

**VILLAGE OF BLACK RIVER**  
**ANNUAL MEETING AGENDA**

**DECEMBER 5, 2022**

Administration of oath to elected officials.

Gary McCullouch, Trustee, two-year term expiring November 30, 2024.

Bonnie Proven, Trustee, two-year term expiring November 30, 2024.

Mayoral Appointments:  
(Not Subject to Board Approval)  
None.

Board Appointments:

Mayoral Appointments Subject to Board Approval

William Reichard, Historian, one-year term.

John Hoering, Planning Board Member, three-year term expiring December 31, 2025.

Standing Committee Appointments:

Disaster Management Coordinator: Mayor Dishaw

Personnel Officer: Trustee McCullouch.

Planning/Zoning Board of Appeals Liaison: Trustee Proven.

Police Department Liaison: Mayor Dishaw and Trustee McCullouch.

Recreation Committee: Trustee Decillis.

Sidewalks/Decorations: Mayor Dishaw.

The Watertown Daily Times will be designated as the official newspaper of the Village.

Community Bank, N.A., Black River branch, will be designated as the official depository for Village funds.

Regular Village Board Meetings: Meetings will be held at 6:00 p.m. on the first Monday of each month, unless a holiday falls on the first Monday, in which case the meeting will be held on Tuesday.

Special meetings are scheduled as necessary and will be advertised in compliance with the New York Open Meetings Law and in compliance with requirements as set forth in the Americans with Disabilities Act.

The Annual Meeting will be the first regular meeting in December.

Meeting will be conducted according to the Village of Black River Board of Trustees Rules of Procedure with regard to matters involving points of order and other accepted procedures to conduct Board meetings.

Annual Agenda

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The Treasurer is authorized to pay any utility bills which come due prior to the monthly meeting as well as any other bills may carry an allowable discount at his or her discretion.

Authorization for employees to attend schools, conferences, seminars, etc. conducted for the benefit of local government as provided for in General Municipal Law Section 77-b shall be obtained prior to registration.

Other business.

Regular agenda.

Adoption of the above listed appointments and directives.

Board of Trustees  
Village of Black River, New York



Agenda

Regular Meeting  
December 5, 2022

- Call to order.
- Pledge of Allegiance.
- Approval of minutes of the 11/7/22 regular meeting.
- Public Comment.
- Police Department Report.
- Code Enforcement Report & review of related correspondence.
- Clerk-Treasurer's Report.
- Superintendent's Report.

Correspondence Received:

- |                                |                             |
|--------------------------------|-----------------------------|
| A) Black River American Legion | Re: Liquor licensing change |
| B) Barton & Loguidice          | Re: Agreement               |
| C) Black River Fire Dept.      | Re: Nominations             |

Correspondence Sent:

New Business:

- A) Discuss DPW position

Unfinished Business:

- Reports from Standing Committees.
- Reports from Special Meetings.
- Authorize payment of bills; adjournment.

Village of Black River  
Board of Trustees  
Regular Meeting  
November 7, 2022

DRAFT

Mayor Dishaw called the regular meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Present:

Mayor Francis Dishaw  
Trustee Bonnie Proven  
Trustee Gary McCullough  
Trustee Corey Decillis  
Superintendent Les Williams  
Clerk-Treasurer Kristin Williams  
Code Enforcement Officer James Holland  
Police Chief Steve Wood

Excused:

Trustee Randy Lake

A motion was made by Trustee Decillis, seconded by Trustee Proven to approve the minutes of the 10/3/22 regular meeting and the 10/17/22 special meeting. The motion was carried.

Public Comment: Matthew Carpenter, Chief of the Black River Fire Department was present to discuss plans for a Christmas parade which will end at the Sally Ploof Hunter Memorial Library. Mayor Dishaw stated that the Black River American Legion will be hosting a house decorating contest. Mr. Carpenter stated that he has spoken with legion representatives and they plan to declare the winner on the night of the parade which is planned for December 17<sup>th</sup>.

Village resident Jill Perkins was present to discuss concerns regarding property maintenance and to ask the board to consider the idea of a dog park in the village. Mayor Dishaw stated that more research would need to be done before it could be considered.

Mary Louise Hunt from the Sally Ploof Hunter Memorial Library was present to discuss library funding.

Taylor McKinney, Tug Hill Commission, presented the board with a map of the Tug Hill Region of New York State.

Code Enforcement Report: Code Enforcement Officer Holland stated that the Planning Board will be meeting to discuss a single lot subdivision on LeRay St. CEO Holland thanked the board for their patience with his schedule due to teaching at the NY State Fire Academy.

Police Department Report: Police Chief Wood stated that Halloween night was quiet and that he has been given more hours for Stop DWI patrols.

The board reviewed the engineering proposal for the water system from Barton & Loguidice.

A motion was made by Trustee Decillis, seconded by Trustee McCullough to adopt the following resolution:

**Resolved**, that the Village of Black River accept the proposal from Barton & Loguidice in the amount of \$25,000. The motion was put to a vote as follows:

Mayor Dishaw	Yes
Trustee Decillis	Yes
Trustee McCullough	Yes
Trustee Proven	Yes
Trustee Lake	Absent

The motion was approved and the resolution duly adopted.

Superintendent's Report: Superintendent Williams stated that the large trucks have been rust proofed, the Town of LeRay has delivered sand, and collected 60 loads of leaves. He stated that he spoke with Jim Taylor of Taylor Fence regarding a gate at the Rt. 3 pump station due to trespassing issues.

A motion was made by Trustee McCullough, seconded by Mayor Dishaw to adopt the following resolution:

**Resolved**, that Superintendent Williams be authorized to hire Taylor Fence to install gates at the Rt. 3 pump station in a amount not to exceed \$3,000. The motion was put to a vote as follows:

Mayor Dishaw	Yes
Trustee Decillis	Yes
Trustee McCullough	Yes
Trustee Proven	Yes
Trustee Lake	Absent

The motion was approved and the resolution duly adopted.

The board discussed the interviews that were conducted for the Department of Public Works position.

A motion was made by Mayor Dishaw, seconded by Trustee Decillis to offer the position to Levi Brownell. The motion was carried.

A motion was made by Trustee McCullough, seconded by Trustee Proven to adopt the following resolution:  
**Resolved**, that the 2022 Village tax levies in the amount of \$10,973.47 for the Town of LeRay and \$7,328.73 for the Town of Rutland. The motion was put to a vote as follows:

Mayor Dishaw	Yes
Trustee Decillis	Yes
Trustee McCullough	Yes
Trustee Proven	Yes
Trustee Lake	Absent

The motion was approved and the resolution duly adopted.

A motion was made by Trustee Proven, seconded by Trustee McCullough to adopt the following resolution:  
**Resolved**, that the following abstract of audited vouchers be approved: interim abstract dated 10/19/22 in the amount of \$37,438.03 (General Fund: \$17,333.05 Water Fund: \$1,990.79 Sewer Fund: \$18,114.19) and regular monthly abstract dated 11/7/22 in the amount of \$28,543.54 (General Fund: \$21,354.96 Water Fund: \$7,188.58). The motion was put to a vote as follows:

Mayor Dishaw	Yes
Trustee Decillis	Yes
Trustee McCullough	Yes
Trustee Proven	Yes
Trustee Lake	Absent

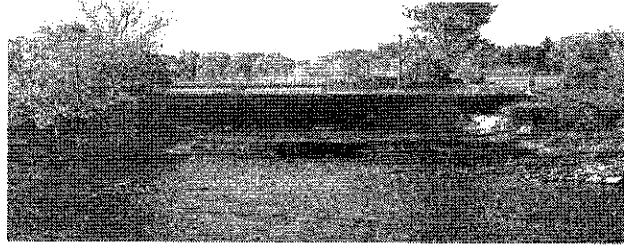
The motion was approved and the resolution duly adopted.

A motion was made by Trustee Proven, seconded by Trustee McCullough to adjourn the meeting at 7:48 p.m. The motion was carried.

Respectfully submitted,

Kristin Williams  
Clerk-Treasurer

**Board of Trustees  
Village of Black River, New York**



November 29, 2022

Sally Ploof Hunter Memorial Library  
Mary Louise Hunt  
101 Public Works Drive  
Black River, New York 13612

RE: 101 Public Works Drive 75.49-1-25.2

Dear Ms. Hunt,

This letter is in regards to the above referred property and your request for a permit for a sign for this location.

By receipt of this letter, you are hereby notified that your request for a permit is hereby denied because the proposed sign would be a violation of Village of Black River Code Chapter 175-39 Section C (7).

*175-39 C (7) No sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light or lights. All luminous signs, indirectly illuminated signs, and lighting devices shall employ only lights emitting light of constant intensity.*

If you should have any questions or concerns regarding this matter, please feel free to contact me at the Village Office.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Holland'.

James Holland  
Code Enforcement Officer

CC: Mayor and Village Board of Trustees



# THE AMERICAN LEGION

DEPARTMENT OF NEW YORK

William C. Dexter Post No. 673, Inc.  
P.O. BOX 141, BLACK RIVER, N.Y. 13612



December 1, 2022

TO: Village of Black River  
FROM: William C. Dexter American Legion Post  
SUBJ: Receipt of 30-Day Advance Notice

Legion Post 673 is applying for a Class Change to our current NYS Liquor License. This change involves in changing our operation of the current Club Room Liquor License to an On-Premises Liquor License.

We are required to notify the Local Municipality at least 30 days in advance in filing the application to the NYS Liquor authority.

The Notice Form is attached for your office filing.

Below is proof that the Local Municipality has received the Village of Black River Clerks Office.

TIMOTHY J. AMBROSE  
Adjutant, Post 673

**RECEIPT OF FILING: DECEMBER 1, 2022**

THE VILLAGE OF BLACK RIVER CLERK'S OFFICE HAS RECEIVED THE HAND DELIVERED STANDARDIZED NOTICE FORM ON DECEMBER.

SIGNED AND DATED,

AGENCY STAMP,

12/1/22  
Clerk-Treasurer

OFFICE USE ONLY		
<input type="radio"/> Original	<input type="radio"/> Amended	Date _____

## Standardized NOTICE FORM for Providing 30-Day Advance Notice to a Local Municipality or Community Board

1. Date Notice Sent:  1a. Delivered by:

2. Select the type of Application that will be filed with the Authority for an On-Premises Alcoholic Beverage License:

For premises outside the City of New York:

- New Application    Removal    Class Change

For premises in the City of New York:

- New Application    New Application and Temporary Retail Permit    Temporary Retail Permit    Removal  
 Class Change    Method of Operation    Corporate Change    Renewal    Alteration

For **New** and Temporary Retail Permit applicants, answer each question below using all information known to date  
For **Renewal** applicants, answer all questions

For **Alteration** applicants, attach a complete written description and diagrams depicting the proposed alteration(s)

For **Corporate Change** applicants, attach a list of the current and proposed corporate principals

For **Removal** applicants, attach a statement of your current and proposed addresses with the reason(s) for the relocation

For **Class Change** applicants, attach a statement detailing your current license type and your proposed license type

For **Method of Operation Change** applicants, although not required, if you choose to submit, attach an explanation detailing those changes

**Please include all documents as noted above. Failure to do so may result in disapproval of the application.**

**This 30-Day Advance Notice is Being Provided to the Clerk of the Following Local Municipality or Community Board:**

3. Name of Municipality or Community Board:

**Applicant/Licensee Information:**

4. Licensee Serial Number (if applicable):  Expiration Date (if applicable):

5. Applicant or Licensee Name:

6. Trade Name (if any):

7. Street Address of Establishment:

8. City, Town or Village:  , NY Zip Code:

9. Business Telephone Number of applicant/ Licensee:

10. Business E-mail of Applicant/Licensee:

11. Type(s) of alcohol sold or to be sold:    Beer & cider    Wine, Beer & Cider    Liquor, Wine, Beer & Cider

12. Extent of Food Service:    Full Food menu; full kitchen run by a chef/cook    Menu meets legal minimum food requirements; food prep area required

13. Type of Establishment:

- Seasonal Establishment    Juke Box    Disc Jockey    Recorded Music    Karaoke

14. Method of Operation: (check all that apply)    Live Music (give details i.e., rock bands, acoustic, jazz, etc.):

- Patron Dancing    Employee Dancing    Exotic Dancing    Topless Entertainment

- Video/Arcade Games    Third Party Promoters    Security Personnel

Other (specify):

15. Licensed Outdoor Area:    None    Patio or Deck    Rooftop    Garden/Grounds    Freestanding Covered Structure  
(check all that apply)    Sidewalk Cafe    Other (specify): \_\_\_\_\_



OFFICE USE ONLY		
<input type="radio"/> Original	<input type="radio"/> Amended	Date _____

16. List the floor(s) of the building that the establishment is located on:

17. List the room number(s) the establishment is located in within the building, if appropriate:

18. Is the premises located within 500 feet of three or more on-premises liquor establishments?  Yes  No

19. Will the license holder or a manager be physically present within the establishment during all hours of operation?  Yes  No

20. If this is a transfer application (an existing licensed business is being purchased) provide the name and serial number of the licensee:

Name	Serial Number

21. Does the applicant or licensee own the building in which the establishment is located?  Yes (if YES, SKIP 23-26)  No

**Owner of the Building in Which the Licensed Establishment is Located**

22. Building Owner's Full Name:

23. Building Owner's Street Address:

24. City, Town or Village:  State:  Zip Code:

25. Business Telephone Number of Building Owner:

**Representative or Attorney Representing the Applicant in Connection with the Application for a License to Traffic in Alcohol at the Establishment Identified in this Notice**

26. Representative/Attorney's Full Name:

27. Representative/Attorney's Street Address:

28. City, Town or Village:  State:  Zip Code:

29. Business Telephone Number of Representative/Attorney:

30. Business E-mail Address of Representative/Attorney:

I am the applicant or licensee holder or a principal of the legal entity that holds or is applying for the license. Representations in this form are in conformity with representations made in submitted documents relied upon by the Authority when granting the license. I understand that representations made in this form will also be relied upon, and that false representations may result in disapproval of the application or revocation of the license.

By my signature, I affirm - under **Penalty of Perjury** - that the representations made in this form are true.

31. Printed Principal Name:  Title:

Principal Signature:

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**

FOR THE

**Village of Black River  
Water System Improvements**

Prepared by



Issued and Published Jointly by



**Barton  
& Loguidice**

This Agreement has been prepared for use with EJCDC® 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 EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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

THIS IS AN AGREEMENT effective as of November 22, 2022 ("Effective Date") between  
Village of Black River ("Owner") and  
Barton & Loguidice, D.P.C. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
Water System Improvements ("Project").

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

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

Study & Report Phase Services

Design, Bid, and Construction Phase Services require additional authorization.

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 and in Exhibit A.

**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.

#### **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 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. Invoices are due and payable within 30 days of receipt.

#### **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 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 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.
- 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.
  - 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 or 2018 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.

#### 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. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. 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 (4) such limited license to Owner shall not create any rights in third parties.
- D. 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 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 Owner'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 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven 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 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 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 days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - 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 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
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 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, 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.

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 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. 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 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 maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

## 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.

## **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, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 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. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
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, 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.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Exhibit L, RUS Bulletin 1780-26, Exhibit C
- M. Exhibit M, NYSEFC Program Requirements and Bid Packet for Non-Construction Contracts.

#### 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: Village of Black River

Engineer: Barton & Loguidice, D.P.C.

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

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

Print name: Francis Dishaw

Print name: Matthew J. Cooper

Title: Mayor

Title: Senior Associate

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

Date Signed: 11/22/22

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

License No. 080486

State of: New York State

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

107 Jefferson Place

443 Electronics Parkway

Black River, New York 13612

Liverpool, New York 13088

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Francis Dishaw

John F. Brusa, P.E.

Title: Mayor

Title: President

Phone Number: 315-773-5721

Phone Number: 315-457-5200

E-Mail Address: clerktreasurer@blackriverny.org

E-Mail Address: jbrusa@bartonandloguidice.com

This is **EXHIBIT A**, consisting of 18 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 22, 2022.

## **Engineer's Services**

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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 Study and Report Phase*

A. 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.
  - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify 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.
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.
4. 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 **Preliminary Engineering Report** ~~report~~ (the "Report", "PER") 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. **The Report will be prepared in accordance with the NYSEFC, USDA RD, NYSDEC, or NYSDOH guidance for engineering reports, as applicable.**
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.
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 as included in our **Scope of Services dated November 1, 2022**:

The study would include the following items and be developed into a PER:

- Project kick-off meeting to establish goals and discuss local concerns.
- Review available maps, engineering reports, and regulatory agency documents.



- Site visit(s) to the water service area to gain a general understanding of the area.
- Perform hydraulic analysis and regulatory standards review to determine necessary improvements for treatment, distribution, and storage standards compliance.
- Perform a desktop hydrogeological review to obtain data on the current water supply wells and known geological conditions of the area. Existing well testing and investigations are outside the scope of this proposal. If specific recommended testing and investigations are identified as part of this study, a separate proposal can be provided for those.
- Identify potential new well locations and/or modifications to existing water supplies.
- Evaluate existing water rate structure and provide recommendations.
- Evaluate alternatives for system improvements and develop associated project budgets and user costs.
- Develop funding scenarios and identify potential funding sources.
- Provide a recommended alternative with steps for implementation.
- Review draft of PER with Village Board, regulatory agencies, and funding agencies.
- Assist with public presentation of the PER.

15. Furnish 2 review copies and an electronic PDF copy of the draft Report and any other Study and Report Phase deliverables to Owner within 120 days of the Effective Date and review it with Owner. Within 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 2 copies and an electronic PDF copy of the revised Report and any other Study and Report Phase deliverables to the Owner within 60 days of receipt of Owner's comments.

B. 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. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

**The Project scope shall be as determined by the Owner upon completion of the Study & Report Phase.**

**Preliminary Design Phase deliverables include:**

- **Basis of Design Report**
  - **50% Contract Drawings**
  - **Outline of Contract Specifications**
  - **Opinion of Probably Project Cost**
2. In preparing the Preliminary 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.
  - ~~3. 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. Field survey and utility mapping will be provided as an Additional Service.~~
  4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
  5. 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.
  6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
  7. Based on the information contained in the Preliminary 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.
  8. 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 EJCDC® C-700, Standard General Conditions of the

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Construction Contract, 2013 or 2018 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.

~~9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:~~

10. Furnish 2 review copies and an electronic PDF copy of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 240 days of authorization to proceed with this phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 2 copies and an electronic PDF copy of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 60 days after receipt of Owner's 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

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. Permitting and permitting assistance will be provided as an Additional Service.~~

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:~~
  10. Furnish for review by Owner, its legal counsel, and other advisors, 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 120 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 30 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 2 final copies of such documents to Owner within 30 days after receipt of Owner's 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 or Negotiating, 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.

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Exhibit A – Engineer's Services

- 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 **TBD**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- 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. 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.
  2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
  4. Consult with Owner as to the qualifications of prospective contractors.
  5. 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.
  6. 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.
  7. 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.
  8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
  9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

- a. Prepare conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
- B. The Bidding or Negotiating 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).

The fee for Bidding and Negotiating Phase is based on a 3 month period occurring immediately following the design phase.

#### A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating 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 EJCDC® 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. *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.
  4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
  5. *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.

6. *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 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.
7. *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.
- ~~8. *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.~~
9. *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

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Exhibit A – Engineer's Services

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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.

10. *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.
11. *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.
12. *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.
13. *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.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *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.
16. *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.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required

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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.

18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *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.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 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 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.
21. *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).

- 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.
22. *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, 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.
  23. *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.
  24. ~~*Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:~~

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Exhibit A – Engineer's Services

25. *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.
  26. *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. **The estimated fee for Construction Phase services is based on an estimated TBD month duration of construction commencing immediately upon completion of Bidding or Negotiating Phase services.**

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction 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 Phase tasks or deliverables:~~
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve 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.
  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;
    - c. 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.
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 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.

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Exhibit A – Engineer's 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.
30. **Additional Services Authorized:** Below is a description of Additional Services anticipated and authorized by execution of this Agreement:
  - a. **Subcontract Administration** – Services relating to soliciting and reviewing quotations and qualifications of sub-consultants, sub-consultant coordination, layout of sub-consultant work, and Minority/Women Owned Business (MWBE) and Equal Employment Opportunity (EEO) requirements for sub-consultant participation.

- b. Subcontracted Services – The following Subcontracted Services are anticipated. The scope of subcontracted services and budgets presented are estimates.
- 1) Survey and Base Mapping – 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.
  - 2) Subsurface Investigations – Provide hollow stem auger boring with continuous split-spoon sampling and rock cores as determined by Engineer throughout the project area to provide contractor(s) with subsurface conditions.
  - 3) Geotechnical Evaluation – Provide a geotechnical evaluation report for the proposed facilities, making geotechnical design recommendations for foundation design, bearing capacity, excavation advancement, stabilization and dewatering, foundation and backfill requirements and seismic loading/design requirements and recommendations. Geotechnical Report will be signed and sealed by a NYS licensed Professional Engineer
  - 4) Easement Maps and Descriptions – Provide easement maps and boundary descriptions for use in obtaining ROW/easements for the project area.
- c. Verification of Existing Conditions – Provide services relating to item nos. 2 and 19 above.
- d. ROW Assistance – Provide services relating to item 26 above regarding easements including but not limited to meetings, consulting with property owners, settling property/ROW disputes, modifications to easements and other ROW related matters. Provide site acquisition assistance for proposed facilities and Phase 1 Environmental Site Assessments (ESA) if requested.
- e. Permits – Provide technical criteria, written descriptions, field assessments 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. The permits/approvals may include, but are not limited to:
- 1) NYSDOT Highway Work Permit
  - 2) County Highway Work Permit
  - 3) NYS Department of Health
  - 4) NYS Department of Environmental Conservation
  - 5) NYS Environmental Facilities Corporation Plan Approval

- 6) USDA Rural Development Plan Approval
  - 7) Water Authorities
  - 8) NYSDEC/USACOE Joint Application for Permit
  - 9) Stormwater Pollution Prevention Plan (SWPPP) and Construction Stormwater SPDES Permit Application
  - 10) FAA Review and Registration (if applicable)
- f. Funding Assistance – Provide technical and administrative assistance to comply with funding agency requirements throughout the project including but not limited to application of funding requirements into the Contract Documents, Engineer, subconsultant and Contractor reporting requirements, owner assistance for funding agency correspondence, disbursements and closeout and other additional services relating to funding agency requirements.
- g. Record Drawings/O&M Manuals – Provide services relating to item nos. 17 through 23 above.
- h. Reimbursable Expenses – All Reimbursable Expenses for Basic Services and Additional Services.
- Other Additional Services – See A2.02 below

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.
  - 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  - 4. 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 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **November 22, 2022**.

## **Owner's Responsibilities**

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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 EJCDC® 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.

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**Exhibit B – Owner's Responsibilities**

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.
  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.
- 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.

- 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 constructibility 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:~~

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Exhibit B -- Owner's Responsibilities

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

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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 November 22, 2022.

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

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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 Construction Phase, Post-Construction Phase and 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 \$25,000 based on the following estimated distribution of compensation:

- a. Study and Report Phase  
    Preliminary Engineering Report      \$25,000
- b. Preliminary Design Phase              \$ \_\_\_\_\_ or TBD (requires authorization)
- c. Final Design Phase                      \$ \_\_\_\_\_ or TBD (requires authorization)
- d. Bidding and Negotiating Phase        \$ \_\_\_\_\_ or TBD (requires authorization)
- e. ~~Construction Phase~~                    \$ [REDACTED]
- f. ~~Post-Construction Phase~~              \$ [REDACTED]

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 (see Appendix 1 for rates or charges):

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 12 months. If such period of service is extended, the compensation amount for Engineer's services ~~shall~~ may be appropriately adjusted.

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 22, 2022.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates**

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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 Study and Report Phase, Preliminary Design Phase, Final Design Phase, Bidding or Negotiating Phase and Resident Project Representative) – Standard Hourly Rates 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. 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 services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
  2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
  3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
  4. The total compensation for services under Paragraph C2.01 is estimated to be \$\_\_\_\_\_ or TBD based on the following estimated distribution of compensation:
    - a. Study and Report Phase \_\_\_\_\_ \$ \_\_\_\_\_
    - b. Preliminary Design Phase \_\_\_\_\_ \$ \_\_\_\_\_
    - c. Final Design Phase \_\_\_\_\_ \$ \_\_\_\_\_
    - d. Bidding or Negotiating Phase \_\_\_\_\_ \$ \_\_\_\_\_
    - e. Construction Phase \$\_\_\_\_\_ or TBD (requires authorization)
    - f. Post-Construction Phase \$\_\_\_\_\_ or TBD (requires authorization)
    - g. Additional Services \$\_\_\_\_\_ or TBD (requires authorization)

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein, including **Standard Hourly Rate Basic Services, Additional Services, and Resident Project Representative Services**, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>) to reflect equitable changes in the compensation payable to Engineer.

**C2.02 Compensation For Reimbursable Expenses**

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. 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; 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.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, ~~the latter multiplied by a factor of 1.15.~~

**C2.03 Other Provisions Concerning Payment**

- A. 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 1.15.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.



C. *Estimated Compensation Amounts:*

1. 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.
  2. 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 the Engineer's services during the 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.
- D. 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 RPR-2:  
Resident Project Representative – Standard Hourly Rates**

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

*C2.04 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 \$\_\_\_\_ or TBD based upon full-time RPR services for \_\_\_ or TBD inspector(s) on an \_\_\_ or TBD hour workday, Monday through Friday, over a \_\_\_ or TBD month 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 2 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 ~~1.05~~.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>) to reflect equitable changes in the compensation payable to Engineer.
5. **Engineer may alter the distribution of compensation between individual phases of the work noted herein, including Standard Hourly Rate Basic Services, Additional Services, and Resident Project Representative Services, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.**

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

- C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*
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 1.15.
  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.
  4. 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**

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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 1.15.~~
  4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.
  5. Engineer may alter the distribution of compensation between individual phases of the work noted herein, including Standard Hourly Rate Basic Services, Additional Services, and Resident Project Representative Services, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
- C. *Other Provisions Concerning Payment for Additional Services:*

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Exhibit C – Compensation Packet AS-1: Additional 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 **1.15**.
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.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 22, 2022.

**Summary of Fees & Reimbursable Expenses Schedule**

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<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Payment</u>
<b>1 <u>Study and Report Phase Services</u></b>		
a. Preliminary Engineering Report	\$ 25,000	Lump Sum
<b>2 <u>Basic Services (requires authorization):</u></b>		
a. Preliminary Design Phase	TBD	Lump Sum
b. Final Design Phase	TBD	Lump Sum
c. Bidding Phase	TBD	Lump Sum
d. Construction Phase	TBD	Hourly
e. Post-Construction Phase	TBD	Hourly
<b>3 <u>Additional Services (requires authorization):</u></b>		
a. Subcontract Administration	TBD	Hourly
b. Subcontracted Services	TBD	Hourly
c. Verification of Existing Conditions	TBD	Hourly
d. ROW Assistance	TBD	Hourly
e. Permits	TBD	Hourly
f. Funding Assistance	TBD	Hourly
g. Record Drawings / O&M Manuals	TBD	Hourly
h. Reimbursable Expenses	TBD	Hourly
i. Other Additional Services (A2.02 from Exhibit A)	TBD	Hourly
<b>4 <u>Resident Project Representative (requires authorization):</u></b>	TBD	Hourly
<b>TOTAL ESTIMATED CONTRACT AMOUNT</b>	<b>\$ 25,000</b>	

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 in accordance with the standard billing rates in effect at the time services are performed. Current billing rates are delineated in the "Barton & Loguidice, D.P.C., Billing Rates Schedule for 2022" attached hereto.

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 November 22, 2022.

## **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 in accordance with the standard billing rates in effect at the time services are performed. Current billing rates are delineated in the "Barton & Loguidice, D.P.C., Billing Rates Schedule for 2022" attached hereto.

**Barton & Loguidice**  
**Billing Rates For Calendar Year 2022**



Travel by passenger vehicle\* ..... IRS standard mileage rate  
 Overnight travel & subsistence ..... at cost  
 Telephone, postage, overnight delivery, etc. .... at cost  
 In-house printing ..... Unit rate schedule for printed material  
 Field equipment & expendables ..... Unit rate schedule  
 Outside services including lab services & printing ..... Cost plus 15%

**INDIVIDUAL TECHNICAL EMPLOYEES AT THE FOLLOWING HOURLY RATES:**

<u>Billing Title</u>	<u>Hourly Rate</u>
Executive Manager	\$270.00
Manager V	\$232.00
Manager IV	\$210.00
Manager III	\$195.00
Manager II	\$183.00
Manager I	\$170.00
Professional VI	\$156.00
Professional V	\$140.00
Professional IV	\$126.00
Professional III	\$114.00
Professional II	\$99.00
Professional I	\$82.00
Technician VII	\$139.00
Technician VI	\$131.00
Technician V	\$115.00
Technician IV	\$107.00
Technician III	\$96.00
Technician II	\$80.00
Technician I	\$69.00
Construction III	\$131.00
Construction II	\$111.00
Construction I	\$99.00
Technical Assistant III	\$97.00
Technical Assistant II	\$82.00
Technical Assistant I	\$70.00

\* IRS standard mileage rate in effect at time of travel (exclusive of operator time).



This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **November 22, 2022**.

## **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.

4. *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:*

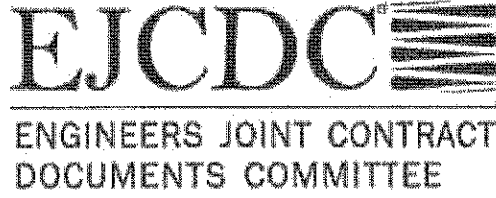
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in 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.
4. 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.

This is EXHIBIT E, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated November 22, 2022.



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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

---

**To:**

Owner

**And To:**

Contractor

**From:**

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:

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Exhibit E – Notice of Acceptability of Work.

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

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Page 1

**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 G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 22, 2022.

## **Insurance**

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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
  - 2) Bodily injury by disease, each employee: \$100,000
  - 3) Bodily injury/disease, aggregate: \$500,000
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$1,000,000
  - 2) General Aggregate: \$1,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$1,000,000
- f. Professional Liability --
  - 1) Each Claim Made \$1,000,000
  - 2) Annual Aggregate \$1,000,000
- g. Other (specify):

2. By Owner:

- a. Workers' Compensation: Statutory

---

Exhibit G – Insurance.



b. Employer's Liability --

- |  |           |
|--|-----------|
| 1) Bodily injury, Each Accident            | Unlimited |
| 2) Bodily injury by Disease, Each Employee | Unlimited |
| 3) Bodily injury/Disease, Aggregate        | Unlimited |

c. General Liability --

- |   |             |
|---|-------------|
| 1) General Aggregate:                                   | \$2,000,000 |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |

d. Excess Umbrella Liability

- |                       |             |
|-----------------------|-------------|
| 1) Per Occurrence:    | \$2,000,000 |
| 2) General Aggregate: | \$4,000,000 |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Other (specify):

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. Barton & Loguidice, D.P.C.  
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.

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Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 22, 2022.

## **Dispute Resolution**

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

### 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 a **mutually acceptable mediator**. Owner and Engineer agree to participate in the mediation process in good faith and to **share the cost of the mediation equally**. 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.
  
- B. **If a dispute involves a claim by Engineer for payment of fees and the parties fail to resolve the dispute through negotiation then Engineer may seek to have its claim for fees resolved by a court of competent jurisdiction without first participating in mediation.**

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **November 22, 2022**.

## **Limitations of Liability**

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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 Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, 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 claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, 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 (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. ~~If no such insurance coverage is provided with respect to Owner's Claims, then 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 such uninsured Owner's Claims shall not exceed \$[-----].~~
  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,
- 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.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 22, 2022.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

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:

ENGINEER:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

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

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

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

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

## REVISIONS TO EJCDC E-500 (2014)

### Modifications to the Main Body of the Agreement

- Article 4.01.A – Insert the following text after the first sentence:

Invoices will include a breakdown of services provided.

- Article 5.01.A – Add the following:

Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

- Article 5.03.A – Add the following:

Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

- Article 6.04.B – Delete “shall” and insert in its place “may”.

- Article 7.01.A.25 – Delete “, as an Additional Service.”

- Article 7.01.A.38 – Add the following:

Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

- Article 8.05 – Add the following:

#### 8.05 Federal Requirements

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency’s applicable requirements. This Agreement shall not be effective unless the Funding Agency’s designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency’s designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner who will forward it the USDA, Rural Development processing office.

#### Modifications to Exhibit A of the Agreement

- Article A1.01.A.1.b - Replace with:

In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.

- Article A1.01.A.1.c. – Delete.
- Article A1.01.A.8 – Insert the following at the end of the paragraph:

The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.

- Article A1.01.A.10 – Modify by inserting “and approved by the Agency” after “When mutually agreed.”
- Article A1.01.A.14 – Add the following immediately after paragraph:

Provide an Environmental Report as defined in 7 CFR 1970. The Environmental Report must be concurred in by the Agency.

- Article A1.01.A.16 – Delete the entire paragraph and insert the following:



Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [*fill in with # of days*] days of receipt of Owner's and Agency's comments.

- Article A1.02.A – Modify by inserting “and concurrence by Agency” after the words “acceptance by Owner.”

- Article A1.02.A.2 – Modify by inserting “and Agency” after “authorized by Owner.”

- Article A1.02.A.8 – Add the following to the end of paragraph:

Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.

- Article A1.03.A.9 – Add the following immediately after paragraph:

The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

- Article A1.03.A.10 – Modify by adding the “and Agency” after the word “counsel.”

- Article A1.03.A.12 – Insert the following:

Provide the Owner and Agency with a written certification that 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 comply with all requirements of Agency. Use the Engineer's Construction Certifications (Exhibit A, Attachment 6) for this purpose.”

- Article A.1.03.A.13 – Add paragraph:

Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.

- Article A1.03.B – Modify by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner.”

- Article A1.04.A.2 – Add the following to the end of paragraph:

Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence where possible.

- Article A1.04.A.6.a – Replace with the following:

a. The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

- Article A1.04.A.6.b – Insert the following:

b. Services required to determine and certify that to the best of the Engineer’s knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.

- Article A1.04.A.9 – Add the following sentence immediately after paragraph:

Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.”

- Article A.1.04.A.10 – Add the following:

Provide copies of Manufacturers’ Certifications to the Bidders on any brand name iron and steel products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers’ Certifications are to be included in the Bidding Documents and must be kept in the Engineer’s project file and on-site during construction.

- Article A.1.04.A.11 – Add the following:

Provide copies of Manufacturers’ Certifications to the Contractor on any brand name iron and steel products specified as sole-source in the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers’ Certifications must be kept in the Engineer’s project file and on-site during construction.”

- Article A1.05.A.4 - Insert “and chair” after “Participate in” regarding the preconstruction conference.

- Article A1.05.A.6 – Delete “If requested by Owner to do so” and capitalize “maintain”.

- Article A1.05.A.9.c – Insert the following:

The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.

- Article A.1.05.A.17 – Add the following prior to the first sentence:

Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with

AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturers Certification to the Contractor for said item.

- Article A1.05.A.18 – Add the following at the end of paragraph:

Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute “or equal” review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.

- Article A.1.05.A.19.d – Add the following:

Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.”

- Article A.1.05.A.20 – Add the following to the end of the paragraph: Review Change Proposals to ensure compliance with AIS.

- Article A1.05.A.22 – Modify the following by deleting the following:

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.

And insert in its place:

Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.

- Article A1.05.A.24.a – Insert the following:

a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

- Article A.1.05.A.25.a – Insert the following:

a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and a copy of Contractor's Certification to the Agency.

- Article A2.01.A.1 – Insert “not including preparation of the Environmental Report defined under Basic Services.” after “preparation or review of environmental assessments and impact statements”.
- Article A2.01.A.4 – Delete the period at the end of the paragraph, and insert “, but only if the Owner’s request is made after completion of the Study and Report Phase.”
- Article A2.01.A.17 – Delete paragraph and insert “Deleted”.
- Article A2.02.A.2 – Delete paragraph and insert with the following:

Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or equal” items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the construction Contract.

#### Modifications to Exhibit B of the Agreement

- Article B.2.02 – Add the following:

B.2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- B. Sign change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.
- C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
- D. Where the Owner directly procures American Iron and Steel products,
  1. Include American Iron and Steel clauses in the procurement contracts;
  2. Obtain Manufacturers’ Certifications; and
  3. Provide copies to Engineers and Contractors.

Guidance Notes: Where the Owner provides their own engineering and/or construction services the Owner is responsible for all provisions included in this Bulletin.

#### Modifications to Exhibit C of the Agreement

- Compensation Packet BC-1 – Modify paragraph C2.01.A.2 by adding “and Agency” after “approved in writing by the Owner.”
- Compensation Packet BC-1 – Modify paragraph C2.01.B.8 by inserting “with concurrence of the Owner and Agency” after “the compensation amount for Engineer’s services shall be appropriately adjusted.”

- Compensation Packet BC-2 – Modify paragraph C2.01.A.5 by inserting “and Agency” after “approved in writing by Owner.”
- Compensation Packet BC-2 – Modify paragraph C2.01.A.8 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet BC-2 – Modify paragraph C2.03.C.2 by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- Compensation Packet RPR-1 – Modify C2.04.A.3 by adding the following at the end of the paragraph “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet RPR-2 – Modify C2.04.A.2 by adding the following text to the end of the paragraph.

If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, “Standard Hourly Rates Schedule,” the Standard Hourly Rate for RPR services is \$ \_\_\_\_\_ per hour.

- Compensation Packet RPR-2 – Modify 2.04.B.4 by inserting the following at the end of the paragraph “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Guide RPR-2 – Modify 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- Compensation Packet RPR-2 – Modify C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- Compensation Packet AS-1 – Modify C2.05.B.4 by inserting the following text at the end of the paragraph “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet AS-1 - Modify C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

#### Modifications to Exhibit D of the Agreement

- Article D1.01.A – Add the following to the end of the paragraph: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”
- Article D.1.01.C.11.g – Add the following after D.1.01.C.11.f:  

g. Maintain all Manufacturers’ Certifications in the project file and on-site during construction to ensure compliance with AIS, as applicable.
- Article D1.01.C.12.b – Delete paragraph and insert “Deleted”.

Modifications to Exhibit F of the Agreement

- Article F5.02.D – Add the following to the end of the paragraph:

Engineers determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.”

**ENGINEER AGREEMENT CERTIFICATION**

PROJECT NAME: \_\_\_\_\_

The Engineer and Owner hereby concur in the Funding Agency acceptable revisions to E-500 identified in RUS Bulletin 1780-26. In addition, Engineer certifies to the following:

All modifications to E-500 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

**SUMMARY OF ENGINEERING FEES**

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ _____
Resident Project Observation	\$ _____
Additional Services	\$ _____
<b>TOTAL:</b>	<b>\$ _____</b>

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

\_\_\_\_\_  
Engineer Date

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Owner Date

\_\_\_\_\_  
Name and Title

**Agency Concurrence:**

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

\_\_\_\_\_  
Agency Representative Date

\_\_\_\_\_  
Name and Title



**Environmental  
Facilities Corporation**

**KATHY HOCHUL**  
Governor

**MAUREEN A. COLEMAN**  
President & CEO

# **Mandatory State Revolving Fund Terms and Conditions**

**for Contracts Funded with the NYS Clean Water State Revolving Fund  
or Drinking Water State Revolving Fund**

Effective November 1, 2021

**New York State Environmental Facilities Corporation  
625 Broadway, Albany, NY 12207-2997  
P: (518) 402-6924 F: (518) 402-7456  
[www.efc.ny.gov](http://www.efc.ny.gov)**



# REQUIRED CONTRACT LANGUAGE

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## Recipient to Identify Contract Type:

- Construction**
    - Treatment Works and Drinking Water Projects**
    - Non-Treatment Works**
  
  - Non-Construction**
- 

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## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**“Contract”** means an agreement between a Recipient and a Contractor.

**“Contractor”** means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**“Service Provider”** means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

**“Subcontract”** means an agreement between a Contractor and a Subcontractor.

**“Subcontractor”** means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

**“Recipient”** means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part.

**“State”** means the State of New York.

**“Treatment Works”** is defined in Clean Water Act (CWA) Section 212.

**“Nonpoint Source Projects”** and **“Green Infrastructure Projects”** are defined in CWA Section 319.

**“Estuary Management Program Project”** is defined in CWA Section 320.

### I. SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN- OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

For purposes of this section:

**“Non-Construction”** shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

**“Contracts Meeting Article 15-A Thresholds”** shall mean Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction Contracts, that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- (c) Construction Contracts greater than \$100,000; and,
- (d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of:

- (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts;
- (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than \$10,000.

The Minority- and Women- Owned Business Enterprises (“MWBE”) participation requirements of this section apply to the Contracts Meeting Article 15-A Thresholds.

Disregard this section if it does not apply to this Contract or Subcontract.

## **II. General Provisions**

- A. Contractors and Subcontractors are required to comply with the following provisions:
1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
  2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction Contracts related to any government programs providing federal financial assistance, as those terms are defined therein.
  4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction Contracts in excess of \$10,000, as those terms are defined therein.
  5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.
- B. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.
- C. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.
- D. Upon request from the Recipient's Minority Business Officer ("MBO") and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the SRF Recipient for MWBE and EEO purposes.

## **III. Equal Employment Opportunities (EEO)**

*Applicable to all Contracts and Subcontracts unless otherwise noted*

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

- C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- D. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. A copy of the EEO notice ("EEO Poster") can be found at:  
<https://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf> .

The Contractor will include the provisions of Subdivisions II(A) and II(C) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

*Applicable to all construction Contracts*

- E. The Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

*Applicable to construction Contracts greater than \$10,000*

- F. The Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. Affirmative action goals for minorities and women by geographic region can be found here:  
<https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf> .

G. Required EEO Forms

Pursuant to 41 CFR Section 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet> , if Contractor or Subcontractor:

1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
2. Has 50 or more employees;
3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.

#### IV. Business Participation Opportunities for MWBEs

*Applicable to Contracts Meeting Article 15-A Thresholds*

##### A. Contract Goals

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation based on the current availability of qualified MBEs and WBEs.

<b>Program</b>	<b>MWBE Contract Goal*</b>
CWSRF, DWSRF, & Green Innovation Grant Program	20%
NYS Water Infrastructure Improvement Act Grants (also receiving EFC loan)	Clean Water project 20% Drinking Water project 20%
NYS Intermunicipal Grants (also receiving EFC loan)	Clean Water project 20% Drinking Water project 20%

\*May be any combination of MBE and/or WBE participation

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.
  - a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
  - b. For non-construction Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract
4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract.
5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

##### B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.

3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE Contractor Compliance Report or revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

#### C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report")

The Contractor agrees to submit a report to the Recipient by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE Report must reflect all Utilization Plan revisions and change orders.

#### E. Liquidated Damages - MWBE Participation

In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women’s Business Development (“ESD”) pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

## **V. SECTION 2 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

New York State Executive Law Article 17-B and 9 NYCRR Part 252 provide for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. EFC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC Contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as Subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>.

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

## **VI. SECTION 3 AMERICAN IRON AND STEEL (AIS) REQUIREMENT**

*The requirements of this section apply to (1) all construction Contracts and Subcontracts for DWSRF projects and CWSRF treatment works projects and (2) all Contracts for the purchase of iron and steel products for a DWSRF project or CWSRF treatment works project. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor acknowledges to and for the benefit of the Recipient of the Clean Water State Revolving Fund (“CWSRF”) or the Drinking Water State Revolving Fund (“DWSRF”) financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation (“EFC”) through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

## VII. SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

*The requirements of this section apply to all construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF treatment works projects. Disregard this section if it does not apply to this Contract or Subcontract.*

### **For Contracts in Excess of \$2,000:**

#### 1. Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The Davis-Bacon poster (WH-1321) can be found at <https://www.dol.gov/whd/regs/compliance/posters/davis.htm> . Wage determinations may be obtained from the US Department of Labor's website, <https://beta.sam.gov/> .

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
2. The classification is utilized in the area by the construction industry; and,
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.



(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Recipient shall upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does

not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

***For Contracts in Excess of \$100,000:***

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
5. In any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Recipient and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

**VIII. SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

*The requirements of this section apply to all Contracts and Subcontracts.*

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

The Contractor and any Subcontractor have not been debarred from or deemed ineligible for Government Contracts or federally assisted construction Contracts pursuant to Executive Order 11246.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

#### **IX. SECTION 6 RESTRICTIONS ON LOBBYING**

*The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor and any Subcontractor executing a Contract or Subcontract in excess of \$100,000 agree to provide to the Recipient an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 9, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

# ***Black River Fire Department, Inc.***

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P.O. Box 95

Black River, New York 13612

Established in 1890

December 2, 2022


Dear Village Board of Directors:

The following individuals have been nominated for office in the Black River Fire Department for 2023 as indicated:

President	Joseph Paige
Vice President	Bill Mushtare
Secretary	Jonathan Gaines
Treasurer	Wayne Robbe
Chief	Matthew Carpenter
1 <sup>st</sup> Assistant Chief	Les Williams
2 <sup>nd</sup> Assistant Chief	Wallace O'Neill
Board of Directors (Three to be elected)	Paul Shepard Scott St. Onge Steve Wood Megan Monaghan Curtis Williams Michael Gaines Bill Lamb

The election is scheduled for the regular monthly meeting on December 7, 2022. The results of the election will be forwarded to the Board for approval.

Sincerely,



Jonathan Gaines, Secretary

BRFD