#### **5.23 Purchase Order**

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

#### **5.24 Change Orders**

- 5.24.1 Any work not contained in a Task Order shall be a change, and shall be performed by ENGINEER only pursuant to a written Change Order to this Agreement signed by OWNER and ENGINEER. Such a Change Order may increase or decrease the Work within the general scope of this Agreement. If this Change Order causes an increase in the cost of the Work, or of the time required for the performance of the Work, ENGINEER shall be paid additional compensation acceptable to both parties in accordance with Exhibit A or granted an extension of the schedule, or both.
- 5.24.2 In the event OWNER requests ENGINEER to develop information necessary for the consideration of a change in the project, and such a change is not adopted, OWNER shall reimburse ENGINEER for the costs which it incurs in connection with such efforts.

## **5.25 Construction Contractor's Means and Methods**

ENGINEER shall have no authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by the OWNER's construction contractor or for safety precautions and programs incident to the work of the OWNER's construction contractor.

## **5.26 Reporting Regulated Conditions**

To the extent required by law, OWNER shall promptly report regulated conditions, including, without limitation, the discovery of releases of hazardous substances at the site to the appropriate public authorities in accordance with applicable law.

## **5.27 Indemnification**

- 5.27.1 OWNER recognizes that any Task Order executed by ENGINEER involving Constituents of Concern, as defined in Article 6, involves legal exposure and higher risk than ENGINEER's usual engineering services.
- 5.27.2 OWNER also recognizes that ENGINEER's services are to be compensated primarily on the basis of the time ENGINEER's personnel spend in rendering services and not on basis of the exposure and risk of the work.
- 5.27.3 Therefore, OWNER and ENGINEER agree as follows:
  - 5.27.3.a Notwithstanding any other provision in this Agreement to the contrary, for Task Orders involving or relating to Constituents of Concern, OWNER shall indemnify, defend, and hold harmless the ENGINEER and its subcontractors, consultants, agents, officers, directors, and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of the work by ENGINEER, or claims against ENGINEER arising from the work of others, related to Constituents of Concern, as defined in Article 6.
  - 5.27.3.b The above indemnification provision extends to claims against ENGINEER and to damages which arise out of, are related to, or are based upon the dispersal, discharge, escape, release, threatened release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, asbestos, or any other material, irritant, contaminant or pollutant in or into

the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether sudden or not.

- 5.27.3.c Nothing in this Article 5 shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own finally determined negligence or willful misconduct.

## **5.28 Status of ENGINEER**

Nothing contained in this Agreement shall be construed or interpreted as requiring ENGINEER, its officers, agents, servants, or employees to assume the status of a generator, storer, treater, transporter or disposal facility as those terms appear within the Resource Conservation Recovery Act, 42USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the treatment, storage, transportation or disposal of waste.

## **5.29 Dispute Resolution**

- 5.29.1 In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.
- 5.29.2 Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

## **6. DEFINITIONS**

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

### **6.1 Agreement**

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

### **6.2 Constituent of Concern**

Any substance, product, waste, or other material of any nature whatsoever (including, but no limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or

addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq, ("CERCLA")| [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §v1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

### **6.3 Construction Cost - •**

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

### **6.4 Constructor**

Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

### **6.5 Contractor - •**

The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

### **6.6 Documents**

As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

### **6.7 ENGINEER's Subcontractor**

A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

### **6.8 Reimbursable Expenses.**

The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in each agreed upon Task Order.

### **6.9 Resident Project Representative - •**

The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").

**6.10 Standard General Conditions - •**

The Standard General Conditions of the Construction Contract of the Engineers Joint Contract Documents Committee.

**6.11 Total Project Costs - •**

The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

**6.12 Work - •**

The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

- **This provision is applicable for projects where ENGINEER provides Design, Bidding, and/or Construction Phase Services**

**7. EXHIBITS AND SPECIAL PROVISIONS**

**7.1 This Agreement is subject to the following special provisions:**

7.1.1 Not Used

**7.2 This Agreement is subject to the following Exhibits which are attached to and made a part of the Agreement:**

EXHIBIT A: Sample Task Order

This Agreement and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

**OWNER:**

**ENGINEER:**

---

BY: James Maness  
TITLE: Mayor

---

BY: Aaron Rogge, PE  
TITLE: Client Service Leader

ADDRESS FOR GIVING NOTICES:

2425 N Mt. Juliet Road  
Mt. Juliet, TN 37122

ADDRESS FOR GIVING NOTICES:

210 25th Ave N Suite 1102  
Nashville, TN 37203



# EXHIBIT A

## SAMPLE TASK ORDER

**TASK ORDER NO. \_\_\_\_\_ TO  
MASTER SERVICES AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

This is Task Order No. \_\_\_\_\_ dated \_\_\_\_\_ attached to and made part of the Master Services Agreement dated, \_\_\_\_\_, between Mt. Juliet, TN and CDM Smith Inc.

This Task Order describes the Scope of Services, Time Schedule, Charges, and Payment Conditions for the Task Order known as: \_\_\_\_\_ (the "Project").

### **1. Scope of Services**

ENGINEER shall provide for OWNER the following specific Services:

#### Time Schedule

The time periods for the performance of ENGINEER's Services are as follows:

#### Compensation and Invoicing

Compensation for Services of ENGINEER described in this Task Order will be on the following basis:

#### Terms and Conditions

The terms and conditions of the Agreement referred to above shall apply to this Task Order except to the extent expressly modified herein. In the event of any such modification, the modification shall be set forth below and the Article of the Agreement to be modified shall be specifically referenced.

Modifications included in this Task Order are:

**Terms or Provisions in Conflict**

If the provisions set forth in the Agreement are in conflict with the provisions set forth in this Task Order, the provisions of this Task Order shall govern.

Acceptance of the terms of this Task Order is acknowledged by the following authorized signatures of the parties to the Agreement:

**OWNER:**

**ENGINEER:**

\_\_\_\_\_  
BY: James Maness  
TITLE: Mayor

\_\_\_\_\_  
BY: Aaron Rogge, PE  
TITLE: Client Service Leader

**ADDRESS FOR GIVING NOTICES:**

2425 N Mt. Juliet Road  
Mt. Juliet, TN 37122

**ADDRESS FOR GIVING NOTICES:**

210 25th Ave N Suite 1102  
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