CHARLES TOWN UTILITY BOARD
AGENDA

WEDNESDAY, JUNE 24, 2020

Regular Meeting | **661 South George Street, Charles Town, WV 25414** | **4:00 PM**

CALL TO ORDER

1. **APPROVAL OF MINUTES**
   Approval of June 10, 2020 Meeting Minutes
   UB Minutes June 10, 2020.pdf

2. **PUBLIC COMMENT**
   This portion of the agenda is designed for members of the general public to share thoughts on items of interest in the community. By law, Board members may ask clarifying questions or discuss procedural matters but are not permitted to discuss the policy merits of any issue unless it is scheduled for discussion.

   Until such time as Governor Justice revokes Executive Order 09-20 or any subsequent executive order that is primarily intended to address the public health emergency and spread of COVID-19 by restricting public gatherings and invoking physical distancing, public access to the meeting room will be restricted. Members of the public may still submit written comments to kstolipher@ctubwv.com that will be read aloud. Up to 20 minutes of time will be allotted for reading public comments.

3. **REPORTS**
   a. RK&K
   i. Overall Project Review
   Project Summary 06162020.pdf

4. **ACTION ITEMS**
   a. RK&K - Task Order 10 Jefferson Memorial Park Force Main
   Task Order 10.pdf
   b. Website Design Services
   Website Quotes.pdf
   c. GDF - Owner and Engineer Agreement for Wastewater Treatment Facilities Renewal & Replacement Project
   Revised Owner-Engineer Agreement.pdf

5. **UTILITY MANAGER UPDATES**
   a. Penalty and Service Termination Resumption

Memo on Terminations.pdf

b. Bond Refunding Update

6. **CHAIRMAN UPDATES**
   a. Update on Return to Work Plan
   b. Update on Personnel Hiring Action – Possible Executive Session Under: WV State Code Section §6-9A-4(b)(2)(A) – Matters arising from the appointment, employment of an employee.

7. **APPROVAL OF BILLS**
   Approval of Bills
   06242020.pdf

8. **ADJOURNMENT**

June 10, 2020

The Charles Town Utility Board held a regular meeting on June 10, 2020 at 4:00 p.m. at 661 S. George Street. Members of the Board present were Daryl Hennessy, Pete Kubic, Duke Pierson, and Jacquelyn Milliron. Also present were Jane Arnett, Kristen Stolipher, April Shultz and Hoy Shingleton. The Chairman called for changes or corrections to the May 27, 2020 regular meeting minutes. Jacquelyn had one minor correction to the spelling of her name. The Board approved the minutes as amended. There were no public comments.

The Chairman next opened the floor for discussion on the Route 9 Sewer Project Draw Resolution No. 04 - Contractor Pay Application No. 004 and Hatch Invoices. The Manager noted the construction schedule has been pushed back about a month due to COVID-19. The new completion date is now October 13th. By motion from Duke, second by Pete, the Board approved Resolution No. 04. Next, the Board discussed the Appointment of Interim Secretary and Interim Treasurer until a new Board member is appointed. By motion from Duke, second by Pete, the Board approved the appointment of Interim Secretary to Ashley Stottlemyer and Interim Treasurer to Pete Kubic.

The Board was next briefed by Chris Eckenrode of Gwin Dobson & Foreman as he gave a presentation on the Renewal & Replacement Project. He started off by providing an update on the MBR project at the Tuscawilla Plant, which is on schedule as planned. Chris also reviewed the upgrades/replacements and costs to both the Charles Town and Tuscawilla Treatment Plants per his recommendations. The total project costs for both plants is an estimated $4.35 million with the projected timeline of +18 months. Chris answered several questions from the Board and staff. The Manager noted the next step is for a task order for engineering efforts to get through the bidding phase. The Manager also mentioned that both the smaller Ranson Project and the modified Flowing Springs project need to be completed and recommended adding them in with this project. There are still many questions that need to be resolved to determine the impact to rates.

The Chairman next discussed items under the Chairman's Requests. He provided that staff is back to work under social distancing and cleaning guidelines. He noted, and the Manager clarified, that two items regarding leave and pay arrangements will be referred to the City's Personnel Committee. The Chairman also mentioned the job posting for a Utility Manager has been posted locally and nationally. The Manager provided a monthly update on the operations. Jacquelyn had multiple questions regarding the report.

By motion from Duke, second by Pete, with discussion from Jacquelyn, the Board approved the payment of bills. The June 10, 2020 regular meeting adjourned at 5:45 p.m. The June 24th regular meeting will be held at the CTUB office located at 661 S. George Street.

_____ _____

Chairman Secretary

Charles Town Utility Board
Project Summary
June 24, 2020

Task 01 – Survey / Plan Review

- Subtask 04 – Briar Run I and Briar Run II Pump Stations
    - Under review
    - Additional Engineering assistance requested

Task 04 – Modified Flowing Spring Project

- Survey has been completed
- Design is complete
- Permitting will commence following CTUB review and approval
- 2-month time extension requested/approved
- On schedule. Revised submission date 07/30/2020

Task 05 – Sewer Model

- Record drawings have been received from CTUB
- Data is being entered into GIS to create sewer model
- On schedule. Estimated submission date 11/05/2020

Task 06 – Shenandoah Junction

- Addressing Staff review comments of the draft
- Anticipate submission to the CTUB for review/comment in July

Task 07 – Parkview - Woodlawn Project

- Work starting on the approved Scope of Work Change for design efforts for installing gravity line between Parkview PS and Woodlawn PS
- Survey next week
- On schedule. Estimated submission date 07/29/2020

Task 08 – Wilt's MHP Pump Station Demolition

- Record drawings have been received from CTUB
- Survey has been completed
- Under design
- Valuation map has been received from Norfolk Southern Railroad
- On schedule. Estimated submission date 08/19/2020

Task 09 – Beallair Downstream Capacity Analysis

- Record drawings have been received from CTUB
- Evaluating capacity of gravity sewer between Beallair Pump Station and Breckenridge Pump Station
- Evaluating capacity of Breckenridge Pump Station
- Information regarding Breckenridge Pump Station has been requested from CTUB operators
- On schedule. Estimated submission date 07/09/2020

Task 10 – Jefferson Memorial Park Force Main

- Scope of Work submitted to CTUB for review/approval

CHARLES TOWN UTILITY BOARD
WATER/SEWER SYSTEMS UPGRADE PROJECTS

RUMMEL, KLEPPER & KAHL, LLP

TASK NO. 10

PROFESSIONAL ENGINEERING & SURVEYING SERVICES

JEFFERSON MEMORIAL PARK FORCE MAIN

June 12, 2020

Being a part of Agreement Between
Charles Town Utility Board and Rummel, Klepper & Kahl, LLP
dated November 13, 2019

This Task No. 10 dated June 12, 2020 to the Agreement between Charles Town Utility Board (CTUB) and Rummel, Klepper, and Kahl, LLP (RK&K) dated November 13, 2019 is to provide professional engineering and surveying services for assisting with the construction of a continuation of the Clarence Drive force main through the Jefferson Memorial Park to the Samuel Street Pump Station. Efforts also include the preparation of easements and assistance during construction.

Scope of Services

The following summarizes RK&K's services as part of this Task:

1. RK&K will perform a field survey to locate existing rights-of-way and property lines, utilities, topographic features and other relevant features.
2. RK&K will prepare preliminary plans for the continuation of the Clarence Drive force main through the Jefferson Memorial Park to the Samuel Street Pump Station.
3. RK&K will submit the preliminary design to the CTUB Staff for review, approval and authorization to proceed to final design.
4. RK&K will prepare the plans in accordance with CTUB sewer design standards.
5. RK&K will perform online courthouse research to ascertain location of existing easements along with preparing additional easements, if necessary, for the project. RK&K has allotted $5,500 towards the preparation of easements.
6. RK&K will contact environmental review agencies and other stakeholders, if needed, to obtain clearances for construction of project.
7. RK&K will submit the final design to the CTUB Staff for review and approval.
8. RK&K will present a summary of the project to the CTUB for review and comment.
9. RK&K will revise the final design, incorporating review comments.
10. Prior to Construction, RK&K will stake out the proposed force main alignment to assist CTUB with construction.
11. RK&K will provide Engineering assistance during construction to address questions from CTUB Staff.

Schedule

Subject to weather and CTUB review time, RK&K anticipates sixty (60) working days to perform the field survey, study, preparation of drawing, permitting, etc. from issuance of notice to proceed. Impacts to the schedule may occur outside of RK&K's and CTUB ability to control (i.e. regulatory and permitting approvals).

Estimated Person-Hours per Phase by Category, Engineer's Consultant Costs and Other Direct Costs

A fee derivation is attached as Page 4 which includes RK&K's estimated person-hours per Phase by category and other direct costs anticipated to complete the work for this project.

Materials and Resources Required of CTUB

- CTUB will be responsible for providing available mapping to facilitate RK&K's review of the existing collection system.
- CTUB will be responsible for paying any permitting fees and regulatory agency costs.
- CTUB will be responsible for any and all construction related materials and equipment.

Estimated Not-To-Exceed Fee

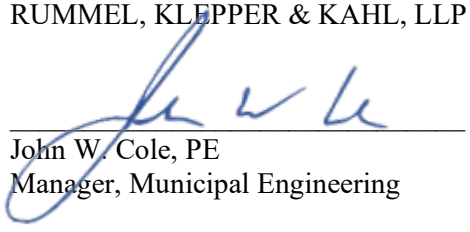
RK&K will provide the scope of services described above at an amount equal to Engineer's Direct Labor Costs times a factor of 2.7 for the services of Engineer's personnel engaged on the Project, plus Reimbursable Expenses. RK&K's current certified payrates for personnel to be assigned to this project is included as Exhibit B to Original Agreement dated November 13, 2019.

The total estimated Not-to-Exceed fee to perform the work is $25,600.00 as shown on RK&K's enclosed fee derivation.

Authorization

This Task No. 10, Park Force Main, dated June 12, 2020 and being a part of the Agreement between Charles Town Utility Board and Rummel, Klepper & Kahl, LLP for Engineering Services for Water/Sewer Systems Upgrade Projects dated November 13, 2019, is approved by the following duly authorized officials:

Engineer: RUMMEL, KLEPPER & KAHL, LLP



06/12/2020

John W. Cole, PE — Date
Manager, Municipal Engineering

Owner: Charles Town Utility Board

Daryl Hennessy — Date
City Manager, Chairman

RUMMEL, KLEPPER KAHL, LLP
FEE DERIVATION
CHARLES TOWN UTILITY BOARD
TASK 10
JEFFERSON MEMORIAL PARK FORCE MAIN

June 12, 2020

Scope of Services	Manager	Associate Engineer	CADD	Professional Surveyor	Survey Technician - Office	Survey Technician - Lead	Survey Technician	Misc. Exp.	Task Total Hours
Technical Assistance									
Field Survey		10			10	40	40	$ 150.00	**100**
Preparation of Easements				2	72	10	10		**94**
Design Efforts	2	32	16						**50**
Permitting		16	4						**20**
Construction Stake-out/Assistance	2	10			6	10	10	$ 150.00	**188**
Review Meeting (phone)	8	8							**16**
Total Hours	**12**	**76**	**20**	**2**	**88**	**60**	**60**	**$ 300.00**	**468**
Hourly Rate (including 2.7 multiplier)	**$ 194.40**	**$ 103.95**	**$ 88.83**	**$ 120.00**	**$ 67.50**	**$ 65.61**	**$ 52.65**		
Total Fee	**$ 2,332.80**	**$ 7,900.20**	**$ 1,776.60**	**$ 240.00**	**$ 5,940.00**	**$ 3,936.60**	**$ 3,159.00**	**$ 300.00**	**$ 25,585.20**

NTE Cost	**$ 25,600.00**

Website Design Service quotes (6-2-20)

CityNet

Website Design	$5,000.00
Annual Hosting and Registration	$1,158.00

B.E.S. Technology, Inc.

Base Website Design (Pre-defined)	$9,874.00
Annual Hosting and plug-in costs	$1,374.00

Granicus

Website Design and Implementation	$15,000.00
Average Annual hosting	$4,240

The above quotes were received based on the following requests:

1) Development of more user friendly website
2) Development of online application process
3) Easier interface with customers for payments
4) Customer notification platform for meetings, updates, etc.
5) Improved communication and access to Board information

All quotes have been evaulated and the lowest bid meeting all RFP requirements was from B.E.S. Technology.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, 2020 ("Effective Date") between

CHARLES TOWN UTILITY BOARD (CTUB) ("Owner") and

GWIN, DOBSON & FOREMAN, INC. ("Engineer").

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

Wastewater Treatment Facilities Renewal and Replacement Project ("Project").

Engineer's services under this Agreement are generally identified as follows:
Engineering, design, plans and specifications, bid phase, construction administration and inspection services for CTUB's Wastewater Treatment Facilities Renewal and Replacement project including various wastewater treatment plant modifications in accordance with the Engineer's Renewal and Replacement Project Summary dated June 2020, officially made an official part herein by reference.

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

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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

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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.

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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 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

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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.

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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.

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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.

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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.

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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.

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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

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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 attorney's 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.

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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.

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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,

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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.

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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.

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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. - **Not Used**

F. Exhibit F, Construction Cost Limit. **- Not Used**

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. **- Not Used**

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.

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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 anything 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.

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

Owner:	Charles Town Utility Board	Engineer:	Gwin, Dobson & Foreman, Inc.
By:		By:	
Print name:	Daryl Hennessy	Print name:	Mark Glenn, P.E.
Title:	CTUB Chairman	Title:	President
Date Signed:		Date Signed:	
		Engineer Firm's License No.:	C01093
		State of:	West Virginia (Firm License)

Address for Owner's receipt of notices:

661 South George Street
Suite 101
Charles Town, WV 25414

Address for Engineer's receipt of notices:

3121 Fairway Drive
Altoona, PA 16602-4475

Designated Representative (Paragraph 8.03.A):		Designated Representative (Paragraph 8.03.A):	
Print name:	Jane Arnett	Print name:	Christopher Eckenrode, P.E.
Title:	Utility Manager	Title:	Senior Project Engineer
Phone Number:	(304) 724-3280	Phone Number:	(814) 943-5214
E-Mail Address:	jarnett@ctubwv.com	E-Mail Address:	ceckenrode@gdfengineers.com

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This is **EXHIBIT A**, consisting of 16 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

Engineer's Services

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

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

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase* **N/A**

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 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.

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6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

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: **NONE**.

15. Furnish 3 review copies of the Report and any other Study and Report Phase deliverables to Owner within 90 days of the Effective Date and review it with Owner. Within 20 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 3 copies of the revised Report and any other Study and Report Phase deliverables to the Owner within 30 days of receipt of Owner's comments.

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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.

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.

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.

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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 Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables. Make measured drawings of existing conditions at the wastewater facilities and verify the accuracy of drawings and other information furnished by Owner or others.

10. Furnish **three (3)** review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **90** 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 **three (3)** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **30** 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.

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3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

9. Perform or provide the following other Final Design Phase tasks or deliverables: **NONE**.

10. Furnish for review by Owner, its legal counsel, and other advisors, 3 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 **90** 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 3 final copies of such documents to Owner within 30 days after receipt of Owner's comments and instructions.

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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.

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 **one (1)**. 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.

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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: **N/A.**

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).

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.

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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

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indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

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.

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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 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

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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.

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24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables. Prepare record drawings showing appropriate record information based on project annotated record documents received from Contractor and furnish such Record Drawings to Owner.

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.

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: **NONE**.

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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.~~ **See A1.02.A.9 - included in Preliminary, Design Phase Services.**

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;

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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 constructability 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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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.

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.

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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.

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This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

Owner's Responsibilities

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

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

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.

B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than 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.

3. Utility and topographic mapping and surveys.

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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 constructability review.

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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: **N/A**

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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 _____, 2020.

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

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation for Basic Services*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

1. A lump sum amount of $575,000 based on the following estimated distribution of compensation:

a.	Preliminary Design Phase	$ 75,000
b.	Final Design Phase	$ 180,000
c.	Bidding/Funding Phase	$ 30,000
d.	Construction Phase	$ 90,000
e.	Resident Project Representative (Not to Exceed 2,000 hours)	$ 175,000
f.	Post Construction Phase	$ 25,000

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): **None**.

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.

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6. If for any reason the Owner decides to abandon the project, prompt notice shall be given to Engineer. Owner will only be responsible for fees incurred by Engineer up to date that project was abandoned.

7. The parties understand that until such time, Owner notifies Engineer that it has obtained available funding for the Project, Owner authorizes Engineer to perform only preliminary design services limited to creation of a Uniform Environmental Report and any other preliminary design work necessary for the submission of a funding application to the Infrastructure Jobs Development Council ("IJDC") or to other funding sources.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **twelve (12)** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

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.

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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.

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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.

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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:

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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.

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This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

Insurance

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

G6.05 *Insurance*

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

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1)	Bodily injury, each accident:	$ 100,000
2)	Bodily injury by disease, each employee:	$ 500,000
3)	Bodily injury/disease, aggregate:	$ 100,000

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:	$ 5,000,000
2)	General Aggregate:	$ 5,000,000

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

$ 1,000,000

f. Professional Liability –

1)	Each Claim Made	$ 2,000,000
2)	Annual Aggregate	$ 2,000,000

g. Other (specify): $ NONE

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2. By Owner:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1) Bodily injury, Each Accident $_____
2) Bodily injury by Disease, Each Employee $_____
3) Bodily injury/Disease, Aggregate $_____

c. General Liability --

1) General Aggregate: $_____
2) Each Occurrence (Bodily Injury and Property Damage): $_____

d. Excess Umbrella Liability

1) Per Occurrence: $_____
2) General Aggregate: $_____

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

$_____

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. Gwin, Dobson & Foreman, Inc.

b. _____
Engineer's Consultant

c. _____
Engineer's Consultant

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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This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

Dispute Resolution

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 **Circuit Court of Jefferson County**. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

Limitations of Liability

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

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to 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 **$1,000,000.**

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

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,

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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.

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This is **EXHIBIT J**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2020.

Special Provisions

Article 1 - Services of Engineer of the Agreement is amended to include the following agreement(s) of the parties:

1. **The general scope of work is included in the "Charles Town Utility Board, Wastewater Treatment Facilities Renewal and Replacement Project Summary, Jefferson County, WV, June 2020," prepared by the Engineer, attached hereto and made an official part hereof.**

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CHARLES TOWN UTILITY BOARD

CITY OF CHARLES TOWN

JEFFERSON COUNTY, WEST VIRGINIA

WASTEWATER TREATMENT FACILITIES

RENEWAL AND REPLACEMENT PROJECT SUMMARY

JUNE 2020

Introduction

Both the Charles Town and Tuscawilla wastewater treatment facilities, operated by the Charles Town Utility Board, effectively treat wastewater to meet the NPDES effluent limits. While each facility has specific effluent limits for most parameters, the entire system shares an allocation of total nitrogen and total phosphorous. Both facilities have met these effluent limits over the past year. Management staff, along with the plant operators, are to be commended on achieving effluent limits given the overall conditions and circumstances of the facilities.

The Charles Town Plant converted a traditional Sequencing Batch Reactor (SBR) process to an Intermittent Cycle Extended Aeration System (ICEAS) in 2001. Sludge processing at the facility includes aerobic digestion and dewatering via a belt filter press. Denitrification filters were also added to the facility in 2016 to reduce overall nitrogen discharge. The plant has a hydraulic capacity of 1.75 million gallons per day (MGD).

The Tuscawilla Plant was placed online in 2013 and utilizes a Membrane Bio-Reactor (MBR) to compliment a Biological Nutrient Removal (BNR) system and has a hydraulic capacity of 0.5 million gallons per day (MGD). The facility currently trucks all waste sludge from Tuscawilla to the Charles Town Plant to be processed and pressed.

Based on the inspection and review of the physical condition of the facilities, discussions with plant personnel, and review of relevant operations information, Gwin, Dobson & Foreman, Inc. (GD&F) has prepared this Renewal and Replacement Project Summary for the Board. Each facility requires significant investment to ensure long term operation and compliance with existing and future discharge regulations. The following summarizes the major items in need of repair and/or replacement at each facility as well as an estimated project cost tabulation.

Charles Town Facility Replacements

Due to the overall age of the Charles Town Facility, more work is required to ensure efficient operation and discharge. Replacement of the primary screening processes at the facility will result in fewer overflows and decreased operational and maintenance costs in the downstream processes. We recommend installation of a fine screen similar to the one proposed at the Tuscawilla Facility. Installation of a fine screen will prevent debris buildup in the downstream process and will make the equipment operate more efficiently. A fine screen will save on maintenance costs due to clogging of pumps and equipment. The construction cost estimate to install a new fine screen is $215,000.

The grit removal system is 30 years old and is in dire need of replacement. Parts are no longer available and the compactor has been broken for years. The construction cost estimate for a new grit removal system is $175,000.

The influent pumps, valves and controls are original to plant construction and are showing severe signs of wear. The influent pumps and motors have failed numerous times. The original wiring to the pump control panel was all fed through the same conduit. Some conduits are currently lying exposed on the ground. New pumps, valves, level sensors and control panel should be installed to provide a more energy efficient and dependable system. The total estimated construction cost to upgrade the influent pump station is $150,000.

The SBR control panel is of original construction and is obsolete. The estimated cost to upgrade the SBR's is $175,000.

The UV system at the Charles Town Plant also requires replacement. The system has been prone to flooding which has ruined the ballasts on multiple occasions requiring expensive replacements. A new UV system with panel mounted ballasts will prevent flood damage of the ballasts. The estimated construction cost to install a new UV system is $250,000.

The existing Ashbrook belt filter press has been in operation for 30 years. The press has done an excellent job dewatering of digested sludge with only routine maintenance being performed during its service life. Since sludge from the Tuscawilla WWTP and from the water treatment facility are also processed via the Charles Town Plant belt press, it is vital to plant operations. The existing press requires a PLC replacement and it is being recommended that a new CMU building house the unit. The metal building structure, including roof, are in desperate need of replacement. The Board purchased a used Ashbrook belt filter press that will be installed in a new CMU building and utilized as a backup to the press in service. Rotation of belt filter presses will reduce the replacement of the wear components and provide full redundancy. The estimated construction cost to replace the existing press building, install the used press and new building and all other associated press upgrades is $500,000.

The existing dry lime silo feed system associated with the solids handling process has historically been problematic with clogging issues and spilled lime. It is recommended to refurbish the existing lime silo and install a new conveyor system to feed the belt presses. The estimated construction cost is $65,000.

The main utility disconnect, automatic transfer switch (ATS) and motor control center (MCC) No. 1 are outdated and will be replaced. A new small electrical building will be constructed such that existing components can remain in service during construction. MCC-1 is considerably aged and availability of replacement components is a concern. MCC-1 also does not allow for expansion of any new equipment. The estimated construction cost to replace MCC-1 and install a stand-alone main utility disconnect and ATS, including a new CMU building addition is $370,000.

The replacement and addition of process equipment and instrumentation will require the installation of new wiring and conduit. The influent pump station requires all new wiring and conduit runs. Due to the age and condition of the current SCADA system, as well as the number of control panels and instruments that are not integrated into the SCADA system, a plant-wide SCADA system with new hardware and software will be installed. The estimated construction cost to install new equipment and instrumentation wiring and conduit and installing a new SCADA system is $350,000.

Tuscawilla Facility Replacements

The Tuscawilla Facility currently employs two (2) fine drum screens located at the head of the BNR Building. These screens are located downstream of the Headworks Building, which houses a coarse screen and grit removal system. The drum screens show signs of severe corrosion and overflow when influent flows are in excess of 500,000 GPD. GD&F recommends replacing the existing fine drum screens with a channel type fixed vertical fine screen directly following the coarse screens at the Headworks Building. Replacement of the drum screens with a vertical screen decreases the footprint of the screening operations and allows it to be relocated to the Headworks Building. The screenings from the new screen may then be discharged to the same dumpster as the grit removal system and coarse screen, eliminating the need for the second dumpster. Relocation of the screens will also prevent the

accidental discharge of untreated sewage to the adjacent wetlands. Fixed vertical fine screens will significantly reduce the operation and maintenance costs in that they will not require manual cleaning and have significantly fewer moving parts than the drum screens. All the screening and grit removal facilities would then be centrally located to one (1) building. This would also free up space in the existing drum screen room for the MBR chemical cleaning systems. The total estimated construction cost to replace the fine screens is $350,000.

The Membrane Bio-Reactors (MBR) system consistently produces high quality effluent; however, the MBR modules have reached the end of their useful life and are in need of replacement. The membrane manufacturer, Toray, produces a new thinner module which will enable each membrane reactor to double its capacity within the same footprint. Newer designed MBR aeration headers will help eliminate sludge buildup on the modules. The newer modules are lighter, more durable, require less cleaning chemicals and less air to operate than the existing modules, thus resulting in a significant reduction in operation and maintenance costs. CTUB is currently in the process of installing 8 modules in Basin #3 Tank. The contract amount for this was $366,180 which does not include some items such as electrical and crane rental. The total estimated cost to perform the membrane equipment upgrades inclusive of current efforts is $750,000.

Cost Estimate Summary Tables

TABLE 1: CHARLES TOWN RENEWAL AND REPLACEMENT PROJECT COST ESTIMATE

1.	One New Fine Screen	$ 215,000
2.	New Grit Removal System	$ 175,000
3.	Influent Pump Replacement and Upgrades	$ 150,000
4.	SBR Control Panel Upgrade	$ 175,000
5.	New Vertical UV System	$ 250,000
6.	Belt Filter Press Upgrades Including New Building	$ 500,000
7.	Lime Feed System Upgrades	$ 65,000
8.	Main Utility Disconnect, ATS and MCC-1 Replacement	$ 370,000
9.	Wiring/Conduit and SCADA Replacement	$ 350,000
	Total Estimated Renewal and Replacement Construction Cost	**$ 2,250,000**
	Other Soft Costs [Eng., Legal, Admin., Contingency, etc.] (30%)	$ 675,000
	Total Estimated Charles Town Project Cost	**$ 2,925,000**

TABLE 2: TUSCAWILLA RENEWAL AND REPLACEMENT PROJECT COST ESTIMATE

1.	Fine Drum Screen Replacement	$ 350,000
2.	MBR Equipment Upgrades	$ 750,000
	Total Estimated Renewal and Replacement Construction Cost	**$ 1,100,000**
	Other Soft Costs [Eng., Legal, Admin., Contingency, etc.] (30%)	$ 330,000
	Total Estimated Tuscawilla Project Cost	**$ 1,430,000**

TABLE 3: OVERALL RENEWAL AND REPLACEMENT PROJECT COST ESTIMATE

1.	Total Charles Town Project Cost Estimate	$ 2,925,000
2.	Total Tuscawilla Project Cost Estimate	$ 1,430,000
	Total Estimated Project Cost	**$ 4,355,000**

Conclusion

This Renewal and Replacement Project is critical in terms of maintaining continuous facility operations, along with maintaining compliance with current and proposed future regulatory requirements. Replacement and upgrading of the facility components are critical to plant operations. These upgrades will result in a reduction of current operation and maintenance costs and will provide more environmentally friendly and safer working environments. These upgrades will assist in automation and efficiency of the plants which will in turn give the operators more time to perform daily operational and maintenance procedures which will thus prolong the life of the equipment. The Project will incorporate state-of-the-art equipment which will improve the quality of the treated effluent while optimizing system performance. As flows to both facilities continue to increase, the needs for these upgrades become more severe.

Memo

To: Charles Town Utility Board Members

From: Jane Arnett, Utility Manager

Date: June 17, 2020

Subject: Penalty and Service Termination resumption

As we transition back to more normal operations, we are going to be reestablishing our standard billing and collection procedures. We will have gone 3 months without late payment penalties and service terminations due to the COVID-19 pandemic to assist our customers during unprecedented circumstances.

Here is a summary of the steps that will be taken:

1. Late payment penalties and service terminations will resume in August. A notice announcing the change was included on the customer bills that were generated last week.

2. A review of the customer aging was done and shows that as of May 31, 2020, 1085 accounts were past due. Please see the breakdown below.

Dollar Amount	**Total Accounts**
$0 - $150	690
$151 - $200	151
$201 - $300	127
$301 - $500	78
> $500	39

To assist the customers with the largest past due balances and make them aware that service terminations will be starting in August, CTUB is going to begin making calls through the automated call system to the customers whose balance is greater than $150.

The message will state "This is an important notice regarding to your past due account. The Charles Town Utility Board will begin a return to normal operations which requires the termination of water service for failure to remain current on your account. The application of late fees and service termination will return during the month of August. The Utility Board is very willing to work with our customers and assist with a payment plan for those customers that are unable to come current on their account at this time. Please contact us at 304-725-2316 if you have any questions or wish to enter a payment plan. Thank you." The plan is to continue the calls weekly as reminders so that staff is not overwhelmed with requests for deferred payment agreements the day before/of termination.

3. The number of delinquent customers will be reviewed weekly. At this time, terminations will be scheduled for those customers whose balance is greater than $200 and do not pay in full or sign a payment plan agreement. That limit should be manageable for the staff. The plan is to continue to decrease the balance limit until we get back to the preferred amount of $50.

4. General guidelines for deferred payment agreements are as follows:
    a. Up to $300 - 1/2 down and 3-5 months to pay balance;
    b. $301-$500 - 1/3 down and 4-6 months to pay the balance;
    c. Over $500 -1/4 down and 6-12 months to pay the balance.

    These are guidelines, and individual circumstances may warrant a different deferred payment agreement. Staff has the flexibility to work with the customer to facilitate an agreement that works for both parties. For consistency, the Accounting Manager shall approve any different deferred payment plan.

We will continue to monitor the customer accounts and let you know if we run into any issues. Hopefully this will allow us to get back on track and help the customers work through any problems that they have encountered resulting from COVID-19. Let me know if you have any other questions.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 17th day of June 2020.

GENERAL ORDER NO. 262.5

COMMISSION GENERAL ORDER REGARDING
EXTRAORDINARY EVENTS RELATED TO COVID-19

COMMISSION ORDER

The Commission addresses the voluntary suspension of service terminations by West Virginia utilities related to the health threat presented by COVID-19.

BACKGROUND

On March 13, 2020, the Commission sent an e-mail to all West Virginia public utilities urging a voluntary suspension of service terminations in consideration of the rapidly unfolding events surrounding the novel coronavirus. The Commission recognized that state residents were facing a health threat and the prospect of economic disruption from COVID-19 and that "stay at home" orders from various federal and state government agencies would likely impact the ability of utility customers to timely pay for utility services. The Commission, therefore, pending further notice, urged all utilities to suspend utility service terminations except for matters of safety or where requested by the customer. The Commission stated that it would provide additional and updated guidance, as warranted.

On March 17, 2020, the Commission issued General Order No. 262. Therein, the Commission continued to urge utilities not to terminate public utility service. Additionally, the Commission extended the Administrative Law Judge decision due dates by two months in all cases not subject to statutory deadlines. For cases subject to a statutory deadline, the Commission invited voluntary motions to toll the running of the statutory suspension period for two months or longer.

DISCUSSION

Recently, West Virginia has begun the process of rescinding its "stay at home" guidelines. The Commission appreciates the efforts of West Virginia utilities to provide financial relief for customers who have experienced financial stress and difficulties during the more restrictive COVID-19 mitigation guidelines. The Commission has

received numerous informal inquiries about whether termination of utility service may resume. The Commission has also been advised that some utilities that voluntarily suspended termination of utility service experienced significant cash flow deficiencies. In a few instances, utilities have requested rate relief for COVID-19 expenses, including the loss of cash flow from suspension of utility service termination activities. As anticipated in the March 13, 2020 e-mail, the Commission determines that further guidance regarding utility service termination is warranted at this time.

Initially, we note that on May 15, 2020, the Commission issued General Order No. 262.4 containing rate relief mechanisms for use by public utilities suffering economic impacts of COVID-19.

In this Order, the Commission describes the process for resuming service terminations for utilities that suspended terminations pursuant to the March e-mail. Because some utilities may have continued to issue termination notices without the intent to terminate,[1] we believe the utilities should "restart" the disconnection process from the beginning for all customers. This will give proper notice to customers that termination for nonpayment subject to notice after July 1, 2020, will occur if they do not pay their outstanding balances or make deferred payment arrangements with the utility.

Therefore, West Virginia utilities that voluntarily suspended utility service terminations as requested by the Commission may begin the notice of termination process effective July 1, 2020, if they choose to do so, subject to the following guidelines:

1. Termination notices issued prior to July 1, 2020 are not considered valid notice for termination of service.

2. Utilities desiring to terminate service may, starting on and after July 1, 2020, issue a new notice of termination to customers who are subject to termination pursuant to the applicable Commission rules and regulations.

3. A utility must provide notice to its customers that it is restarting the termination of service process effective with termination notices issued after July 1, 2020. This additional notice should be provided on the actual termination notice, if possible, or in instances where programming changes to termination notices is not possible, the utility may issue a news release notifying customers of the restart of the termination of the utility service process.

4. Utilities should not assess late payment fees for balances accrued during the voluntary termination suspension period.

[1] Some residential customer assistance agencies require termination notices to process assistance checks.

In addition, the Commission termination rules require that utilities negotiate reasonable deferred payment plans with customers who have significant past-due balances. The Commission urges utilities to utilize deferred payment plans in consideration of their customers' ability to pay during this period, including commercial customers impacted by COVID-19 restrictions.

FINDINGS OF FACT

1. West Virginia is beginning to reopen businesses.

2. Many West Virginia utilities discontinued termination for nonpayment of bills during the early months of the pandemic.

CONCLUSIONS OF LAW

1. Terminations for nonpayment should be subject to conditions that will give customers notice of the resumption of actual terminations.

2. Allowing additional time and notice prior to resuming terminations is reasonable considering the disruptions caused by the novel coronavirus.

ORDER

IT IS THEREFORE ORDERED that public utilities may resume disconnection for nonpayment pursuant to the guidelines described herein.

IT IS FURTHER ORDERED that on entry of this order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all public utilities and parties in active cases before the Commission who have filed an e-service agreement, by United States First Class Mail on all public utilities and parties of record in active cases before the Commission who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,

Connie Graley

Connie Graley, Executive Secretary

JJW/sc
262.5.doc

Memo

To: Board of Directors

From: Curtis B. Keller, General Manager

Date: June 16, 2020

Subject: Penalty and Service Termination resumption

As we transition back to more normal operations, we are going to be reestablishing our standard billing and collection procedures. We will have gone 3 months without late payment penalties and service terminations due to the COVID-19 pandemic to assist our customers during unprecedented circumstances. We have worked through the process with our counterparts at the Water District in developing the plan.

Here is a summary of the steps that are being taken:

1. Late payment penalties and service terminations will resume in July. A notice announcing the change was included on the customer bills that were generated last week.

2. A review of the customer aging was done and shows that as of June 10, 2020, 1,387 accounts were past due and over $150. You can see the breakdown below.

Dollar Amount	Total Accounts
$150	1,361
$175	1,081
$200	878
$225	721
$250	604
$300	425

To assist the customers with the largest past due balances and make them aware that service terminations will be starting in July, the Water District is going to begin making calls through the automated call system to the customers whose balance is greater than $150.

The message will state "This is an important notice regarding to your past due water account. The Berkeley County Public Service Water and Sewer Districts will begin a return to normal operations which requires the termination of water service for failure to remain current on your account. The application of late fees and service termination will return during the month of July. The Districts are very willing to work with our customers and enter a payment plan to assist those customers that are unable to come current on

their account at this time. Please contact the payment center at 304 – 263 – 8566 if you have any questions or wish to enter a payment plan. Thank you." The plan is to continue the calls weekly as reminders so that the staff isn't overwhelmed with requests for deferred payment agreements the day before/of termination.

3. The number of delinquent customers will be reviewed weekly. At this time, terminations will be scheduled for those customers whose balance is greater than $200 and do not pay in full or sign a deferred payment agreement. That limit should be manageable for the staff at both Districts. The plan is to continue to decrease the balance limit until we get back to the preferred amount of $50.

4. General guidelines for deferred payment agreements are as follows:
    a. Up to $300 – 1/2 down and 3-5 months to pay balance;
    b. $301-$500 – 1/3 down and 4-6 months to pay the balance;
    c. Over $500 – 1/4 down and 6-12 months to pay the balance.

    These are guidelines, and individual circumstances may warrant a different deferred payment agreement. Staff has the flexibility to work with the customer to facilitate an agreement that works for both parties.

We will continue to monitor the customer accounts and let you know if we run into any issues. Hopefully this will allow us to get back on track and help the customers work through any problems that they have encountered resulting from COVID-19. Let me know if you have any other questions.

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT		AMOUNT
	PSD MAY COLLECTIONS	SEWER FUND	SEWER		250.70
	MAY COLLECTIONS	SEWER FUND	SEWER		492.05
				TOTAL:	1,234.80
WV BUREAU OF PUBLIC HEALTH	CLASS C WW: TRAVIS MARKLEY	SEWER FUND	SEWER		100.00
				TOTAL:	100.00
XYLEM WATER SOLUTIONS U.S.A., INC.	SUPPLIES WTP	WATER FUND	WATER		2,029.32
				TOTAL:	2,029.32

========== FUND TOTALS ==========

50	WATER FUND	54,330.10
60	SEWER FUND	80,952.67
	GRAND TOTAL:	135,282.77

TOTAL PAGES: 4

APPROVED BY: _____

APPROVED BY: _____

This Packet: $135,282.77

Potomac Edison for Locust Hill Golf Course: $318.39

Total: $135,601.16

****** Highlighted invoices to be reimbursed by the Route 9 Sewer Project Escrow Account**

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
MISS UTILITY OF WV, INC.	MESSAGE FEES: MAY	WATER FUND	WATER	162.40
			TOTAL:	162.40
NB & C ENGINEERING SERVICES, LLC	KEYES FERRY RD ES STRUCTUR	WATER FUND	WATER	1,100.00
	KEYES FERRY RD: MT ANALYSI	WATER FUND	WATER	1,000.00
			TOTAL:	2,100.00
LOGICAL CONCEPTS, INC	WAR ADMIRAL PS, NORTHPOST	SEWER FUND	NON-DEPARTMENTAL	7,718.80
			TOTAL:	7,718.80
PACE ANALYTICAL SERVICES, LLC	TESTING: UCMR4_SE1_WK1_JN2	WATER FUND	WATER	418.00
	TESTING: CAVALAND QUARTERL	WATER FUND	WATER	24.00
	TESTING: CT WEEKLY	SEWER FUND	SEWER	190.30
	TESTING: JCPSD IU04 QUARTE	SEWER FUND	SEWER	82.06
			TOTAL:	714.36
POTOMAC EDISON	210 000 852 967	WATER FUND	WATER	46.08
	210 000 853 759	WATER FUND	WATER	9,809.66
	210 000 853 759	WATER FUND	WATER	74.64
			TOTAL:	9,930.38
QUALITY FENCE & DECK CO	TEMP FENCING 3 MOS CLARENC	SEWER FUND	SEWER	2,250.00
			TOTAL:	2,250.00
R&L LANDSCAPES, INC	BAG WORMS CNTRCT 343 SOUTH	SEWER FUND	SEWER	1,400.00
			TOTAL:	1,400.00
SG PLUMBING, INC.	737 WILLOW SPRINGS 6/1- 6/	WATER FUND	WATER	2,280.00
	247 DOUGLAS DR 6/04/20	WATER FUND	WATER	760.00
	N MILDRED ST 6/05/2020	WATER FUND	WATER	625.00
	S GEORGE ST 6/08/2020	WATER FUND	WATER	625.00
	S GEORGE ST 6/10/2020	WATER FUND	WATER	980.00
	S MINERAL ST 6/11- 6/12/20	WATER FUND	WATER	1,250.00
			TOTAL:	6,520.00
STEPTOE & JOHNSON PLLC	GENERAL ENVIRONMENTAL FOIA	SEWER FUND	SEWER	6,142.50
	GEN ENV:UIC & NPDES PRMNT	SEWER FUND	SEWER	17,688.75
			TOTAL:	23,831.25
GERALD TAYLOR CO., INC.	SUPERVAC / HAUL	SEWER FUND	SEWER	1,992.75
	SUPERVAC/ HAUL	SEWER FUND	SEWER	2,167.50
			TOTAL:	4,160.25
CI THORNBURG CO., INC.	CPLNGS, BALL CURB STOPS	WATER FUND	WATER	2,234.01
	CHLORINE	WATER FUND	WATER	903.00
	CPLNGS, BLL CRB STPS	WATER FUND	WATER	1,099.61
	CPLNG, CLMP, ADPTR, ELL, N	WATER FUND	WATER	1,254.04
			TOTAL:	5,490.66
TIAA COMMERCIAL FINANCE, INC	COPIER	WATER FUND	NON-DEPARTMENTAL	3,744.00
			TOTAL:	3,744.00
USA BLUEBOOK	FACE MASKS	SEWER FUND	SEWER	80.00
			TOTAL:	80.00
VALLEY CREDIT SERVICE, INC.	MAY COLLECTIONS	WATER FUND	WATER	492.05

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT		AMOUNT
WV DEPT OF HEALTH & HUMAN SERVICES	FLUORIDE TEST	WATER FUND	WATER		15.00
	BACTERIOLOGICAL TESTING	WATER FUND	WATER		120.00
	BACTERIOLOGICAL TESTING	WATER FUND	WATER		140.00
				TOTAL:	275.00
EJ USA, INC.	1570Z FR, 2965A CV	SEWER FUND	SEWER		556.00
	1570Z FR, 2965A CV	SEWER FUND	SEWER		448.00
				TOTAL:	1,004.00
FERGUSON WATERWORKS	C1.5V ALK PROCELL INTENSE	SEWER FUND	SEWER		15.00
	MASKS	SEWER FUND	SEWER		98.00
				TOTAL:	113.00
FRONTIER COMMUNICATIONS	304-876-2120-111514-4	WATER FUND	WATER		89.97
	304-876-9970-121914-4	WATER FUND	WATER		89.38
	304-876-2594-041306-4	SEWER FUND	SEWER		143.34
				TOTAL:	322.69
GUTTMAN ENERGY	W/E 6/07/2020	WATER FUND	WATER		522.97
	W/E 6/14/2020	WATER FUND	WATER		537.24
	W/E 6/07/2020	SEWER FUND	SEWER		450.50
	W/E 6/14/2020	SEWER FUND	SEWER		215.54
				TOTAL:	1,726.25
HACH COMPANY	SUPPLIES FOR WTP	WATER FUND	WATER		1,191.93
				TOTAL:	1,191.93
INWOOD QUARRY, INC.	M3 PICKUP: 6/11/20	SEWER FUND	SEWER		99.78
				TOTAL:	99.78
JAMES RIVER EQUIPMENT	3" ROCKLAND 130G RENTAL	SEWER FUND	SEWER		300.00
				TOTAL:	300.00
JEFFERSON UTILITIES, INC	12-0820-00	SEWER FUND	SEWER		135.36
	12-0820-00	SEWER FUND	SEWER		45.12
				TOTAL:	180.48
JENKINS TREE SERVICE	TRIM TREES @ WWTP	SEWER FUND	SEWER		8,500.00
				TOTAL:	8,500.00
JOHNNY BLUE, INC	CONSTRUCTION W/SANITIZER	SEWER FUND	SEWER		124.00
				TOTAL:	124.00
J.C. KUNKLE & ASSOCIATES, A.C.	PROFF SVCS 5/01 - 5/31/202	WATER FUND	WATER		2,475.00
	PROFF SVCS 5/01 - 5/31/202	SEWER FUND	SEWER		2,475.00
				TOTAL:	4,950.00
MASTERDRY, LLC	602 N REYMANN ST DAMAGE	SEWER FUND	SEWER		3,368.58
				TOTAL:	3,368.58
DONALD MICKEY	MOWING SUMMIT PT & PLYGRND	SEWER FUND	SEWER		250.00
				TOTAL:	250.00
MICRO-TECH DESIGNS, INC.	WS FLW TRNSMTR& INSTALL/SE	SEWER FUND	SEWER		3,993.00
				TOTAL:	3,993.00

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
AMERIGAS	TANK RENTAL: CRANES LN	SEWER FUND	SEWER	195.20
			TOTAL:	195.20
APPLE VALLEY TIRE	TIRES & LABOR, DISPOSAL TI	SEWER FUND	SEWER	789.32
			TOTAL:	789.32
ARDEN EQUIPMENT REPAIR, INC.	ZERO TURN SVC	WATER FUND	WATER	629.52
			TOTAL:	629.52
NEAL O NILSEN	OFFICE 365 BASIC - 22 USER	WATER FUND	WATER	66.00
	OFFICE 365 BASIC - 22 USER	WATER FUND	WATER	66.00
	OFFICE 365 BASIC - 22 USER	SEWER FUND	SEWER	66.00
	OFFICE 365 BASIC - 22 USER	SEWER FUND	SEWER	66.00
			TOTAL:	264.00
AUTOZONE	WIPER BLADES	SEWER FUND	SEWER	15.98
			TOTAL:	15.98
BUSINESS CARD	5472 0636 0426 2754	WATER FUND	WATER	31.01
	5472 0636 0426 2754	WATER FUND	WATER	220.47
	5472 0636 0426 2754	SEWER FUND	SEWER	500.00
			TOTAL:	751.48
CHARLES TOWN SEWER	MAY FUNDING	SEWER FUND	NON-DEPARTMENTAL	11,805.88
			TOTAL:	11,805.88
CHARLES TOWN WATER	MAY FUNDING	WATER FUND	NON-DEPARTMENTAL	8,686.46
			TOTAL:	8,686.46
COASTTEC	APC SMART-UPS 2200VA RM 2U	WATER FUND	WATER	748.08
			TOTAL:	748.08
CORE & MAIN	SEAL, IMP, UFR1500	WATER FUND	WATER	248.73
	MTRBX, FRM & CVR, TUBING	WATER FUND	WATER	260.96
	TUBING, CPLG, INSERT	WATER FUND	WATER	61.76
	SEAL	SEWER FUND	SEWER	344.88
	BRS SAD,BALL CORP,CPLG,NIP	SEWER FUND	SEWER	1,762.22
	BALLCURB,TEE,NIPPLE,CPLG,I	SEWER FUND	SEWER	2,826.51
			TOTAL:	5,505.06
COYNE CHEMICAL	AMMONIUM SULFATE 40%	WATER FUND	WATER	1,141.40
	CP-837, HYDROFLUOSILICIC A	WATER FUND	WATER	3,677.14
			TOTAL:	4,818.54
C. R. SEMLER, INC.	RSR, RNGS, VLT SLR	SEWER FUND	SEWER	150.52
			TOTAL:	150.52
CUMMINS, INC	ORCHARD HILLS 5/28/20	SEWER FUND	SEWER	194.75
			TOTAL:	194.75
DELL MARKETING L.P.	OPTIPLEX 5070 SFF MLK, DEL	WATER FUND	WATER	462.77
	OPTIPLEX 5070 SFF MLK, DEL	SEWER FUND	SEWER	462.78
			TOTAL:	925.55
DEWBERRY ENGINEERS INC	CTUB WATER MODEL	WATER FUND	NON-DEPARTMENTAL	1,937.50
			TOTAL:	1,937.50