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

Prepared by



Issued and Published Jointly by



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

THIS IS AN AGREEMENT effective as of [ ] (“Effective Date”) between the City of Reading, A Pennsylvania municipal corporation with an address of 815 Washington Street, Reading, PA 19601 (“Owner”) and \_\_\_\_\_ (“Engineer”).

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

City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project.

The Project includes, without limitation, the improvements to existing the 19<sup>th</sup> Ward Pump Station located on Berks County Parcel #19439712957861 (“19<sup>th</sup> Ward P.S.”) such that the 19<sup>th</sup> Ward P.S. will meet Owner’s obligations related to the capital improvements set forth in the Capital Improvements Plan submitted by Owner to the United States Department of Justice and Pennsylvania Department of Environmental Protection on June 18, 2013 (“CIP”). The Project is required to be completed for Owner’s compliance with the Consent Decree entered with the United States District Court for the Eastern District of Pennsylvania on November 7, 2005, as Civil Action No., 04-5696, and modified on February 26, 2014 (the “Consent Decree”). Owner’s objective for the Project is to enhance the 19<sup>th</sup> Ward P.S. to accommodate anticipated future wastewater conveyance flow, wastewater treatment needs, wastewater discharge permit obligations, and regulatory requirements. The Work shall include separate specifications sections and drawings for at least four prime Construction Contracts.

Engineer’s Specifications shall require that Contractors perform the Work such that the 19<sup>th</sup> Ward P.S. remains in full operation during construction including, without limitation, as necessary for Owner to continuously maintain compliance with its permit requirements.

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 required by this Agreement, including, without limitation, Basic Services and Additional Services (collectively, the “Services”).

**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 endeavor to give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  - 1. any development that affects the scope or time of performance of Engineer's Services;
  - 2. the presence at the Site of any Constituent of Concern; or
  - 3. any relevant, material defect or nonconformance in: (a) Engineer's Services, (b) the Work, (c) the performance of any Contractor, or (d) Owner's performance of its responsibilities under this Agreement.
- D. Owner's efforts to notify Engineer (or failure thereto) of any condition or event set forth in Paragraph 2.01.C shall not constitute acceptance of defective or nonconforming Services or result in a waiver of any of Owner's rights or remedies.

### **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's Services shall be completed in accordance with the schedule set forth in the Project Schedule attached to Exhibit A. The periods of time for rendering Engineer's Services as set forth in the Project Schedule are hereby represented by Engineer to be reasonable based on Engineer's experience with projects of similar scope and complexity. Time is of the essence with respect to Engineer's performance of Services.
- B. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's Services shall be adjusted equitably unless such change relates, in any way, to Engineer's negligent act or omission or breach of this Agreement.
- C. If Engineer's Services cannot be performed as a result of circumstances wholly outside of Engineer's control and which were not reasonably foreseeable or avoidable, then the time for completion of Engineer's Services shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its Services. To the extent Owner fails to make decisions or carry out its other responsibilities in the time periods required by this Agreement or authorities issuing permits and approvals unreasonably delay approving permit applications submitted by Engineer, which meet all technical requirements of the applicable authority, then the time for completion of Engineer's Services shall be adjusted equitably.

- E. If Engineer fails to perform its Services in accordance with the Project Schedule, as duly adjusted in accordance with Paragraphs 3.02.B, 3.02.C, 3.02.D, and 6.10.E, then Owner shall be entitled to all remedies available under this Agreement, at law, or in equity, including, without limitation, the recovery of direct , indirect, consequential, special, and/or liquidated damages, if any, resulting from such failure. In addition, Engineer shall promptly propose a revision to the Project Schedule that recovers any delay as quickly as possible by allocating all necessary additional labor or accelerating the performance of its Services as necessary for Engineer to meet the remaining specific dates and periods of time for rendering Engineer’s Services set forth in the latest approved Project Schedule without modification to Engineer’s compensation as set forth in Exhibit C. When mutually agreed upon, the revision to the Project Schedule shall be incorporated in the Agreement by an amendment.

**ARTICLE 4 - INVOICES AND PAYMENTS**

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare detailed invoices in accordance with the requirements of Exhibit C. Engineer shall submit its invoices to Owner on or before the 20<sup>th</sup> day of the month for Services. Invoices timely submitted shall be due and payable within 45 days of Owner’s receipt of an invoice meeting the requirements of Exhibit C. Engineer’s failure to timely submit invoices will delay payments as a result of additional administrative time for Owner to evaluate invoices.

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 of undisputed amounts due to Engineer in accordance with Paragraph 4.01, then:
  - 1. amounts due Engineer will be increased at the rate of 2.0% per annum (or the maximum rate of interest permitted by law, if less) from said forty-fifth day; and
  - 2. Engineer may suspend Services under this Agreement in accordance with Paragraph 6.06.A.2.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner (1) shall promptly advise Engineer in writing of the specific basis for its dispute, (2) may withhold only that portion so disputed, and (3) must pay the undisputed portion subject to the terms of Paragraph 4.01. Owner shall have the right to set-off from payments due to Engineer any amount Engineer may be liable to Owner.
- D. *Sales or Use Taxes:* If, after the Effective Date, a 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 as a Reimbursable Expense subject to the limits for Reimbursable Expenses set forth in Exhibit C.

## **ARTICLE 5 - OPINIONS OF COST**

### **5.01 *Opinions of Probable Construction Cost***

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications. It represents Engineer's best judgment as an experienced and qualified professional specifically familiar with the construction industry. The opinion of probable Construction Cost shall specifically identify Engineer's assumptions associated with Work to be performed on a unit price basis, including, without limitation, the scope of the Work subject to unit prices, the units used to measure such Work, the estimated quantity of units that will be required to complete the Work, and the total cost of such Work incorporated in the opinion of probable Construction Cost. If Engineer includes alternates or unit prices in the bidding documents, Engineer shall specify its opinion of the increase or decrease each alternate and unit price will have on the Construction Costs.

### **5.02 *Designing to Construction Cost Limit***

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$\_\_\_\_\_ ("Construction Cost Limit"). The Construction Cost Limit does not include the Construction Cost of the Adders set forth in Paragraph A2.01.B.
- B. Subject to Owner's approval, Engineer shall determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project Requirements and sound engineering practices, to bring the Project within the Construction Cost Limit.
- C. If the aggregate sum of the lowest bids from responsive, responsible bidders for each prime Construction Contract exceeds the established Construction Cost Limit, Owner may, in its sole discretion, (1) give written approval to increase such Construction Cost Limit, (2) authorize rebidding the Project, and/or (3) cooperate with Engineer in revising the Project's scope, extent, or character to the extent consistent with the Project's Requirements and with sound engineering practices. If Owner elects to have the Project's scope, extent, or character revised, Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit and assist Owner in rebidding the Project. Engineer's performance of the Services required by this Paragraph shall be Basic Services.

## ARTICLE 6 - GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all Services performed or furnished by Engineer or its Subconsultants under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances.
- 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 or time for the completion of such Services.
- C. *Subconsultants:* Engineer may subcontract work under this Agreement. Engineer shall notify Owner prior to engaging any Subconsultant. Engineer shall not engage any Subconsultant which Owner has a reasonable objection. Each Subconsultant shall be bound by the conditions of this Agreement and shall execute and deliver to Owner a Non Discrimination Statement, as included with the RFP, prior to performing any Services under this Agreement.
- D. Compliance with Laws and Regulations, and Policies and Procedures:
  - 1. Engineer and Owner shall comply with all applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of Services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
    - a. Engineer recognizes that the Project is being performed in connection with Owner's obligations under the Consent Decree. The CIP was submitted by Owner to the United States Department of Justice, United States Environmental Protection Agency and the Pennsylvania Department of Environmental Protection to identify the improvements to the 19<sup>th</sup> Ward P.S. and completion schedule associated with Owner's obligations under the Consent Decree. Engineer warrants and agrees that it has sufficient time and resources necessary to perform its Services as necessary for Owner to comply with Owner's obligations under the Consent Decree with respect to this Project, and Engineer expressly covenants to provide such resources as necessary to do so at no additional cost to Owner.
  - 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 that materially and directly cause Engineer to incur additional costs solely with respect to the performance of Services for the Project;
  - 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.
- E. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- F. 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 Engineers Joint Contract Documents Committee, as modified by Owner’s legal counsel.
- G. Engineer shall not at any time supervise, direct, control, or have authority over any Contractor’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 Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that Contractor’s furnishing and performing of its work unless such failure resulted from a strict compliance with the Specifications or Drawings. Engineer shall not be responsible for the acts or omissions of any Contractor.
- H. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- I. 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 Subconsultants.
- J. 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.
- K. Engineer’s Services do not include providing legal advice or representation.
- L. 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.

- M. While at the Site, Engineer, its Subconsultants, 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.
- N. Engineer's Representations and Warranties: Engineer represents and warrants to Owner as follows:
1. Engineer may lawfully conduct its business in the Commonwealth of Pennsylvania with power and authority to enter into this Agreement, to carry on its business and to incur and perform its obligations.
  2. The execution and delivery of this Agreement and performance by Engineer of its obligations under this Agreement do not and will not violate any provision of law and will not result in the breach of, or constitute a default under, any agreement to which Engineer is a party or by which it is bound.
  3. There is no action, suit or proceeding at law or in equity or by any governmental instrumentality or other agency now pending or, to the knowledge of Engineer, threatened against or affecting Engineer that, if adversely determined, would materially impair Engineer's right to carry on business substantially as now conducted and as contemplated under this Agreement, or to perform its obligations under this Agreement, or would materially adversely affect its financial condition.
  4. Engineer and all of its professional employees performing Services possess the necessary license or licenses to perform, in the Commonwealth of Pennsylvania, the Services contemplated under this Agreement and if any part of such Services is to be subcontracted or subconsulted, its Subconsultants have the necessary license or licenses to perform such Services.
  5. Engineer possesses the expertise, experience, personnel and resources to perform the desired Services and all personnel engaged to perform Services hereunder shall be fully qualified and authorized or permitted under applicable Law and Regulations to perform such Services.
- O. Errors and Omissions
1. Nothing contained in this Agreement shall release Engineer of the responsibility for furnishing Services without additional costs to Owner when such Services are necessary due to Engineer's or its Subconsultant's errors or omissions.

2. When Engineer does not include an item or omits an item from the Drawings and/or Specifications, which was anticipated to be included or which should have been anticipated by Engineer for inclusion in the Project, thereby creating a value-added Change Order, Engineer shall modify the Drawings and/or Specifications as necessary to account for such item at no additional compensation. In addition, Engineer shall be liable to pay Owner a sum equal to five percent (5%) of the Change Order associated with the additional cost to construct such item as liquidated damages representing the party's reasonable estimate of the additional costs that will be incurred by Owner if such item had been included in the original bidding documents versus being handled as a Change Order.
3. When Engineer incorrectly designs or specifies an item that requires the removal, replacement, or modification of new or existing items, Engineer shall be liable to pay Owner the total cost of a Change Order for the removal, replacement, and/or modification said items.
4. Owner shall have the right to set-off from payments due to Engineer any amount Engineer may be liable to Owner.

#### 6.02 *Design with Construction Phase Services*

- A. Engineer shall be responsible for the Construction Phase Services set forth in this Agreement, including, without limitation, Exhibit A, and as otherwise reasonably inferable therefrom.

#### 6.03 *Use of Documents*

- A. All Documents prepared by Engineer and/or Engineer's Subconsultants for this Project, (including, without limitation, those in electronic form), shall be the property of Owner who shall be vested with all common law, statutory and other reserved rights. At Owner's request, Engineer and/or Engineer's Subconsultants shall provide Owner and any third party designated by Owner, a full and complete release in form and substance acceptable to Owner, of any and all rights Engineer and/or Engineer's Subconsultants may have to such Documents. Owner shall provide Engineer and/or Engineer's Subconsultants with a full and complete release of liability arising from repurposing Documents prepared by Engineer and/or Engineer's Subconsultants for this Project, in any other project of Owner to the extent Owner does not retain Engineer for such other project.
- B. Engineer shall deliver to Owner at least one original printed record version of all Project Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

#### 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. Engineer shall develop such protocol for Owner's approval.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Engineer and Engineer's Subconsultants shall procure and maintain insurance as set forth in Exhibit G.
- B. Owner shall procure and maintain insurance coverage as it deems appropriate in its sole discretion. Owner shall provide Engineer with a copy of its certificate of insurance upon request.
- C. Owner shall require each 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 to be listed as additional insured with respect to the general liability insurance purchased and maintained by Contractor for the Project.
- D. Engineer shall each deliver to Owner 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 term of the Agreement. Engineer shall not perform any Services until Owner has approved Engineer's certificate of insurance.
- E. All policies of property insurance relating to the Project, if any, 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 Subconsultants. Owner and Engineer waive all rights against each other, Contractor, the Subconsultants, 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 Subconsultants, 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 Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* At no additional cost to Owner, Owner may suspend the Project for up to 90 consecutive days upon seven days prior written notice to Engineer.
2. *By Engineer:* If Owner fails to make undisputed payments to Engineer in accordance with this Agreement, Engineer may suspend performance of Services under this Agreement upon ninety (90) days prior written notice to Owner during which period Owner may cure its nonperformance by making payment of all undisputed sums due to Engineer and not in dispute.

B. *Termination:*

1. Owner may terminate this Agreement for cause upon seven days prior written notice if Engineer (i) refuses or fails to supply enough properly skilled workers to perform Basic Services or Additional Services, (ii) fails to make payment to its Subconsultants or suppliers for labor in accordance with the respective agreements between Engineer and its Subconsultants, (iii) violates any Laws or Regulations, (v) becomes insolvent, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, or (vi) otherwise materially breaches a provision of this Agreement. In the event Owner terminates this Agreement pursuant to this Paragraph, Owner may assess any legal fees, professional fees, costs and expenses, including, but not limited to, employee time attributable to said event, to Engineer. Engineer shall immediately reimburse Owner for the same. In the event Engineer fails to adhere to a contractual provision or other requirement of this Agreement, whether the subject provision is material or not, to the extent Owner incurs legal fees, professional fees, costs or expenses of any kind in Owner's attempt to enforce such provision and avoid terminating this Agreement, Engineer shall be liable to Owner for the same. In such event, Owner may deduct such amounts from any fees required to be paid to Engineer pursuant to this Agreement.

2. Engineer may terminate this Agreement upon seven days prior written notice if Owner (a) demands that Engineer furnish or perform Services contrary to Engineer's responsibilities as a licensed professional or (b) suspends the Project for more than 180 consecutive days. In the event of a termination by Engineer pursuant this Paragraph, Engineer will be entitled to invoice Owner and to receive payment for Services performed or furnished in accordance with this Agreement and Reimbursable Expenses incurred through the effective date of termination. Notwithstanding anything to the contrary in this Agreement, Engineer's entitlement to compensation for Services and Reimbursable Expenses in the event of a termination under this paragraph shall not exceed the remaining balance of the maximum allowable portion of the Not to Exceed Fee for the phase of the Project as of the date of termination.
3. Notwithstanding the foregoing, this Agreement shall not terminate under Paragraph 6.06.B.1 or 6.06.B.2 if the party receiving such notice begins to correct its failure to perform within seven days of receipt of such notice and diligently cures such failure within no more than 30 days of receipt thereof.
4. Owner may terminate this Agreement for its convenience at any time for any reason or no reason at all upon thirty days prior written notice to Engineer. In the event of a termination by Owner pursuant to this Paragraph, Engineer will be entitled to invoice Owner and to receive payment for Services performed or furnished in accordance with this Agreement performed and Reimbursable Expenses incurred through the effective date of termination. Notwithstanding the anything to the contrary in this Agreement, Engineer's entitlement to compensation for Services and Reimbursable Expenses in the event of a termination under this paragraph shall not exceed the remaining balance of the maximum allowable portion of the Not to Exceed Fee for the phase of the Project as of the date of termination. Engineer shall also be entitled to invoice Owner up to \$5,000 for the reasonable costs incurred by Engineer directly attributable to a termination under this paragraph, such as reassignment of personnel, costs of terminating contracts with Engineer's Subconsultants, and other related close-out costs ("Termination Expenses") at the hourly rates set forth in Appendix 1 of Exhibit C.

C. *Use of Documents:*

1. Upon the termination of this Agreement, Owner shall have the right to the use of Documents subject to the provisions of Paragraph 6.03.

- D. Under no circumstances shall Engineer be entitled to incidental, consequential, special, or punitive damage or lost or anticipated profits from Owner.

6.07 *Controlling Law*

- A. This Agreement shall be governed by and construed with the Laws and Regulations of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law.

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. Engineer may not 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 Owner, 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. Owner may assign this Agreement at any time upon written notice to Engineer.
- D. Unless expressly provided otherwise in this Agreement, 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.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days prior to invoking the dispute resolution procedures set forth in of Exhibit H.
- 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. Unless otherwise mutually agreed between Owner and Engineer in writing, the dispute resolution process set forth in Exhibit H shall be the sole and exclusive process for resolving disputes between Owner and Engineer.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of the actual knowledge of Owner's Director of Public Works, without obligation of inquiry, 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 (1) immediately notify Owner and (2) allow Owner the opportunity to notify 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 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 actions, or other professional Services, are necessary with respect to undisclosed Constituents of Concern, at its option and without liability for consequential or any other damages, Owner may suspend performance of Services on the portion of the Project affected thereby until such portion of the Project has been sufficiently investigated or remediated to allow Engineer to resume performing Services.
- E. If the presence at the Site of undisclosed Constituents of Concern causes the suspension of performance of Engineer's Services under this Agreement, then the time of completion for Engineer's Services shall be extended on a day-for-day basis while Engineer's Services are suspended.
- 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 Waiver*

- A. *Indemnification by Engineer:* Engineer shall indemnify, defend and hold harmless (immediately upon demand) Owner and the County of Berks, including, without limitation, their elected officials, directors, officers and employees, from and against any and all third party claims, losses, damages, expenses, costs or other liabilities, including, but not limited to, reasonable attorneys' fees, arising out of, or resulting from any breach of the provisions set forth herein and/or the error or negligent act or omission of Engineer or its Subconsultants, or any of their directors, officers, agents and/or employees or anyone directly or indirectly employed by them or anyone whose acts or omissions they may be liable, except to the proportionate extent such claim, loss, damage, expense, cost, or other liability, is caused in part by a party indemnified hereunder. Engineer shall further indemnify, defend and hold harmless (immediately upon demand) Owner, its elected officials, directors, officers and employees from and against any and all claims, losses, damages, expenses, costs, or other liabilities, including, but not limited to, reasonable attorneys' fees, made for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings or specifications furnished by Engineer in the performance of this Agreement.
- B. *Indemnification by Owner:* Intentionally deleted.
- C. *Environmental Indemnification:* Intentionally deleted.

- D. *No Defense Obligation:* Intentionally deleted.
- E. *Percentage Share of Negligence:* Intentionally deleted.
- F. *Waiver:* To the fullest extent permitted by Laws and Regulations, Engineer waives against Owner, and Owner's elected officials, 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 Documents, records, or design calculations to Owner. Owner shall reimburse Engineer for its photocopying costs at the rates set forth in Appendix 1 to Exhibit C hereof.
- B. Owner shall be entitled to audit the books and records of Engineer or any of its Subconsultants to the extent that such books and records relate to this Agreement or the performance of Services.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement shall 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, limitations of liability and dispute resolution procedures 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:* Intentionally deleted.

F. *Equal Opportunity:*

1. Engineer shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Owner may elect to provide Engineer with the required form of notice.
2. Engineer shall, in all solicitations or advertisements for employees placed by or on behalf of Engineer; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. In the event of Engineer's noncompliance with the non-discrimination clauses above or with any applicable laws, this Agreement may be canceled, terminated, or suspended in whole or in part, and Engineer may be declared ineligible for further contracts with Owner.
4. Engineer shall include the subparagraphs set forth in this Paragraph 6.13.F.4 in every subcontract or purchase order unless exempted.

G. *Employment of Certain Persons Prohibited:* No person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Agreement.

H. *Dissemination of Information:* During the term of this Agreement, Engineer shall not release any information related to the Project or performance of Services under this Agreement, nor publish any report or documents relating to Owner, the Project, or performance of Services under this Agreement without prior written consent of Owner. Engineer shall indemnify, defend, and hold harmless Owner, its officers, agents, elected officials and employees from all liability or damages which may be incurred by reason of Engineer's unapproved dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to Owner, the Project, or this Agreement by Engineer or its agents or employees.

## 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 not within the scope of Basic Services.
  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 Owner and Engineer which is to be used by the Contractors 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 for the completion of the Project as set forth in this Agreement or reasonably inferable therefrom.
  6. *Bidding Phase* – The phase of the Project in which Bidding Documents are prepared, organized and advertised, Bidders are solicited, requests for information and clarification of the Bidding Documents are made by prospective Bidders, Bids are received and quantified, Bidder qualifications are evaluated and a recommendation for an award of the applicable Construction Contracts are made.
  7. *Change Order*—A document which is signed by a 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.
  8. *Change Proposal*—A written request by a 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.

9. *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. Provided, however, the sewage (including all constituents therein) treated at the Site, substances used to treat sewage at the Site or materials otherwise stored and used at the Site in commercially reasonable methods for the operation of Owner’s operations shall not be a Constituent of Concern.
10. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
12. *Construction Contract Price*—The money that Owner has agreed to pay a Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. *Construction Contract Times*—The number of days or the dates by which each Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. *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 professional services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

15. *Construction Manager*—Owner’s full-time onsite representative during the Construction Phase of the Project.
16. *Construction Phase*— The phase of the Project commencing upon the issuance of a Notice to Proceed to all Contractors.
17. *Contractor*—The entities or individuals with which Owner enters into a prime Construction Contract and references to the term “Contractor” throughout this Agreement shall be deemed to collectively refer to each entity or individual with which Owner enters into a prime Construction Contract.
18. *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.
19. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
20. *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.
21. *Engineer*—The individual or entity named as such in this Agreement.
22. *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.
23. *Final Design Phase* – The phase of the Project where Engineer uses the approved preliminary design documents and completes the design in accordance with comments from Owner, Program Manager, and Construction Manager.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, guidance documents, permits, approvals, decrees (including, without limitation, the Consent Decree), and orders of any and all governmental bodies, agencies, authorities, industry standards and courts having jurisdiction.
25. *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.

26. *Program Manager* – Owner’s representative managing the implementation of the Consent Decree projects, including, without limitation, the Project.
27. *Project*—The total undertaking to be accomplished for Owner for the completion of the City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project 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.
28. *Project Schedule*—The general schedule for the various phases and tasks required for the completion of the Project prepared by Engineer and attached to Exhibit “A” of this Agreement as revised from time to time through an amendment to this Agreement signed by Owner and Engineer.
29. *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.
30. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project only as set forth in Appendix 1 to Exhibit C.
31. *Resident Project Representative*—The authorized representative of Construction Manager assigned to observe Work at the Site on behalf of Owner 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 the Agreement between Owner and Construction Manager.
32. *RFP*—Owner’s Request for Proposals for Project dated \_\_\_\_\_, 2015.
33. *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.
34. *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.
35. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner, or by the County of Berks as the adjoining landowner through an appropriate agreement between Owner and the County of Berks,

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.

36. *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.
37. *Subconsultant*—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.
38. *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.
39. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner and 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 and, if applicable, a certificate of occupancy has been issued for the Project. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
40. *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.
41. *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.
42. *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.

43. *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.

C. Capitalized terms not defined herein shall have the meaning set forth in the “Standard General Conditions of the Construction Contract” as prepared by Engineers Joint Contract Documents Committee (EJCDC C-700, 2013 Edition).

## **ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS**

8.01 *Exhibits Included*: Unless otherwise indicated, references to this Agreement shall be interpreted to include the main body of this Agreement, exhibits, appendices and schedules. In interpreting this Agreement and resolving any conflicts, inconsistencies, discrepancies or ambiguities between and/or within this Agreement, the main body of this Agreement takes precedence over the exhibits, appendices and schedules. Any conflict, inconsistency, discrepancy or ambiguity between or among the exhibits, appendices and/or schedules shall be governed in the following order of precedence:

A. Exhibit A, Engineer’s Services.

1. Schedule 1, Project Schedule.

B. Exhibit B, Owner’s Responsibilities.

C. Exhibit C, Engineer’s Compensation.

1. Appendix 1 to Exhibit C, Reimbursable Expenses.

2. Appendix 2 to Exhibit C, Schedule of Hourly Rates.

D. Exhibit D, Duties and Responsibilities of Engineer and Owner’s Construction Manager.

E. Exhibit E, Notice of Acceptability of Work.

F. Exhibit F, Engineer’s Non-Collusion Affidavit.

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Intentionally deleted.

- J. Exhibit J, Intentionally deleted.
- K. Exhibit K, Form Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits, appendices and schedules listed 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 consistent with the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

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

8.04 *Engineer's Certifications*

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

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

Owner: City of Reading, Pennsylvania

Engineer: [ ]

By: [ ]  
Print name: [ ]  
Title: [ ]  
Date Signed: [ ]

By: [ ]  
Print name: [ ]  
Title: [ ]  
Date Signed: [ ]

Engineer License or Firm's Certificate No. (if required):  
[ ]  
State of: [ ]

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:  
[ ]

815 Washington Street  
Reading, PA 19601  
Designated Representative (Paragraph 8.03.A):  
Ralph Johnson  
Title: Director of Public Works  
Phone Number: [ ]  
E-Mail Address: [ ]

Designated Representative (Paragraph 8.03.A):  
[ ]  
Title: [ ]  
Phone Number: [ ]  
E-Mail Address: [ ]

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

## **Engineer's Services**

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### **PART 0 – SCOPE OF THE PROJECT**

#### **A0.01 General Description of Physical Improvements**

- A. Below is a general description of the physical improvements required to be designed by Engineer:
1. Replace the existing sewage pumps – Replace the three existing pumping units (each rated for 2.20 million gallons per day (“MGD”) at 126’ total dynamic head) with new pumps (the quantity to be determined by Engineer) that are controlled by new variable frequency drives (“VFDs”). The firm capacity of the 19<sup>th</sup> Ward P.S. (largest pump out of service) should be able to convey a minimum of the 2035 peak hour flow.
  2. The existing 19<sup>th</sup> Ward P.S. must remain in full operation throughout the construction phase and be able to convey all flows up to peak hour. Hence, Engineer will be responsible for designing provisions to accommodate temporary bypass pumping during the construction phase for the permanent improvements.
  3. Install all new interior piping, valves and appurtenances to support proposed improvements.
  4. Replace approximately 3,100 linear feet of existing 10 inch diameter force main system with a larger diameter force main and air release valves, including a crossing under the Schuylkill River and excavation in close proximity to existing railroad infrastructure.
  5. Force main geotechnical investigations: Engineer shall conduct geoprobes to obtain continuous soil cores for the subsurface investigation along the force main route to allow for accurate estimating of construction earthwork. The geoprobe shall be advanced to a reasonable depth for designing the force main. If ground water is encountered, the levels shall be measured upon completion of each geoprobe, prior to backfilling. If rock is encountered, Engineer shall include an appropriate amount of rock cores to determine the extent and quality of the rock. Engineer shall include both testing and a thorough visual observation of the soil samples retained during the field study for determination of soil corrosivity. Engineer shall compile data to project the subsurface conditions along the proposed force main route. The projected subsurface

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City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project

Exhibit A – Engineer's Services

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conditions shall be used in engineering analyses to estimate the extent of any shallow rock and/or potential corrosive soil conditions for design and construction of the force main.

6. Engineer shall also perform a geotechnical investigation that will clearly identify the subsurface conditions that must be taken into account for the design and construction of the force main and the Schuylkill River crossing. Engineer will be responsible for indicating the appropriate subsurface information necessary to properly design the Schuylkill River crossing, and permit the contractor to develop the means and methods for the construction of the force main for its bid.
7. Abandon or rehabilitate the existing 10 inch force when the new force main is fully operational.
8. Upgrade of existing electrical system to facilitate the new sewage pumps and replacement of all existing lighting, electrical equipment and power distribution systems in the wet and dry well areas.
9. Evaluate if an expansion to the wet well is necessary to adequately accommodate the existing and future flow scenarios and the installation of recommended improvements.
10. Evaluate the existing building footprint to accommodate new equipment.
11. Remove the existing sewer overflow piping into the Tulpehocken Creek.
12. Evaluate existing influent channels and grinder units and installation of recommended improvements.
13. Provide new level measuring system and recorders, etc. into the new programmable logic controls ("PLC"), pumps, and new VFDs.
14. Provide new PLC for control of the pumps and develop new control logic, set points and programming for control of the pumps.
15. Coordinate the new sewage pumps with existing supervisory control and data acquisition ("SCADA") system. The construction Specifications shall require the applicable prime Contractor to retain Optimum Controls Corporation ("OCC") as a subcontractor to perform the integration of the SCADA system. Contact information for OCC is as follows:

Optimum Controls Corporation  
1301 Rosemont Blvd.  
P.O. Box 14174  
Reading, PA 19612  
Phone: (610) 375-0990

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City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project  
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16. Apply new paint/coating systems within the interior of the 19th Ward P.S. building.
17. Upgrade of building architectural components, including replacement of the roof and all interior/exterior doors & access hatches, repointing of exterior building facade, repair of cracks, and re-caulking of joints.
18. Conduct an Asbestos Baseline Survey on the 19th Ward P.S. in conformance with all applicable laws and industry standards, including, without limitation, ASTM E2356, and include design specifications for the abatement of asbestos that will be encountered during the construction of the Project on a unit price basis based on the quantities of asbestos containing materials estimated by the Asbestos Baseline Survey.
19. Conduct a lead based paint baseline survey and include specifications for the abatement that may be encountered during the construction of the Project on a unit price basis based on the quantities estimated during the baseline survey.
20. Replace the existing 19th Ward P.S. HVAC equipment and installation of air condition system for proposed pump VFDs.
21. Evaluate and upgrade safety measures and exterior lighting for the protection of the 19th Ward P.S. and public safety.

## **PART 2 - BASIC SERVICES**

### *A1.02 Study and Report Phase*

#### **A. Engineer shall:**

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations ("Project Requirements"), and identify available data, information, reports, facilities plans, and site evaluations.
2. Identify alternative potential solution(s) to meet Owner's Project Requirements, as needed.
3. Visit the Site to review existing conditions and facilities.
4. 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.

5. Perform all required pump station investigations of the existing pumping, piping, electrical, lighting, HVAC, instrumentation, etc. systems at the 19th Ward P.S.
6. Perform an investigation of the existing 19th Ward P.S. for replacement of the existing (1) roof, (2) doors & hatches, (3) coating systems; and (4) repair/repainting of the caulking, cracks, and exterior facade.
7. Acquire the last 5 years of flow data from all sources contributing flow to the 19th Ward P.S. to establish updated flow criteria for the 19th Ward P.S. The existing flow criteria are shown below.

Flow Criteria	2011 Flow (MGD)
Minimum Day	0.339
Average Annual	0.660
Maximum Month	0.778
Maximum 30-Day	0.780
Maximum 7-Day	1.030
Maximum Day	1.504
Peak Hour	3.00+

8. Engineer shall gather current flow data (year 2010 to 2015) from the City of Reading and Bern Township and Spring Township. In addition, Engineer shall gather land use and flow projections for the sewersheds in the respective towns that contribute to the 19th Ward Pump Station. Engineer shall use sound engineering judgment to determine future flows (up to year 2035) for the 19th Ward P.S. The CIP estimated the 2035 peak hour flow to be 5.00+ MGD.
9. Evaluate different pumping styles, capacities, systems, arrangements and manufacturers to determine the optimal sewage pumps for conveyance of existing and future flows. Develop representative system head curves for various scenarios including but not limited to existing force main, new force main, new and existing force main in service together, and new and the existing force main upgraded in service together. Engineer shall develop a pump curve/system head curve analysis for various combinations of pump capacities. Refer to Hydraulic Institute standards for design of the new sewage pumps and piping.
10. Determine the optimal size and route of new force main based upon recommended pump capacity and impacts to Stonecliffe Park.
11. Evaluate whether the existing 10 inch force main should be abandoned in place or kept as a redundant back-up. If the existing 10 inch force main is to remain for

emergency purposes, evaluate whether any improvements are necessary and prepare a maintenance and inspection protocol to maximize the useful life and avoid unexpected failures.

12. Evaluate the need to expand the existing wet well to provide adequate storage under existing & future flow (2035) scenarios and the impacts to Stonecliffe Park.
13. Perform all survey work and develop a site plan/plan & profiles drawings as necessary to adequately complete the Project design, file permit applications and provide reference points for use by the Contractor to layout the work. The survey work shall include, without limitation, property lines, all physical features, topographic information, and locations of existing structures within approximately 100 feet of the property line. Drawings for the force main should show location and depth of proposed force main. Benchmarks shall be established through the use of an accepted USGS datum and property corners are to be set. Survey activities must generate adequate information to prepare plans as required for all permits. Elevation data shall not be arbitrary and shall be based on PA State Plane South NAD83 datum and tie into relevant FEMA flood plain elevations. Surveyor shall be licensed in the Commonwealth of Pennsylvania.
14. Conduct a force main routing plan which determines both the existing force main route and the optimal route(s) for the proposed force main. The routing plan shall include, without limitation, an identification of the size and location of all existing and proposed easements/properties for the existing and proposed force mains, the nature, size and location of existing utilities, potential conflicts/project challenges, anticipated construction difficulties, recommended location and method for the pipeline crossing under the Schuylkill River, a method of connection to tie-in point, and all necessary permits.
15. Coordinate the Drawings and Specifications with any conditions or requirements established by entities operating railroads identified in Attachment 7.
16. Evaluate the need to expand the existing pump station building to accommodate the proposed improvements and the impacts to Stonecliffe Park.
17. Identify all additional real property necessary to be acquired by Owner (for example, a temporary construction and/or access agreement, and easement for the new force main route) to accommodate construction activities at the 19th Ward P.S. and/or for the new force main route and prepare a survey and legal description of any such real property.
18. Determine the most economical design to disconnect and remove the existing sewer overflow into Tulpehocken Creek.
19. Evaluate condition of existing dry and wet well areas to determine what improvements should be made.

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City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project

Exhibit A – Engineer’s Services

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20. Perform an engineering evaluation of the existing electrical service, electrical infrastructure, and emergency generation system to determine improvements that should be made based on existing condition and capacity, the anticipated useful life and the ability to adequately accommodate the demands of the new sewage pumps.
21. Evaluate constructability issues and collaborate with Owner to determine the optimal sequence of construction to ensure the 19th Ward P.S. remains in service throughout the construction of the Project. Engineer should compare the cost of alternatives and the capability of the pumping capacity of each alternative as it relates to various design flow rates.
22. Consult with all authorities having jurisdiction regarding the Project to determine the applicable laws and regulations that will apply to facilitate the design of the Project in accordance therewith.
23. Study and evaluate the potential solution(s) to assess whether they meet Owner's Project Requirements. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment most effectively meet the Project Requirements, based on technical and economic considerations.
24. 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 shall provide the following, which will be separately itemized in the Report: opinion of probable Construction Cost; proposed allowances for contingencies; impacts on the Project Schedule, the estimated total costs of design, professional, and related Services to be provided by Engineer and its Subconsultants; and, on the basis of information furnished by Owner, a tabulation of other items and Services included within the definition of Total Project Costs.
  - a. All recommended solutions shall be consistent with the CIP for Owner to meet its obligations under the Consent Decree.
  - b. If Engineer recommends a solution inconsistent with the CIP, Engineer shall assist Owner in amending the CIP and obtaining the approval for such amendment from the Department of Justice, United States Environmental Protection Agency, and Pennsylvania Department of Environmental Protection prior to commencing the 30% Design Phase. Amending the CIP shall not be a basis for additional compensation or extension to the Project Schedule.
25. 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.

26. Review all reports, information and data related to the Site and environmental conditions provided by Owner and perform any and all additional investigation work necessary to design the Project in accordance with the standard of care set forth in Paragraph 6.01.A.
  27. Furnish three hard copies and one electronic copy of the draft of the Report and any other Study and Report Phase deliverables for Owner's within [TO BE IDENTIFIED BASED ON PROPOSER'S PROJECT SCHEDULE] days of the Effective Date and review it with Owner. Notwithstanding anything to the contrary, Owner will endeavor to provide comments to the Study and Report Phase deliverables within 14 days of its receipt.
  28. Revise the Report, opinion of probable Construction Costs, Project Schedule and any other Study and Report Phase deliverables in response to comments from Owner or the Program Manager, as appropriate, and furnish three hard copies and one electronic copy of the revised Report and any other Study and Report Phase deliverables to Owner within ten (10) days of receipt of Owner's comments. Engineer shall provide written responses to all comments provided by Owner or the Program Manager.
- 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.

#### A1.03 *Permitting*

- A. Prior to or concurrently with the 30% Design Phase, Engineer shall provide technical criteria, written descriptions, and design data for Engineer's use in filing of applications (to be signed by Owner) for permits from or approvals of governmental authorities having jurisdiction, including, without limitation, the local and regional municipal boards and authorities, Pennsylvania Department of Environmental Protection, United States Army Corp of Engineers, Berks County Soil Conservation District, and United States Environmental Protection Agency, local and regional municipal boards and authorities to review or approve the final design of the Project.
- B. Engineer shall coordinate its design with the applicable railroad entities and obtain any approvals of the design that may be required by such railroads for the completion of the Project.
- C. Engineer shall identify if the proposed improvements or force main piping will involve construction within the 100 year flood plain and, if so, secure all necessary permits from governmental authorities have jurisdiction.
- D. Engineer shall obtain and secure all permits (except for the building permit and individual trade permits) from or approvals from governmental authorities having jurisdiction prior to the commencement of the Final Design Phase.

- E. Engineer shall revise the Drawings and Specifications as recommended or required by governmental authorities having jurisdiction and applicable railroads as a condition or requirement to obtain the necessary permits or approvals.

A1.04 *30% 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 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, Engineer shall:
  - 1. Prepare Preliminary Design Phase Documents consisting of design criteria, preliminary drawings, outline specifications, and written descriptions of the Project to a benchmark of approximately 30% into the design (“30% Design Phase Documents”).
  - 2. In preparing the 30% 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”. 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 30% 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 30% Design Phase Documents, revise the opinion of probable Construction Cost for Owner’s review and acceptance.
  - 8. Identify any deviations from the latest approved Project Schedule based on the 30% Design Phase Documents and what efforts will be undertaken to address

any delays. Engineer shall not be entitled to additional time for the completion of Services except in accordance with Article 3.

9. Furnish three hard copies and one electronic copy of the draft 30% Design Phase Documents, update to the opinion of probable Construction Cost, deviations from the latest approved Project Schedule, and any other deliverables to Owner within [TO BE IDENTIFIED BASED ON PROPOSER'S PROJECT SCHEDULE] days of the Effective Date, and review them with Owner. Notwithstanding anything to the contrary, Owner will endeavor, but not be obligated, to provide comments to the 30% Design Phase Documents within 14 days of receipt.
  10. Revise the 30% Design Phase Documents, opinion of probable Construction Cost, and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner three hard copies and one electronic copy of the revised 30% Design Phase Documents, revised opinion of probable Construction Cost, and any other deliverables within ten (10) days after receipt of Owner's comments. Engineer shall provide written responses to all comments provided by Owner or the Program Manager.
- B. Engineer's Services under the 30% Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised 30% Design Phase Documents, revised opinion of probable Construction Cost, and any other deliverables.

#### A1.04 60% Design Phase

- A. Upon completion of the 30% Design Phase and upon written authorization from Owner, Engineer shall:
1. Revise, update, and enhance the 30% Design Phase Documents in accordance with Owner's comments and prepare final design criteria, Drawings and Specifications in response to directives from authorities with jurisdiction to a benchmark of approximately 60% into the design ("60% Design Phase Documents").
  2. Visit the Site as needed to assist in preparing the 60% Design Phase Documents
  3. 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.
  4. Based on the information contained in the 60% Design Phase Documents, prepare an updated opinion of probable Construction Cost for Owner's review and acceptance.
  5. Identify any deviations from the latest approved Project Schedule based on the 60% Design Phase Documents and what efforts will be undertaken to address

any delays. Engineer shall not be entitled to additional time for the completion of Services except in accordance with Article 3.

6. Furnish three hard copies and one electronic copy of the draft 60% Design Phase Documents, update to the opinion of probable Construction Cost, deviations from the latest approved Project Schedule, and any other deliverables to Owner within [TO BE IDENTIFIED BASED ON PROPOSER'S PROJECT SCHEDULE] days of the Effective Date, and review them with Owner. Notwithstanding anything to the contrary, Owner will endeavor, but not be obligated, to provide comments to the 60% Design Phase Documents within 14 days of receipt.
  7. Revise the 60% Design Phase Documents, opinion of probable Construction Cost, and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner three hard copies and one electronic copy of the revised 60% Design Phase Documents, revised opinion of probable Construction Cost, and any other deliverables within ten (10) days after receipt of Owner's comments. Engineer shall provide written responses to all comments provided by Owner or the Program Manager.
- B. Engineer's Services under the 60% Design Phase will be considered complete on the date when the revised 60% Design Phase Documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner. Engineer to provide written responses to Owner's and/or agent's review comments.

#### A1.05 90% Design Phase

- A. Upon completion of the 60% Design Phase and upon written authorization from Owner, Engineer shall:
1. Revise, update, and enhance the 60% Design Phase Documents in accordance with Owner's comments and prepare final design criteria, Drawings and Specifications in response to directives from authorities with jurisdiction to a benchmark of approximately 90% into the design ("90% Design Phase Documents").
  2. Visit the Site as needed to assist in preparing the 90% Design Phase Documents
  3. 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.
  4. Based on the information contained in the 90% Design Phase Documents, prepare an updated opinion of probable Construction Cost for Owner's review and acceptance.

5. Provide an anticipated Project construction schedule detailing Engineer's proposed sequence for construction and major milestones and tasks to be completed by the Contractors.
  6. Identify any deviations from the latest approved Project Schedule based on the 90% Design Phase Documents and what efforts will be undertaken to address any delays. Engineer shall not be entitled to additional time for the completion of Services except in accordance with Article 3.
  7. Furnish three hard copies and one electronic copy of the draft 90% Design Phase documents, update to the opinion of probable Construction Cost, deviations from the latest approved Project Schedule, anticipated Project construction schedule, and any other deliverables to Owner within [TO BE IDENTIFIED BASED ON PROPOSER'S PROJECT SCHEDULE] days of the Effective Date, and review them with Owner. Notwithstanding anything to the contrary, Owner will endeavor, but not be obligated, to provide comments to the 90% Design Phase Documents within 14 days of receipt.
  8. Revise the 90% Design Phase Documents, opinion of probable Construction Cost, and any other 90% Design Phase Deliverables in response to Owner's comments, as appropriate, and furnish to Owner three hard copies and one electronic copy of the revised 90% Design Phase Documents, revised opinion of probable Construction Cost, and any other deliverables within ten (10) days after receipt of Owner's comments. Engineer shall provide written responses to all comments provided by Owner or the Program Manager.
- B. Engineer's Services under the 90% Design Phase will be considered complete on the date when the revised 90% Design Phase Documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner. Engineer to provide written responses to Owner's and/or agent's review comments.

#### A1.06 *Final Design Phase*

- A. Upon completion of the 90% Design Phase and upon written authorization from Owner, Engineer shall:
1. Prepare final Bidding Documents, Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor ("Final Design Phase Documents").
  2. Visit the Site as needed to assist in preparing the Final Design Phase Documents.
  3. Prepare and file 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 Final Design Phase Documents in response to directives from such authorities, as appropriate.

4. Based on the information contained in the Final Design Phase Documents, prepare an updated opinion of probable Construction Cost and Project construction schedule for review and Owner's approval.
5. Identify any deviations from the latest approved Project Schedule based on the Final Design Phase Documents and what efforts will be undertaken to address any delays. Engineer shall not be entitled to additional time for the completion of Services except in accordance with Article 3.
6. To the extent practicable, Engineer shall prepare the Final Design Phase Documents to include unit prices and alternates to facilitate Owner's evaluation of bids and allow for flexibility to approach meeting Owner's Project Requirements.
7. After consultation with Owner, include in the Bidding 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, Construction Manager, and Contractor during the Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
8. 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.
9. 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.
10. Prepare the Bidding Documents based on form Division 00 documents used by Owner. Engineer shall ensure Owner's legal counsel has sufficient information, but in no event less than three weeks prior to Engineer's deadline for submission of draft Bidding Documents to Owner, for Owner's legal counsel to provide comments on the Bidding Documents, including, without limitation, Division 00 and Division 01. Incorporate all proposed revisions and respond to all comments from Owner's legal counsel on Division 00 and Division 01. Prepare and furnish revised Bidding Documents for review by Owner, its legal counsel, and other advisors. All terms and conditions in the Construction Contract Documents shall be acceptable to Owner in its sole and absolute discretion.
11. Furnish for review by Owner, its legal counsel, and other advisors, three hard copies and one electronic copy of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft Bidding

Documents, update to the opinion of probable Construction Cost, deviations from the latest approved Project Schedule, update to the anticipated Project construction schedule, and any other Final Design Phase deliverables, within [TO BE IDENTIFIED BASED ON PROPOSER'S PROJECT SCHEDULE] days of the Effective Date, and review them with Owner. Notwithstanding anything to the contrary, Owner will endeavor, but not be obligated, to provide comments to the 90 Percent Design documents within 14 days of receipt.

12. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft Bidding Documents, and any other deliverables in accordance with comments and instructions from Owner, as appropriate, and submit three hard copies and one electronic copy of the final version of such documents to Owner within ten (10) days after receipt of Owner's comments and instructions. Engineer shall provide written responses to all comments provided by Owner, its legal counsel, Program Manager, or Construction Manager.
- 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 Documents, and any other Final Design Phase deliverables.
- C. The Work shall be designed and specified by Engineer to be performed or furnished by at least four prime Construction Contracts, and, if necessary, 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). Engineer shall sequence and coordinate its Services as are applicable to the work under such separate prime Construction Contracts.
- D. Engineer shall specify the Work of each individual prime Construction Contract in separate sections of the Specifications and separate sheets of the Drawings so as to clearly demark the tasks applicable to each individual prime Construction Contract, reduce the risk of jurisdictional disputes, and facilitate clear bidding requirements.

#### A1.05 *Bidding Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related 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 for the Work by generating interest among qualified entities, advertising the bidding documents on various building and industry exchanges and trade groups, assist Owner in issuing assembled design, contract, and bidding-related 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. Concurrently with Owner's advertisement of bids in a newspaper of general circulation, Engineer shall advertise the Bidding Documents with at least the following services: McGraw Hill Construction – Dodge Report, CMD Group (Reed Construction Data), Construction Blue Book (BB-Bid), Mid-Atlantic BX, and Pennbid.
  3. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  4. Consult with Owner as to the qualifications of prospective contractors.
  5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  6. If the issued documents require, 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.
  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, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase.

#### A1.06 *Construction Phase*

- A. Upon successful completion of the Bidding Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by Engineers Joint Contract Documents Committee, as modified by Owner's legal counsel. If, after the award of the

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City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project

Exhibit A – Engineer's Services

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Construction Contract, 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 direct increases in Engineer's 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.

2. *Resident Project Representative (RPR):* Coordinate Services with Owner's Construction Manager in accordance with Exhibit N of this Agreement and as required by the Construction Contract Documents.
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 B1.01.G.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to the 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. *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.
7. *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 but not less than once per calendar month, or as otherwise requested by Owner, to observe as an experienced and qualified design professional the progress of the multiple prime Contractors' executed Work. Such visits and observations by Engineer 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. 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 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 to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, for security or safety at the Site, for safety precautions and programs incident to any Contractor's work in progress, for the coordination of the Contractor's work or schedules, nor for any failure of any Contractor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
8. *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.
9. *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 and modify the Drawings and Specifications as necessary to accommodate such recommendation.
10. *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

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City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project

Exhibit A – Engineer's Services

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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.

11. *Non-reviewable Matters:* If a submitted matter in question concerns 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.
12. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
13. *Change Orders and Work Change Directives:* Review, comment, and issue Change Orders and Work Change Directives as necessary for the completion of the Project.
14. *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.
15. *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.
16. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
17. *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.
18. *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. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
19. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment received by the Construction Manager from the Contractors. Engineer shall review updated as-built drawings with each Application for Payment.
- a. Determine the amounts that Engineer recommends each prime Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the

quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

20. *Substantial Completion:* Promptly after notice from each Contractor that such 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.
21. *As-Built Drawings:* Final as-built Drawings shall be prepared by the Contractor in AutoCAD and reviewed and approved by Engineer prior to issuance of the Final Notice of Acceptability of the Work. Engineer shall provide the final as-built drawings to Owner in electronic and hard copy formats (one set of mylars and one set of paper). The Contract Documents prepared by Engineer shall require that the prime Contractors update the drawings with each payment application with a final set prior to final completion.
22. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete in accordance with the Construction Contract Documents and acceptable so that Engineer may recommend, in writing, final payment to each 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 to the best of Engineer's knowledge, information, and belief,

and based on the extent of the Services provided by Engineer under this Agreement.

23. *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.

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 (and approved by Owner) for final payment to all Contractors. Because the Project involves more than one prime Construction Contract as indicated in Paragraph A1.04.C, the Construction Phase Services may be rendered at different times in respect to each separate Contractor.

### **PART 3 - ADDITIONAL SERVICES**

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

A. In the event Engineer determines that any Additional Services are necessary after the Effective Date, Engineer shall submit a proposal to Owner's Managing Director setting forth in reasonable detail the scope of such Additional Services, the estimated time and price of performing the Additional Services and any potential impact on the then-existing Basic Services and any fees related thereto. Engineer shall obtain the prior written approval from Owner's Managing Director before performing any Additional Services. Engineer shall not be entitled to additional compensation for any work or materials associated with Additional Services unless it received such prior written approval from Owner. If approved by Owner's Managing Director, Engineer shall perform or cause to be performed such Additional Services in accordance with the terms of the Agreement and in concert with all other Basic Services.

B. The following Services are Additional Services that may or may not be awarded by Owner based on Engineer's recommendations at the conclusion of the Study and Report Phase ("Adders"):

1. Adder No. 1 – Replace/upgrade existing grinder units and make modifications to influent channels and all Basic Services as applicable to the designed improvements.
2. Adder No. 2 – Adder No. 2 includes the investigation, design, permitting, bidding and construction services for the construction of an underground reinforced concrete wet well structure to a size/capacity as recommended in the Selected Engineer's study. The wet well would be located adjacent to the existing wet well. In addition to the application of the Basic Services as

applicable to the designed improvements required by Adder #2, the Selected Engineer will be required to:

- a. Identify all additional real property necessary to be acquired by the City (by easement or fee simple) to accommodate the new wet well and prepare a survey and legal description of any such real property.
  - b. Perform all geotechnical investigations and analyses, including, without limitation soil borings and rock cores, as necessary to adequately allow for accurate estimating of construction earthwork and provide an understanding of the subsurface conditions to complete the design of the expansion for the wet well.
  - c. Identify all necessary zoning and land use approvals necessary for the completion of Adder No. 2 as well as any relief or variances from the zoning or land development ordinances that may be required for the new wet well. The Selected Engineer shall prepare exhibits and testify before the zoning hearing board and planning commission as may be necessary to obtain any necessary zoning and land development approvals, relief, and waivers for the completion of the Project.
3. Adder No. 3 – Adder No. 3 includes the investigation, design, permitting, bidding and construction services for the construction of an at-grade expansion to the existing pump station building to facilitate new equipment. The expansion would be interconnected to the existing pump station building and be of a similar architecture to the existing building. In addition to the application of the Basic Services as applicable to the designed improvements required by Adder #3, the Selected Engineer will be required to:
- a. Identify all additional real property necessary to be acquired by the City (by easement or fee simple) to accommodate the expanded pump building and prepare a survey and legal description of any such real property.
  - b. Perform all geotechnical investigations and analyses, including, without limitation soil borings and rock cores, as necessary to adequately allow for accurate estimating of construction earthwork and provide an understanding of the subsurface conditions to complete the design of the expanded pump building.
  - c. Identify all necessary zoning and land use approvals necessary for the completion of Adder No. 3 as well as any relief or variances from the zoning or land development ordinances that may be required for the expansion of the pump building. The Selected Engineer shall prepare exhibits and testify before the zoning hearing board and planning commission as may be necessary to obtain any necessary zoning and

land development approvals, relief, and waivers for the completion of the Project.

4. Adder No. 4 – Adder No. 4 includes the performance of all Services associated with both Adder No. 2 and Adder No. 3 to address the efficiencies in the design if both Adders are awarded by the City.

This is **Schedule 1 to Exhibit A**, consisting of \_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

**Schedule 1 to Exhibit A**

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[Project Schedule to be incorporated based on Proposal]

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

## **Owner's Responsibilities**

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### **B1.01 Owner Responsibilities**

- A. As requested by Engineer, 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 and instructions to bidders), 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, and Construction Contract Documents. Owner has furnished copies of all design and construction standards, Owner's standard forms, general conditions (including its standard modifications to the EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition) for Engineer to include in the draft bidding-related documents through the procurement process of Engineer's Services. Owner shall have responsibility for the final content of (1) such bidding-related 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 in Owner's possession 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 (unless such information is required to be provided by Engineer as a Basic Service). Such additional information or data would generally include the following:
  - 1. Property descriptions.

2. Zoning, deed, and other land use restrictions.
  3. Utility and topographic mapping and surveys.
  4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  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:
1. Except with respect to providing its opinion of the probable Construction Cost, 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. Auditing services.
- 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. To the extent not required to be procured by Engineer as a Basic Service, 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.
- J. Intentionally deleted.
- K. Intentionally deleted.
- 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. Pay for advertisement for Bids placed.
- 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.

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

## Engineer's Compensation

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### C1.01 Compensation for Basic Services

- A. Owner shall pay Engineer for Basic Services, if any, as follows:
1. The total compensation for all Basic Services shall not exceed \$ \_\_\_\_\_ (the "Not to Exceed Fee"), as determined by the cumulative hours charged to the Project by each class of personnel from Engineer and its Subconsultants multiplied by the Standard Hourly Rates for each applicable billing class attached to this Exhibit C as Appendix 2. The maximum allowable portion of the total Not to Exceed Fee, as broken down for each phase, shall be:
    - a. Study and Report Phase \$[REDACTED]
    - b. Permitting \$[REDACTED]
    - c. 30% Design Phase \$[REDACTED]
    - d. 60% Design Phase \$[REDACTED]
    - e. 90% Design Phase \$[REDACTED]
    - f. Final Design Phase \$[REDACTED]
    - g. Bidding Phase \$[REDACTED]
    - h. Construction Phase \$[REDACTED]
  2. If Engineer has not invoiced Owner for the maximum portion of the total Not to Exceed Fee for any individual phase after invoicing Owner for all Services rendered necessary to complete such phase, the balance of the maximum allowable portion of the Not to Exceed Fee from such phase may be allocated among the remaining phases by an amendment to this Agreement.
  3. The Not to Exceed Fee includes compensation for Engineer's Services and the Services of Engineer's Subconsultants, if any.

C1.02 *Compensation for Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses (excluding permit application fees) at the rates set forth in Appendix 1 to this Exhibit C or the actual amount invoiced to Engineer by a third party vendor, not to exceed \$\_\_\_\_\_.
- B. Owner shall reimburse Engineers for any payments to governmental agencies associated with obtaining permits, licenses or approvals for the Project. Permit fees shall not be subject to the not to exceed limit in Paragraph C1.02.A. Notwithstanding, Engineer shall notify Owner of the estimated fee as soon as reasonably practicable.
- C. The amounts payable to Engineer for Reimbursable Expenses shall be limited to the Project-related expenses actually incurred by Engineer without markup.
- D. In order to be entitled to reimbursement for Project-related internal Reimbursable Expenses, Engineer shall provide itemized invoice of each expense and the date such Reimbursable Expense was incurred. In order to be entitled to reimbursement for external Reimbursable Expenses, Engineer shall submit to Owner copies of third party invoices, bills or vouchers identifying third party costs.

C1.03 *Other Provisions Concerning Payment*

- A. Subject to the limitations to Engineer's compensation in Paragraph C1.01, above, whenever Engineer is entitled to compensation for the charges of Engineer's Subconsultants, those charges shall be charged in accordance with the hourly rates set forth in Appendix 2 to Exhibit C.

C1.04 *Invoicing*

- A. By the 20th of each month, Engineer shall submit a detailed invoice to Owner by electronic mail, which identifies the specific tasks of the Services performed by Engineer and/or its Subconsultants in the preceding month. Each invoice shall clearly set forth in single line items: a detailed description of each action performed by each person from Engineer and its Subconsultants (with his or her corresponding billing rate) and the time required to perform such action to the nearest quarter of an hour. The invoice shall also generally describe the relative percentage of completion for each Phase, the total cumulative amount invoiced for each Phase, the total remaining compensation for completing each Phase, any supporting documentation and the overall percentage of the Project's Basic Services completed as of the date of such invoice. Progress reports shall accompany each invoice in MS Word format.
- B. If Owner reasonably determines that Engineer's invoice lacks sufficient detail or is inappropriately block billed, Owner shall notify Engineer promptly and Owner shall have no obligation to make payment on a rejected invoice until corrected. Engineer shall revise the invoice in accordance with the requirements of this Agreement and resubmit to Owner.

- C. No payments made under this Agreement shall be evidence of the proper performance of this Agreement, either in whole or in part, and no payment, including the final payment, shall be construed to be an acceptance of defective or improper Services or relieve Engineer and/or any Subconsultant of its responsibility to perform its Services in a professional manner and in accordance with the terms of this Agreement.
- D. In the event of any dispute between Owner and Engineer as to the percentage or quality of Services completed or the absence of supporting documentation, Owner shall not be obligated to pay the amount in dispute until a final resolution of the dispute. Unless the parties expressly agree otherwise in writing, in the event a dispute arises under this Agreement in connection with payments to be made on any invoice, or otherwise, Engineer shall continue to perform its duties and responsibilities under this Agreement, including, without limitation, Basic Services, during the pendency of such dispute.
- E. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of all records associated with the Project available to Owner.

C1.05 *Additional Services*

- A. The Not to Exceed Fee shall be increased for each Additional Service set forth below if awarded by Owner at the conclusion of the Study and Report Phase by an Amendment to this Agreement:
  - 1. Adder No. 1 – Replace/upgrade existing grinder units and make modifications to influent channels: \$\_\_\_\_\_
  - 2. Adder No. 2 – Underground reinforced concrete wet well structure: \$\_\_\_\_\_
  - 3. Adder No. 3 – At-grade expansion to the existing pump station building: \$\_\_\_\_\_
  - 4. Adder No. 4 – Performance of both Adder No. 2 and Adder No. 3. \$\_\_\_\_\_

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

## **Reimbursable Expenses Schedule**

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### C1.1.01 Reimbursable Expenses Schedule

- A. Reimbursable Expenses are subject to limitations set forth in Exhibit C. Rates and charges for Reimbursable Expenses are:
1. Drawing plots, blue lines, xerographic prints, extra-large prints: \$0.30 per square foot
  2. Outsource Printing: Reimbursable at the amount invoiced by the third party vendor without markup
  3. Auto Mileage: \$0.555 per mile
  4. Parking fees: At cost without markup
  5. Meals: Reimbursable at cost with Owner's prior written approval
  6. Overnight Accommodations: Reimbursable at cost and without markup when travel outside the Commonwealth of Pennsylvania or any office maintained by Engineer is required by Owner in writing.
  7. Third party graphic services, such as plotting, reproduction, and binding shall be the amount invoiced by the third party vendor without markup.
  8. Rented equipment, title research, courier and express services and project field office expenses shall be reimbursable at the amount invoiced by the third party vendor without markup.

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

**Standard Hourly Rates Schedule**

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*C2.1.01 Standard Hourly Rates:*

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

*C2.1.01 Hourly Rate Schedule:*

- A. Hourly rates for Services performed on or after the date of the Agreement are:

Billing Class VIII	\$[REDACTED]/hour
Billing Class VII	[REDACTED]/hour
Billing Class VI	[REDACTED]/hour
Billing Class V	[REDACTED]/hour
Billing Class IV	[REDACTED]/hour
Billing Class III	[REDACTED]/hour
Billing Class II	[REDACTED]/hour
Billing Class I	[REDACTED]/hour
Non-administrative Support Staff	[REDACTED]/hour

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

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## **Duties and Responsibilities of Engineer and Owner's Program and Construction Manager**

### *D1.01 Owner's Representatives*

- A. Owner has retained a Program Manager to manage Owner's overall compliance with the Consent Decree and the development of the Project through the completion of the Bidding Phase. Owner has retained a Construction Manager to provide a full-time on-site representation of Owner, not Engineer, for the coordination and observation of the Work of the Contractors. Construction Manager and Engineer will be Owner's representatives during the Construction Phase.
- B. Program Manager will assist Owner with responding to information requests from Engineer and evaluate, review and comment on reports, technical memoranda, cost estimates, and permit applications prepared by Engineer. Program Manager will provide Engineer with input and recommendations on construction sequencing, scheduling and coordination for Contractors.
- C. Construction Manager will be Owner's full-time Site representative during the Construction Phase.
- D. Engineer shall not be entitled to additional compensation as a result of Owner's use or non-use of a Program Manager or Construction Manager as such representatives have been retained by Owner for Owner's sole benefit.

### *D1.02 Administration of the Construction Contract*

- A. Construction Manager and Engineer will provide administration of the Construction Contract in accordance with the Contract Documents and will be Owner's representatives during construction until the date Engineer issues (and Owner approves) Engineer's recommendation for final payment in accordance with the Contract Document. Construction Manager and Engineer will have authority to act on behalf of Owner only to the extent provided in the Contract Documents.
- B. Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Laws and Regulations and the Contract Documents. However, Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, Construction Manager and Engineer will keep Owner reasonably informed about the progress and

quality of the portion of the Work completed. Engineer and Construction Manager shall promptly report to Owner (1) deviations from the Contract Documents and from the most recently Owner approved Progress Schedule, and (2) defects and deficiencies observed in the Work.

- C. Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Site whenever the Work is being performed.
- D. Program Manager, Construction Manager and Engineer will not:
  - 1. Have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these will be each Contractor's rights and responsibilities under the Contract Documents;
  - 2. Be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents; or
  - 3. Have control over or charge of or be responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

#### D1.03 *Communications Facilitating Contract Administration*

- A. The Construction Manager and Engineer will review all Applications for Payment by Contractor.
- B. Engineer, after consultation with the Construction Manager, will have the authority to reject Work that does not conform to the Contract Documents. However, neither Engineer's nor the Construction Manager's authority to act, nor a decision made by either of them in good faith to exercise or not to exercise such authority, shall give rise to a duty or responsibility of Engineer or Construction Manager to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.
- C. Engineer will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from Contractor, including, without limitation, Shop Drawings, Product Data and Samples. The Construction Manager will coordinate the information contained within each submittal received from Contractor and other contractors, and transmit to Engineer those recommended for approval. Construction Manager's actions will be taken in accordance with the Schedule of Submittals approved by Engineer or, in the absence of an approved Schedule of Submittals, with reasonable promptness while allowing sufficient time to permit adequate review by Engineer.

- D. Engineer will review and take other appropriate action upon Contractor's submittals, including, without limitation, Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Engineer's action will be taken in accordance with the Schedule of Submittals approved by Engineer or, in the absence of an approved Schedule of Submittals, with reasonable promptness while allowing sufficient time in Engineer's professional judgment to permit adequate review. Upon Engineer's completed review, Engineer shall transmit its submittal review to the Construction Manager.
- E. Review of Contractor's submittals by Construction Manager and Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor. Construction Manager's and Engineer's review of Contractor's submittals shall not relieve Contractor of its obligations under the Contract Documents. Construction Manager's and Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Construction Manager and Engineer, of any construction means, methods, techniques, sequences or procedures. Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- F. Engineer will prepare Change Orders and Work Change Directives in consultation with Construction Manager.
- G. Construction Manager and Engineer will take appropriate action on Change Orders or Work Change Directives in accordance with the Contract Documents and Engineer will have authority to order minor changes in the Work. Engineer, in consultation with Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions.
- H. Construction Manager will assist Engineer in conducting inspections to determine the dates of Substantial Completion and the date of final completion. Construction Manager will receive and forward to Owner written warranties and related documents required by the Contract and assembled by Contractor.
- I. Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor. Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- J. Construction Manager will receive and review requests for information from Contractor, and forward each request for information to Engineer, with Construction Manager's recommendation. Engineer will review and respond in writing to Construction Manager to requests for information about the Contract Documents. Construction Manager's recommendation and Engineer's response to each request will be made in writing

within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

This is **EXHIBIT E**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

***Notes to User***

***1. Exhibit A, Paragraph A1.05.A.25 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor, Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E.***

***2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC C-700 (2013), Standard General Conditions of the Construction Contract.***



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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

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**To:** \_\_\_\_\_  
**Owner**

**And To:** \_\_\_\_\_  
**Contractor**

**From:** \_\_\_\_\_  
**Engineer**

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

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

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

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

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

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

Dated: \_\_\_\_\_

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

**Engineer's Non-Collusion Affidavit**

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

## Insurance

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### G1.01 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) Each Accident:	\$100,000
	2) Disease, Policy Limit:	\$500,000
	3) Disease, Each Employee:	\$100,000
c.	General Liability --	
	1) Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000
	2) Annual Aggregate:	\$2,000,000
	3) Products and Completed Operations (per Project aggregate)	\$2,000,000
	4) Personal and Advertising Injury	\$1,000,000
d.	Excess or Umbrella Liability --	
	1) Each Occurrence:	\$2,000,000
	2) General Aggregate:	\$2,000,000
e.	Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):	
	Each Accident	\$1,000,000
f.	Professional Liability --	
	1) Each Claim Made	\$5,000,000

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City of Reading 19<sup>th</sup> Ward Pump Station Renovation Project  
Exhibit G – Insurance

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.  
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and American Society of Civil Engineers. All rights reserved.

2)	Annual Aggregate	\$5,000,000
2.	By Owner:	
a.	Workers' Compensation:	Statutory
b.	General Liability --	
1)	Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000
2)	Aggregate:	\$1,000,000
c.	Excess or Umbrella Liability --	
1)	Each Occurrence:	\$4,000,000
2)	Aggregate:	\$4,000,000
d.	Premises Pollution Liability	
1)	Per condition:	\$1,000,000
2)	Aggregate:	\$1,000,000

B. Prior to commencement of the performance of the Agreement, Engineer shall furnish to Owner a certificate of insurance evidencing all required coverage in at least the limits required herein, naming the City of Reading and County of Berks and their elected officials, agents, and employees as Additional Insured for "ongoing operations" and "products and completed operations" for a period of three years after final payment under Engineer's insurance policies. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Engineer's insurance policies shall be primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause. The Certificate shall note the Project and provide that no policies may be cancelled without thirty (30) days advance written notice to Owner. Such certificate shall be issued to: City of Reading, Attn: Risk and Safety Coordinator, 815 Washington Street, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of "A-" or better or financial rating of IX or better with the A.M. Best's Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. In the event any insurance policy is cancelled or changed, Engineer shall procure a new insurance policy that provides insurance coverage retroactive to the commencement of Engineer's performance of Services.

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

## **Dispute Resolution**

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### H1.01 Dispute Resolution

- A. Either Owner or Engineer may request mediation of any dispute between the parties not resolved through negotiation. Mediation shall be a condition precedent to the filing of an action for binding dispute resolution in accordance with Paragraph H1.01.D. The mediation shall be administered in accordance with the Berks County Bar Association Mediation Rules in effect as of the date mediation is initially requested.
- B. In the event that Owner and Engineer do not agree upon a mediator for appointment within ten (10) days of the request for mediation, both agree that the Berks County Bar Association may appoint a mediator.
- C. Owner and Engineer shall participate in the mediation process in good faith in Berks County, Pennsylvania. Unless otherwise mutually agreed, neither party shall be obligated to continue with the mediation in excess of sixty (60) days after the appointment of a mediator.
- D. If Owner and Engineer are unable to resolve the dispute in mediation, all actions and disputes between the parties shall be resolved by a non-jury trial and shall be brought in the Court of Common Pleas of Berks County, Pennsylvania and not elsewhere for binding dispute resolution. Both parties hereby irrevocably submit to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and agree that Engineer shall pay any fees and costs, including, without limitation, attorneys' fees, incurred by Owner to transfer a claim filed elsewhere.

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

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

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

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

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

- \_\_\_ Additional Services to be performed by Engineer
- \_\_\_ Modifications to Services of Engineer
- \_\_\_ Modifications to responsibilities of Owner
- \_\_\_ Modifications of payment to Engineer
- \_\_\_ Modifications to time(s) for rendering Services
- \_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for Services (days or date, as applicable): \_\_\_\_\_

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

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

OWNER:

ENGINEER:

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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