



ESSEX COUNTY OFFICE OF COMMUNITY RESOURCES

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Anna Reynolds
Director

Rob Wick
Project Manager

TO: All Bidders / Respondents

FROM: Rob Wick, PMP Project Manager

DATE: February 27th, 2019

SUBJECT: Addendum #2 Wadhams WWTP Disinfection Upgrades Engineering RFP

1. Response to Request for Information Questions posed on 2/27/2019

Q: Can the due date for this RFP be pushed back to March 22nd, 2019?

A: No; the Town has regularly scheduled Board Meetings and due to the volume of RFP's this office is processing, these RFP due dates will not be moved.

Q: Has SHPO provided a determination on any required archaeological work to be done on this site?

A: On 06/06/2018 SHPO determined that there was a 'Finding of No Effect' the project would have on the property.

Q: Has a hazardous (lead and asbestos) survey been completed for the structures on site?

A: This has not yet been conducted, as this would fall into the scope of the engineer's requisite investigations and Basis of Design Report that is one of the listed deliverables.

Q: Is there a minimum number of project meetings for Respondents to consider?

A: Per the RFP and the draft form of Agreement, it is assumed that there will be monthly project meetings with the Owner and project team.

Q: For Scheduling purposes, please provide response times for Town and County staff to review deliverables such as Basis of Design Reports, etc.

A: Assume an average response time for Deliverable review and acceptance to be no more than fifteen (15) business days.

Q: Confirm if funding has been secured for this project.

A: Per the funding program requirements indicated in the RFP, all Respondents can assume that the CDBG program has provided funds for this project.

Q: Clarify who is approving the Basis of Design Report.

A: As the project is for the Town of Westport, the Town will be reviewing the Report first prior to formal submission to NYS DEC.

Q: Clarify the intent to have a Basis of Design Report provided prior to Final Design. What is the assumed response time for approval process?

A: Before the Town will commission an engineer to commence Final Design, the Town will place the Basis of Design and Preliminary Cost Estimates before the Board for approval. The Town Board meets regularly on the second and fourth Tuesdays of each month. Assumed responses ought to be not more than fifteen (15) business days for comment on engineer Deliverables.

Q: Clarify the intent to have funding secured before Final Design work for the project can commence.

A: If there is an opportunity to provide additional supplemental funding for the project, it is necessary to first have the Basis of Design in hand for potential funding applications. Final Design phase provides a natural pause point in the project to make any modifications before finalizing plans and specifications and adding potentially unnecessary project cost.

Q: Clarify Scoring Criteria and the Cost Proposal formula.

A: Per the formula provided in 3. a. of the RFP, each Respondents' Cost Proposal figure is compared first to the AVERAGE of all Proposals, then divided by YOUR proposal, then multiplied by the 15 points. While it is possible for this formula to provide a total Proposal Score of over 100 possible points if the Cost Proposal is *dramatically lower* than all other Proposals, the Cost Proposal is weighted less than the allotted point score of the Technical and Qualifications Proposals for this very reason. In the unlikely event that a Respondents Cost is so low or high that it appears to skew scoring results, as a matter of standard procedure those Respondents are contacted and asked to explain details of their Cost Proposals to ensure there are no misinterpretations stemming from the RFP.

2. Correction to the Draft Form of Agreement, which did not include the 'Study & Report Phase' of engineer services.

END OF ADDENDUM # 2

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with E CDC C 700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see E CDC E 001, Commentary on the E CDC Engineering Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of **(DRAFT UPDATED 2/27/19)** (Effective Date) between

THE TOWN OF WESTPORT, NY (Owner) and

TBA (Engineer).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

TOWN OF WESTPORT, HAMLET OF WADHAMS WWTP DISINFECTION UPGRADES (Project).

Other terms used in this Agreement are defined in **Article 7**.

Engineer's services under this Agreement are generally identified as follows:

DESIGN THE TOWN THE DISINFECTION UPGRADES NECESSARY FOR THE WADHAMS HAMLET WWTP TO MEET NYS DEC SPDES PERMIT COMPLIANCE. PROJECT MUST REMAIN IN NYS OCR-FUNDED COMPLIANCE, AND CAUSE TO BE CONSTRUCTED NO LATER THAN DECEMBER 15 2020.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein, in **Exhibit A** and the originating RFP response, **and all revisions** included as **Exhibit P**.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in **Exhibit B**.
- B. Owner shall pay Engineer as set forth in **Article 4 and Exhibit C**.
- C. Owner shall 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. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer s services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer s services, (b) the Work, (c) the performance of any Constructor, or (d) Owner s performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.
- B. **The term of this agreement shall commence on May 1st, 2019 through December 15TH, 2020, time being of the essence.**

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in **Exhibit A and Exhibit L**, and are hereby agreed to be reasonable.
- B. 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.
- C. 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.
- D. 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.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of **Exhibit C**. Engineer shall submit its invoices to Owner on a monthly basis **prior to the Owners Town Board meeting for invoice approval, which is listed for public knowledge. The Town of Moriah Board meets on the second Thursday of each month.** Invoices are due and payable ~~within thirty (30) days of receipt after thirty (30) days of acceptance from the Town Board.~~

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within **thirty (30) days** after receipt of Engineer's invoice, then:
 - 1. 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
 - 2. Engineer may, after giving **seven (7) days** written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- 3. **Exceptions to this section apply when the Consultant fails to provide funding agency required reports and/or documents that are complete and on time; if these reports are not supplied as required and further specified in the Attachments hereto, the Owner reserves the right to withhold payment without penalty by the Consultant to ensure that project costs are compliant per the specified funding agency program requirements.**
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of **Paragraph 4.01**.
- ~~D. *Sales or Use Taxes:* 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 sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of **Exhibit C**.~~

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. 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.

5.02 ~~Designing to Construction Cost Limit~~

- ~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* 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 the subject profession practicing under similar circumstances 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.
- B. *Technical Accuracy:* 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.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in **Paragraph 6.01.A**, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable laws and Regulations.
 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in **Paragraph 6.01.A**, and to the extent compliance is not inconsistent with professional practice requirements.
 - a. Articles 8 – 9 NYS Labor Law: Public Works Building Service Contracts
 - b. Section 220 f of NYS Labor Law: International Boycotts
 - c. Debarment/Suspension:

- 1) Exec. Order 125 9 12689
 - 2) 2 USC ss 1320a 7b(f)
- d. HIPA Act of 1996
3. This Agreement is based on laws and Regulations and Owner provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
- a. changes after the Effective Date to laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner provided written policies and procedures;
 - c. changes after the Effective Date to Owner provided written policies or procedures.
- F. 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.
- G. **The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.**
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. Engineer's services do not include providing legal advice or representation.

- M. 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.
- N. 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.
- O. The parties each acknowledge, covenant and agree that the relationship of the Consultant to the Owner shall be of an independent contractor. The Consultant, in accordance with its status as an independent contractor, further covenants and agrees that it
 - 1. will conduct itself in accordance with its status as an independent contractor;
 - 2. will neither hold itself out as nor claim to be an officer or employee of the Owner;
 - 3. will not make any claim, demand, or application for any right of privilege applicable to an officer or an employee of the Owner, including but not limited to workers compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.
- P. The Consultant shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certifications required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Consultant under this agreement.

~~6.02 — Design Without Construction Phase Services~~

- ~~A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in **Exhibit A, Paragraph A1.05**. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in **Exhibit A**.~~

6.03 Use of Documents

- A. 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.

- B. The Consultant is to maintain all books, documents, papers, account records and other evidence pertaining to this work ***and to make such materials available*** at their respective offices at all reasonable times during the agreement and **for a period up to six (6) years from the date of final payment under the agreement.**
- C. If Engineer is required to prepare or furnish Drawings and/or Specifications under this Agreement, Engineer shall deliver to Owner at least **two (2)** original printed record versions of such Drawings and Specifications, signed and sealed according to applicable laws and Regulations, and further provide electronic copies (e.g., PDF.) upon completion of the project and upon payment in full to the Engineer.
- D. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and 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, on any other project, or for any other use or purpose, 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 its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and () such limited license to Owner shall not create any rights in third parties. **THIS PROVISION SHALL NOT APPLY TO SURVEY AND MAPPING PRODUCTS THAT WILL REMAIN THE PROPERTY OF THE OWNER AT PROJECT COMPLETION.**
- E. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. 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.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. 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.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in **Exhibit G**. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in **Exhibit G**. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in **Exhibit G**. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least **ten (10) days** prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Engineer's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in **Exhibit G**. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and **Exhibit G** will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

- A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to **ninety (90) days** upon **seven (7) days** written notice to Engineer.
 2. *By Engineer:* Engineer may, after giving **seven (7) days** written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in **Paragraph 4.02.B**, or in response to the presence of Constituents of Concern at the Site, as set forth in **Paragraph 6.10.D**.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. by either party upon **thirty (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.
 - b. by Engineer:
 - 1) upon **seven (7) days** written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon **seven (7) days** written notice if the Engineer's services for the Project are delayed or suspended for more than **ninety (90) days** for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in **Paragraph 6.10.D**.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - 4) **In the event of such termination, Engineer is still liable to provide copies of any project drawings, specifications, mapping and any other developed Work that the Owner has paid for in the period of performance.**
 - c. Notwithstanding the foregoing, this Agreement will not terminate under **Paragraph 6.06.B.1.a** if the party receiving such notice begins, within **seven (7) days** of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than **thirty (30) days** of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such **thirty (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, **sixty (60) days** after the date of receipt of the notice.
 2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under **Paragraph 6.06.B** may set the effective date of termination at a time up to **thirty (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.
- D. *Payments Upon Termination:*

1. In the event of any termination under **Paragraph 6.06**, 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, **other than survey and Mapping products for which the Owner will have unfettered use**, at Owner's sole risk, subject to the provisions of **Paragraph 6.03**.
2. 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 6.06.D.1**, 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, using methods and rates for Additional Services as set forth in **Exhibit C**.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the laws and Regulations of the state in which the Project is located: **TOWN OF MORIAH, ESSEX COUNTY, NEW YORK, and any and all disputes shall be brought to the Essex County Supreme Court, Essex County, NY.**

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by **Paragraph 6.08.B** the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third party individual or entity, or to any surety for or employee of any of them.
 2. 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.
 3. Owner agrees that the substance of the provisions of this **Paragraph 6.08.C** shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of **thirty (30) days** from the date of notice ~~prior to invoking the procedures of Exhibit H~~ or other provisions of this Agreement or exercising their rights at law.
- B. **No Exhibit H is included.**
- C. **After the thirty (30) day period for mutual negotiation has expired or the process has failed, then disputes, including breach or alleged breach thereof, may not be submitted to binding arbitration. Instead, the dispute must be heard in the Essex County Supreme Court or any other court of competent jurisdiction within Essex County, NY**
- D. ~~If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.~~

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, 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.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent 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 such portion of the Project is no longer affected.
- E. 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 **seven (7) days'** notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an owner, arranger, operator, generator, or transporter of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Indemnification and Mutual Waiver

- ~~A. *Indemnification by Engineer:* To the fullest extent permitted by laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants and attorneys fees and expenses) arising from third party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**~~
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- ~~D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.~~
- ~~E. *Percentage Share of Negligence:* To the fullest extent permitted by laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- ~~F. *Mutual Waiver:* To the fullest extent permitted by laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.~~

6.12 *Records Retention*

- A. Engineer shall establish and maintain complete and accurate books, records, documents, accounts other evidence directly pertinent to performance under this contract of the Consultant on file in legible form, for a period of **six (6) years** following completion or termination of its services under each Task Order **plus the year in which the Work was completed**; all Documents, records (including cost records), and design calculations related to Consultant s services or pertinent to Consultant s performance under this Agreement.
- B. Upon Owner s request, Consultant shall provide access to the Records during normal business hours at an office of the Consultant in the State of New York; if not such office is available, then at a mutually agreeable venue for the purposes of inspection, auditing and copying. Consultant will also ensure the ability to send and utilize electronic/digital files of the same of more efficient transference of Records, per **Paragraph 6.04**. a copy of any such item to Owner at cost.
- C. The Owner shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers aw (The Statute) provided that: (1) the Consultant shall timely inform an appropriate Owner official, in writing, that said records should not be disclosed; and (2) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way affect, the Owners right to discovery in any pending or future litigation.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which 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.
- D. *Waiver:* A party s non enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Discrimination Prohibited:* The services to be furnished and rendered under this agreement by the Consultant shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment;

and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule, or regulation.

- G. *Non-Discrimination in Employment:* The consultant will not discriminate against any employee or applicant for employment because of race, color, creed, sex, religion, national or ethnic origin, disability, or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale of distribution of materials, equipment of supplies, (c) for building service, the Consultant agrees that neither it nor its subcontractors shall, by any race, color, creed, sex, religion, national or ethnic origin, handicap, or marital status:
- a. Discriminate in hiring against any citizen who is qualified and available to perform the work; or
 - b. Discriminate against or intimidate any employee hired for the performance of work under the contract.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment

in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern* Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 2 U.S.C. 9601 et seq. (CERCLA); (b) the Hazardous Materials Transportation Act, 9 U.S.C. 5501 et seq.; (c) the Resource Conservation and Recovery Act, 2 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. 1251 et seq.; (f) the Clean Air Act, 2 U.S.C. 701 et seq.; or (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.
9. *Construction Contract* The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents* Those items designated as Contract Documents in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost* The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights of way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Contractor*—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.
15. *Consultants* Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings* That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date* The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer* The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations* Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner* The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project* The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings* Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses* The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative* The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or RPR includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site* Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights of way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications* The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor* An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion* The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms substantially complete and substantially completed as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier* A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs* The total cost of planning, studying, designing, constructing, testing, commissioning, and start up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights of way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *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; 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.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word *day* means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, EJCDC Notice of Acceptability of Work.
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- ~~H. Exhibit H, Dispute Resolution.~~
- ~~I. Exhibit I, Limitations of Liability.~~
- J. **Exhibit J, Special Provisions – Additional Terms & Conditions to Agreement.**
- K. Exhibit K, EJCDC Amendment to Owner Engineer Agreement.
- L. **Exhibit L, Project Schedule.**
- M. **Exhibit M, Funding Program Requirements.** (*See Request for Proposal Appendix A*)
- N. **Exhibit N, EJCDC Contractor Payment Application.** (*For Inclusion at Bidding*)
- O. **Exhibit O, Project Closeout Checklist.** (*For inclusion at Bidding*)
- P. **Exhibit P, Engineer's Originating Proposal Excerpt.**

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or

canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of **Exhibit K** to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer s and Owner s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this **Paragraph 8.04**:
 - 1. corrupt practice means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. fraudulent practice means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **TOWN OF MORIAH**

Engineer: **TBA**

By: _____

By: _____

Print name: **HON. MICHAEL TYLER**

Print name: _____

Title: **TOWN SUPERVISOR**

Title: _____

Date Signed: _____

Date Signed: _____

Engineer license or Firm's Certificate No. (if required): _____

State of: **NEW YORK**

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

22 CHAMPLAIN AVE. POB 465

WESTPORT, NY 12993

Designated Representative (**Paragraph 8.03.A**):

Designated Representative (**Paragraph 8.03.A**):

Rob Wick, PMP

Title: **Project Management Specialist**

Title: _____

Phone Number: **(518) 873-3426**

Phone Number: _____

E Mail Address: **rwick@co.essex.ny.us**

E Mail Address: _____

This is **EXHIBIT A**, consisting of **17** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 General Requirements:

A. Engineer shall provide:

1. Project Schedule.

- a. Produce a project schedule in Gantt chart format at the start of the project as a baseline and continue to keep the schedule updated throughout project.
- b. Provide updates to the Owner for any changes to the schedule that may impact the timely execution of the project per the terms of the contract.

2. Project & Program Management:

- a. Conduct **bi-weekly progress meetings**, a minimum of one (1) project meeting per month, through all phases of design and construction; Engineer will notify Owner of any additional meetings required, whether they be informal, formal or official Board Meetings to pass various Resolutions.
- b. Engineer will keep all meeting minutes and distribute to attendees.
- c. Engineer will coordinate with Owner (or Owner s Designated Representative) for necessary permits.
- d. Ensure Engineer s own contract is compliant by the Owners funding program requirements, and produce all necessary reports required.
- e. Ensure that Owners Contractors contracts are also compliant per the Owners funding program requirements, and all necessary reports required are produced.

Study and Report Phase

B. Engineer shall:

1. Consult with Owner to define and clarify Owner s requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

- a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:
- b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner s requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer s study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
- e. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify **THREE (3)** alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~

1) For the purposes of this project, UV disinfection has already been determined to be the selected Alternative.

2. Identify potential solution(s) to meet Owner s Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner s Project requirements.
 - . Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project related data and information, for Engineer s use in the study and evaluation of potential solution(s) to Owner s Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer s judgment meet Owner s requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the Report) which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and Engineer s recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

Exhibit A – Engineer’s Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner s facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as Project Strategies, Technologies, and Techniques.
 11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner s instructions plan for the inclusion of sustainable features in the design.
 12. Use ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables:
[PROVIDE ALL SURVEY AND MAPPING PRODUCTS TO THE TOWN; PROVIDE A REGULATORY AND FUNDING AGENCY COMPLIANT BASIS OF DESIGN REPORT NO LATER THAN 06/10/2019.
 15. Furnish **three (3)** review copies of the Report and any other Study and Report Phase deliverables to Owner within **approximately sixty (60) days** of the Effective Date and review it with Owner. Within **thirty (30) days** of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner s comments, as appropriate, and furnish **three (3)** copies of the revised Report and any other Study and Report Phase deliverables to the Owner within **thirty (30) days** of receipt of Owner s comments.
- C. Engineer s services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer s compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer s services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
 1. *Project Permitting (these are not inclusive; may vary or change during the project):*
 - a. Topographic Survey Map

Exhibit A – Engineer’s Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- b. Boundary Survey Map
 - c. CONSULTANT shall provide technical support as needed to support any permitting process.
 - d. CONSULTANT has allocated fees to cover the creation of drawings, technical documents, review of permit related documents and revision as needed
2. Prepare Schematic Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 3. In preparing the Schematic Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 4. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer **based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,"** as set forth in **Paragraph A1.01.A.12** above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 5. Visit the Site as needed to prepare the Schematic Design Phase documents.
 6. Advise Owner if additional reports, data, information, or services of the types described in **Exhibit B** are necessary and assist Owner in obtaining such reports, data, information, or services.
 7. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 8. Based on the information contained in the Schematic Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 9. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than E CDC C 700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 10. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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COORDINATE WITH THE OWNER AND OWNER'S PROJECT TEAM TO SUPPORT EFFORTS IN ACHIEVING ANY AND ALL PERMITTING NECESSARY FOR PROJECT TO REGULATORY AND FUNDING AGENCIES, PRIOR TO FINAL DESIGN AND IN TIME TO SUPPORT BIDDING OF CONSTRUCTION.

11. Furnish **two [2]** review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **thirty [30]** days of authorization to proceed with this phase, and review them with Owner. Within **ten [10]** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 12. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Schematic Design Phase deliverables in response to Owner s comments, as appropriate, and furnish to Owner **two [2] copies** of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen [15] days** after receipt of Owner s **and any required Regulatory Agencies'** comments.
- B. Engineer s services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 Final Design Phase (100% complete Design for Regulatory/Funding Agency reviews)

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner s use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of 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. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post Construction Phase, and unless agreed otherwise shall

supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables: **PROVIDE A FINAL SET OF PLANS & SPECS TO REGULATORY AND FUNDING AGENCIES IS SUCH TIME TO ALLOW FOR FORMAL REVIEW ACCEPTANCE PRIOR TO BIDDING CONSTRUCTION PROJECT.**
 10. Furnish for review by Owner, its legal counsel, and other advisors, **two [2] copies** of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **sixty [60] days** of authorization to proceed with the Final Design Phase, and review them with Owner. Within **fifteen [15] days** of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **two [2] final copies** of such documents to Owner **and any required Regulatory Agencies** within **twenty [20] days** after receipt of Owner s/Agencies comments and instructions.
- B. Engineer s services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer s services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer s services during the Final Design, Bidding, Construction, and Post Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer s compensation has been established under this Agreement is **[3 - GENERAL**

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CONTRACTOR, ELECTRICAL, AND PLUMBING/PROCESS J. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.0 *Bidding Phase (incl. Program Compliant "Construction Documents")*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. **Conduct a Pre-Bidding Conference and ensure all potential Bidders are cognizant of any special considerations, to include Funding Agency requirements.**
2. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
3. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 - . Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
5. Consult with Owner as to the qualifications of prospective contractors.
6. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
7. If the issued documents require, the Engineer shall evaluate and determine the acceptability of or equals and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of **Paragraph A2.02.A.2 of this Exhibit A.**
8. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
9. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
10. Perform or provide the following other Bidding Phase tasks or deliverables:

ENGINEER WILL BE EXPECTED TO ENSURE ALL FUNDING REQUIREMENTS THAT THE PROJECT MUST BE COMPLIANT TO ARE CLEARLY CITED IN THE CONTRACT DOCUMENTS, TO ENSURE

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CONTRATOR(S) HAVE ALL NECESSARY AGENCY PLAN & REPORT FORMS TO POPULATE, PER EXHIBIT M.

- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if **Exhibit F** is a part of this Agreement).

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in E CDC C 700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in **Exhibit D**. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in **Exhibit D**.
 3. **Additionally, RPR will conduct HUD/CDBG Wage Rate Interviews per Exhibit M, as required.**
 4. ~~*Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in **Exhibit B, Paragraph B2.01.**~~
 5. *Pre-Construction Conference:* Participate in a pre construction conference prior to commencement of Work at the Site.
 6. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of 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, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post Construction Phase.
 7. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by

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Engineer and other design professionals in accordance with applicable laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

8. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
9. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
10. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

11. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
12. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
13. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
14. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
15. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
16. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
17. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
18. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

19. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or equal materials and equipment proposed by Contractor, but subject to the provisions of **Paragraph A2.02.A.2 of this Exhibit A**.
20. *Inspections and Tests*:
- a. Receive and review all certificates of inspections, tests, and approvals required by laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
21. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within **ten (10) days** after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part **such that the Owner can pay the Contractor within a thirty (30) day term from invoice submission**. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
22. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set offs) based on the provisions for set offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents). **Further, the Engineer will review Contractor Submittals, to include any funding agency**

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plans or reports that are due on monthly/quarterly deliverables for compliance and acceptability, to ensure that all project costs are funding agency compliant.

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; ~~to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~
23. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, **Record Drawings**, Samples, and other data approved as provided under **Paragraph A1.05.A.17**. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages. **Engineer shall ensure that all Project Closeout documents listed in Exhibit P, "Project Closeout Checklist", are secured prior to issuing the "Notice of Acceptability of Work". Provided in Exhibit E.**
24. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
25. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: **ENSURE ALL DELIVERABLES THROUGH CONSTRUCTION ADMINISTRATION ARE COMPLIANT AND IN ACCORDANCE WITH FUNDING PROGRAM REQUIREMENTS, LISTED IN EXHIBIT M.**
26. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final

payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as **Exhibit E (“Notice of Acceptability of Work”)** that the Work is acceptable (subject to the provisions of the Notice and **Paragraph A1.05.A.21.b**) to the best of Engineer’s knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

27. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in **Paragraph A1.03.D**, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of **Article 3**, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 ~~Post-Construction~~ *Close Out Phase*

A. Upon written authorization from Owner during the ~~Post-Construction~~ Close Out Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
2. ~~Together with Owner, visit the Project within one month before the end of the Construction Contract’s correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.~~
3. Perform or provide the following other ~~Post-Construction~~ Close Out Phase tasks or deliverables:

**ENSURE ALL NECESSARY PROGRAM MANAGEMENT & DOCUMENTS
ADDRESS FUNDING AGENCY REQUIREMENTS AS DEFINED IN EXHIBIT M.**

B. The ~~Post-Construction~~ Close Out Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate ~~twelve~~ **two** months after the commencement of the Construction Contract’s correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in **Exhibit C**.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for ~~private or governmental grants, loans, or advances in connection with the Project;~~ preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in **Paragraph A1.01.A.1 and 2**.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.

NOTE: A PRIMARY DELIVERABLE OF THIS CONTRACT IS TO PROVIDE OWNER AN ELECTRONIC SET OF PROJECT DESIGN DATA TO INCLUDE ANY MAPS, DESIGNS, SPECIFICATIONS, ETC. USED IN CONJUNCTION WITH ESTABLISHING CONSTRUCTION DOCUMENTS (.pdf file type); THIS ACTIVITY IS NOT SUBJECT TO INTERPRETATION AS AN "ADDITIONAL SERVICE".

7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. ~~the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;~~

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- ~~e. preparation of appraisals;~~
- ~~d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;~~
- ~~e. detailed quantity surveys of materials, equipment, and labor; and~~
- ~~f. audits or inventories required in connection with construction performed or furnished by Owner.~~

NOTE: AS A PART OF THE CONSTRUCTION PHASE ADMINISTRATION SERVICES, THE ENGINEER IS EXPECTED TO PROVIDE ANALYSIS OF THE CONTRACTOR'S PAYMENT APPLICATIONS FOR ACCURACY REMITTED EACH MONTH, PER ATTACHED FORMS IN EXHIBITS, AND NOT SUBJECT TO INTERPRETATION AS AN "ADDITIONAL SERVICE".

- 8. Furnishing services of Consultants for other than Basic Services.
- 9. Providing data or services of the types described in **Exhibit B**, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
- 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in **Paragraph A1.03. D.**
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
- 11. Services during out of town travel required of Engineer, ***other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).***
- ~~12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.~~
- 13. Preparing additional bidding related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by **Paragraph 5.02.A and Exhibit F.**
- 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
- 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total

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quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.

17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.

NOTE: ENGINEER SHALL CITE IN CONSTRUCTION DOCUMENTS THAT THE CONTRACTOR IS RESPONSIBLE TO PROVIDE (2) SETS OF RECORD DRAWINGS, AND ENGINEER SHALL REVIEW FOR ACCURACY AND APPLY ANY NECESSARY MARKUPS, AS REQUIRED AS A NORMAL CONSTRUCTION PHASE SERVICES ACTIVITY, NOT SUBJECT TO INTERPRETATION AS “ADDITIONAL SERVICES”.

18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under **Paragraph A1.05.A.8**; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

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A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than or equal items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed or equal or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed or equals or substitutions, whether proposed before or after award of the Construction Contract.

NOTE: ENGINEER SHALL COMMUNICATE TO OWNER ANY CHANGES TO THE PLANS & SPECIFICATIONS THAT RESULT IN PRODUCT CHANGES THAT DO NOT MEET THE EXISTING CONFIGURATION MANAGEMENT OR PRODUCT STANDARDS, PER THE ORIGINATING RFP, APPENDIX J.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 - . Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of **4** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than E CDC C 700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 - ~~3. Utility and topographic mapping and surveys.~~
 4. Property, boundary, easement, right of way, and other special surveys or data, including establishing relevant reference points.

Exhibit B – Owner's Responsibilities

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5. Explorations and tests of subsurface conditions at or adjacent to the Site; ~~geotechnical reports and investigations~~; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, ~~laboratory tests and inspections of samples, materials, and equipment~~; with appropriate professional interpretation of such ~~information or data~~.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, municipal advisor services as described in Section 975 of the Dodd Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- ~~G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.~~
- NOTE: THE ENGINEER SHALL PROVIDE AND/OR PROCURE AND NECESSARY TESTING THAT NEEDS TO OCCUR IN ORDER TO PRODUCE CONSTRUCTION DOCUMENTS. THE ENGINEER SHALL CITE IN CONSTRUCTION DOCUMENTS THE REQUISITE CONSTRUCTION PERMITTING, AND THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY CONSTRUCTION PHASE TESTING THAT IS NECESSARY.**
- ~~H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.~~

NOTE: THE ENGINEER IS RESPONSIBLE TO WORK WITH OWNER RESOURCES FROM COUNTY DEPARTMENTS TO SECURE ALL NECESSARY PERMITTING AND ENVIRONMENTAL APPROVALS FOR THE PROJECT.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this **Exhibit B** the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this **Exhibit B** that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in **Exhibit A**.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre bid conference, bid opening, pre construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in **Part 2 of Exhibit A** of the Agreement, as required.
- T. Perform or provide the following: (SEE EXHIBIT J and EXHIBIT P)

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This is **EXHIBIT C**, consisting of **2** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated **May 1st, 2019**.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in **Exhibit A**, except for services of *Engineer’s Resident Project Representative*, if any, as follows:

1. A lump Sum amount of **\$TBA** based on the following estimated distribution of compensation, **and per the cost proposal included in Exhibit P**:

- a. **General Requirements/PM Services** **\$TBA**
- b. **Study & Report Phase** **\$TBA**
- c. **Preliminary Design Phase** **\$TBA**
- d. **Final Design Phase** **\$TBA**
- e. **Bidding Phase** **\$TBA**
- f. **Construction Phase** **\$TBA**
- g. **Post-Construction Phase** **\$TBA**

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total lump Sum amount unless approved in writing by the Owner.

3. The lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the lump Sum, Engineer is also entitled to reimbursement from Owner for the following **Reimbursable Expenses (to include fees for Resident Project Representative included in “Compensation Packet RPR-2”**. Also see **Appendix 1 for rates or charges**): **\$TBA**

5. The portion of the lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in **Compensation Packet BC-1** is conditioned on a period of service **not exceeding December 15th, 2020**. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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COMPENSATION PACKET RPR-2: Resident Project Representative – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.0 *Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment*

A. *Owner shall pay Engineer for Resident Project Representative Basic Services as follows:*

1. *Resident Project Representative Services:* For services of Engineer s Resident Project Representative under **Paragraph A1.05.A of Exhibit A**, an amount equal to the cumulative hours charged to the Project by each class of Engineer s personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer s Consultant s charges, if any. The total compensation under this paragraph is estimated to be **\$TBA** (*This figure includes projected travel fees: Labor is \$TBA and travel is projected at \$TBA*) based upon full time RPR services on an eight hour workday, Monday through Friday, **over an a projection of (XX) hours per week, for (XX) weeks, or approximately (XXX) hours of allocation during the approximate one hundred twenty (120) day** construction schedule.

B. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under **Paragraph C2.01**, and are directly related to the provision of Resident Project Representative or Post Construction Basic Services, Owner shall pay Engineer at the rates set forth in **Appendix 1 to this Exhibit C**.
2. Reimbursable Expenses include the expenses identified in **Appendix 1** and the following: transportation (including mileage), lodging, and subsistence incidental thereto; ~~providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges;~~ reproduction of reports, Drawings, Specifications, bidding related or other procurement documents, Construction Contract Documents, and similar Project related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.1, AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.

~~The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st, 2019) to reflect equitable changes in the compensation payable to Engineer.~~

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.

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1. **Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants**, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.1**, **AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.
2. *Factors*: The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts*:
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
 - . To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer s personnel engaged directly on the Project pursuant to **Paragraph A2.01 or A2.02 of Exhibit A**, except for services as a consultant or witness under **Paragraph A2.01.A.20**, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer s personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer s Consultant s charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under **Paragraph C2.01** and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in **Appendix 1 to this Exhibit C**.
 2. Reimbursable Expenses include the expenses identified in **Appendix 1** and the following categories: transportation (including mileage), ~~lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges;~~ reproduction of reports, Drawings, Specifications, bidding related or other procurement documents, Construction Contract Documents, and similar Project related items; and Consultants charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **ONE POINT ONE [1.1], AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.
- ~~The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st, 2019) to reflect equitable changes in the compensation payable to Engineer.~~
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer s Consultants, those charges shall be the amounts billed by Engineer s Consultants to Engineer times a factor of **ONE POINT ONE [1.1], AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.

2. *Factors:* The external Reimbursable Expenses and Engineer s Consultant s Factors include Engineer s overhead and profit associated with Engineer s responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer s charges and upon Owner s timely request, Engineer shall make copies of such records available to Owner at cost.

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This is **Appendix 1 to EXHIBIT C**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per **Exhibit C**. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

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This is **Appendix 2 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this **Appendix 2 to this Exhibit C** and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in **Article C2**.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (RPR) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR s actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor s work in progress, for the coordination of the Constructors work or schedules, or for any failure of any Constructor to comply with laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in **Exhibit A, Paragraph A1.05**, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project related meetings (but not including Contractor s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

- . *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
- 5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation - RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
- 7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor or has not been approved by Contractor or Engineer.
- 8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
- 9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and

- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start ups.
- b. Verify that tests, equipment, and systems start ups and operating and maintenance training are conducted in the presence of appropriate Owner s personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start ups.
- d. Observe whether Contractor has arranged for inspections required by laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer s clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor s hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up to date lists of the names, addresses, fax numbers, e mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (**Exhibit E**).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including or equal items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - . Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: WDHAMS WWTP DISINFECTION UPGRADES PROJECT
OWNER: TOWN OF WESTPORT, NY
CONTRACTOR: TBA
OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: P-0108-2018
EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: TBA
ENGINEER: TBA
NOTICE DATE:

To: Town of Westport
Owner

And To: TBA
Contractor

From: TBA
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated , and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (Notice) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer s professional opinion.
3. This Notice is given as to the best of Engineer s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor s work) under Engineer s Agreement with Owner, and applies only to facts that are within Engineer s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner s reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is ~~EXHIBIT F~~, consisting of ~~1~~ pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [] .

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

~~F5.02 — Designing to Construction Cost Limit~~

- ~~A. — Owner and Engineer hereby agree to a Construction Cost limit in the amount of [] .~~
- ~~B. — A bidding or negotiating contingency of [] percent will be added to any Construction Cost limit established.~~
- ~~C. — The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- ~~D. — Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.~~
- ~~E. — If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- ~~F. — If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

Exhibit F – Construction Cost Limit.

EJDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by **Paragraph 6.05.A and 6.05.B** of the Agreement are as follows:

1. By Engineer:

- a. Workers Compensation: Statutory
- b. Employer's liability
 - 1) Bodily injury, each accident: 100,000.00
 - 2) Bodily injury by disease, each employee: 50,000.00
 - 3) Bodily injury/disease, aggregate: 100,000.00
- c. General liability
 - 1) Each Occurrence (Bodily Injury and Property Damage): 1,000,000.00
 - 2) General Aggregate: 2,000,000.00
- d. Excess or Umbrella liability
 - 1) Per Occurrence: 1,000,000.00
 - 2) General Aggregate: 1,000,000.00
- Automobile liability Combined Single Limit (Bodily Injury and Property Damage): 1,000,000.00
- e. Professional liability
 - 1) Each Claim Made 1,000,000.00
 - 2) Annual Aggregate 2,000,000.00
- f. Other (specify): [REDACTED]

2. **By Owner:**

- | | |
|---|--------------|
| a. Workers Compensation: | Statutory |
| b. Employer's liability | |
| 1) Bodily injury, Each Accident | 100,000.00 |
| 2) Bodily injury by Disease, Each Employee | 500,000.00 |
| 3) Bodily injury/Disease, Aggregate | 100,000.00 |
| c. General liability | |
| 1) General Aggregate: | 2,000,000.00 |
| 2) Each Occurrence (Bodily Injury and Property Damage): | 1,000,000.00 |
| d. Excess Umbrella liability | |
| 1) Per Occurrence: | 1,000,000.00 |
| 2) General Aggregate: | 1,000,000.00 |
| Automobile liability Combined Single Limit (Bodily Injury and Property Damage): | 1,000,000.00 |
| e. Other (specify): | [REDACTED] |

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner s general liability policies of insurance as additional insureds:

a. **TBA**
Engineer

b. _____
Engineer s Consultant

c. _____
Engineer s Consultant

d. [] _____

[other

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner s general liability policies of insurance.

3. The Owner shall be listed on Engineer s general liability policy as provided in **Paragraph 6.05.A.**

This is ~~EXHIBIT H~~, consisting of 2 pages, referred to in and part of the ~~Agreement between Owner and Engineer for Professional Services~~ dated ~~December 1st, 2018~~.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

[NOTE TO USER: Select one of the two alternatives provided.]

~~H6.08 – Dispute Resolution~~

~~A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (Disputes) to mediation by [here insert name of mediator, or mediation service]. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

~~{or}~~

~~A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [insert the name of a specified arbitration service or organization here] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~

~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than [] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than [] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than [] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

~~3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

Exhibit H - Dispute Resolution.

- ~~— The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
5. ~~If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a joinable Party), and such joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the joinable Party and against Owner or Engineer that does not otherwise exist.~~

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This is ~~EXHIBIT I~~, consisting of [] pages, referred to in and part of the ~~Agreement between Owner and Engineer for Professional Services dated August 17th, 2018.~~

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

~~A. *Limitation of Engineer's Liability*~~

~~1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services, or this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of [] or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.~~

~~2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:~~

~~*[NOTE TO USER: List here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc.]*~~

~~B. *Indemnification by Owner:* To the fullest extent permitted by laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or~~

~~destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

DRAFT

Exhibit I - Limitations on Liability.

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This is **EXHIBIT J**, consisting of [1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

Special Provisions

Paragraph(s) A. 1.03 of the Agreement is/are amended to include the following agreement(s) of the parties:

SEE EXHIBIT ATTACHED FOR ADDITIONAL TERMS & CONDITIONS FOR THE TOWN.

ALSO SEE EXHIBIT P., “ENGINEER’S ORIGINATING PROPOSAL” FOR SCOPE AND COST PROPOSAL ELEMENTS, ALSO INCLUDED IN THIS CONTRACT.

DRAFT

This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1st, 2019**.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner Engineer Agreement:

Owner: **TOWN OF WESTPORT, NY**

Engineer: **TBA**

Project: **WADHAMS WWTP DISINFECTION UPGRADES**

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

Additional Services to be performed by Engineer

Modifications to services of Engineer

Modifications to responsibilities of Owner

Modifications of payment to Engineer

Modifications to time(s) for rendering services

Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:

Net change for prior amendments:

This amendment amount:

Adjusted Agreement amount:

Change in time for services (days or date, as applicable):

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in **Exhibit C**.

Owner and Engineer hereby agree to modify the above referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER: TOWN OF MORIAH, NY

ENGINEER: TBA

By: _____

By: _____

Print name: HON. MICHAEL TYLER

Print name: _____

Title: TOWN SUPERVISOR

Title: _____

Date Signed: _____

Date Signed: _____

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