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Design and Construction Related Documents
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You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

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

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



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AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

EJCDC E-500 Standard Form of Agreement Between Owner and Engineer for Professional Services.
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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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TABLE OF CONTENTS

Page

| | |
|---|----|
| ARTICLE 1 – SERVICES OF ENGINEER | 2 |
| 1.01 Scope | 2 |
| ARTICLE 2 – OWNER’S RESPONSIBILITIES..... | 2 |
| 2.01 General | 2 |
| ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES..... | 2 |
| 3.01 Commencement | 2 |
| 3.02 Time for Completion | 2 |
| ARTICLE 4 – INVOICES AND PAYMENTS | 3 |
| 4.01 Invoices | 3 |
| 4.02 Payments | 3 |
| ARTICLE 5 – OPINIONS OF COST | 3 |
| 5.01 Opinions of Probable Construction Cost | 3 |
| 5.02 Designing to Construction Cost Limit | 4 |
| 5.03 Opinions of Total Project Costs | 4 |
| ARTICLE 6 – GENERAL CONSIDERATIONS | 4 |
| 6.01 Standards of Performance | 4 |
| 6.02 Design With Construction Phase Services..... | 7 |
| 6.03 Use of Documents | 7 |
| 6.04 Insurance | 7 |
| 6.05 Suspension and Termination | 8 |
| 6.06 Controlling Law | 10 |
| 6.07 Successors, Assigns, and Beneficiaries..... | 10 |
| 6.08 Dispute Resolution..... | 11 |
| 6.09 Environmental Condition of Site..... | 11 |
| 6.10 Indemnification and Waiver | 12 |
| 6.11 Miscellaneous Provisions | 12 |
| ARTICLE 7 – DEFINITIONS..... | 14 |
| 7.01 Defined Terms | 14 |
| ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS..... | 17 |
| 8.01 Exhibits Included..... | 17 |
| 8.02 Total Agreement: | 18 |
| 8.03 Designated Representatives:..... | 18 |
| 8.04 Engineer’s Certifications: | 18 |



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

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

THIS IS AN AGREEMENT effective as of _____ , _____ (“Effective Date”) between
City of Reading, Pennsylvania _____ (“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 Sixth and Canal Pump Station Short-Term Improvements Project (“Project”).

The Project requirements are set forth in this Agreement, the Owner’s Request for Proposal date _____, 2014 (the “RFP”), and the CIP (as defined below).

The Project involves the planning and designing of improvements to the existing the Sixth and Canal Pump Station (“6th Street P.S.”) such that the 6th Street P.S. will meet the Owner’s obligations related to the short-term capital improvements set forth in the Capital Improvements Plan submitted by the Owner to the United States Department of Justice and Pennsylvania Department of Environmental Protection on June 18, 2013 (“CIP”), which was made available to Engineer in connection with the RFP in a way that will facilitate flexibility to accommodate additional improvements to meet future permit and regulatory requirements. Engineer’s design shall allow for the existing facilities at the 6th Street P.S. to remain in full operation during construction so that the Owner can 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 set forth herein and the exhibits attached hereto.

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 Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay Engineer’s performance of its services.
- E. If Engineer fails, as a result of circumstances not wholly outside of Engineer’s control and which were not reasonably foreseeable, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to all remedies available at law,

including, without limitation, the recovery of direct, indirect, consequential, special, and/or liquidated damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare detailed invoices in accordance with the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 60 days of Owner's receipt of an invoice meeting the requirements of Exhibit C.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice (unless such invoice is rejected for reasons set forth in Exhibit C), 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 sixtieth day; and
 - 2. Engineer may, after giving thirty days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges without mark up as a Reimbursable Expense in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction

Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner will employ an independent cost estimator.

5.02 *Designing to Construction Cost Limit*

- A. Engineer shall meet with Owner to understand Owner's budgetary limitations for the Project. Engineer shall also review all of Owner's financing and grant agreements associated with the Project.

5.03 *Opinions of Total Project Costs*

- A. The services of Engineer with respect to Total Project Costs shall be, in addition to providing the probable Construction Cost, limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs provided such opinions are prepared in accordance with the standard of care set forth in Paragraph 6.01.A.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information that Engineer reasonably relied upon.
- C. *Consultants:* Engineer shall not subcontract work under this Agreement unless prior written approval of each Consultant is granted by Owner in its sole discretion. The Subcontractors shall be bound by the conditions of this Agreement and shall execute and deliver to Owner a Political Contribution Affidavit and Non Discrimination Statement, as included with the RFP, prior to performing any services under this Agreement. All required notices, work orders, directives and requests for emergency services will be directed to Engineer. All directions given to Engineer's Consultant in the field shall bind Engineer as if the notice had been given directly to Engineer. Compensation due for the services of such Consultants shall be in accordance with Exhibit C.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. Provided, however, information furnished by Engineer's Consultants shall be deemed Engineer's work product.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement, provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and Owner's written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner's written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
 4. Engineer recognizes that the Project is being performed in connection with Owner's obligations under a Consent Decree entered with the United States District Court for the Eastern District of Pennsylvania, Civil Action No., 04-5696 (November 7, 2005) (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 and completion schedule associated with Owner's capital improvement program required 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 and CIP with respect to the short-term improvements to the 6th Street P.S., and Engineer expressly covenants to do so.
- F. Engineer shall not be required to sign any documents, 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 documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) as modified by the Owner's legal counsel.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Contractor 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 such Contractor's furnishing and performing of its Work.
- I. 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 Contract Documents.

- J. Engineer shall not provide or 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 shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision, application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- M. 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, except those previously disclosed to the Owner in writing.
 4. Engineer possesses 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 subcontractors and 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. None of the services covered by this Agreement shall be subcontracted without the prior written permission of Owner.

6.02 *Design With Construction Phase Services*

- A. Engineer shall be responsible for those Construction Phase services of Engineer in Exhibit A and the RFP and as otherwise reasonably inferable therefrom.

6.03 *Use of Documents*

- A. All documents prepared by Engineer and/or Engineer's Consultants for this Project, including, without limitation, drawings, specifications (including, without limitation, those in electronic form), are 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 Consultants 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 Consultants may have to all documents prepared by Engineer and/or Engineer's Consultants for this Project. Owner shall provide Engineer and/or Engineer's Consultants with a full and complete release of liability in form and substance acceptable to Engineer, of any and all liability arising from the use of the drawings, specifications and other documents prepared by Engineer and/or Engineer's Consultants for this Project, in any other project of Owner other than this Project.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

6.04 *Insurance*

- A. Engineer and Engineer's Consultants shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on insurance policies (except for workers' compensation) carried by Engineer and Engineer's Consultants.
- B. Owner shall procure and maintain insurance as deemed appropriate by Owner in its sole discretion.

- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), 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 insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Engineer shall deliver to the Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished contemporaneously with Engineer's execution of this Agreement and at renewals thereafter during the life of the Agreement except as otherwise provided in Exhibit G. Engineer shall not perform any services until the Owner has approved Engineer's certificate of insurance.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer, or any insureds, additional insureds, or loss payees thereunder.
- 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 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *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 written notice to Engineer.
 - 2. By Engineer: If Owner fails to make payments to Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and Engineer may suspend performance of services under this Agreement upon thirty (30) days' written notice to Owner during which period Owner may cure its nonperformance by making payment of all sums due to Engineer and not in dispute.
 - 3. In the event of a suspension of services, Engineer shall have no liability to Owner for delay or damage suffered by Owner because of such suspension of services. Engineer shall resume its performance of services upon receipt of all amounts due and not reasonably disputed by Owner.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By Owner:

- 1) Owner may terminate this Agreement upon not less than seven (7) days' written notice should Engineer substantially fail to perform in accordance with the terms of this Agreement. Should Owner exercise its right of termination, the written notice shall set forth the nature of such failure.

b. By Engineer:

- 1) Upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional after being provided a written summary from Engineer explaining why such services cannot be furnished or performed; or
- 2) If Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of Engineer, Engineer may terminate this Agreement at anytime thereafter by giving not less than thirty (30) days' written notice to Owner provided that the Project has not resumed prior to such notice.
- 3) Engineer shall have no liability to Owner if Engineer terminates for cause.

- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.b if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

- C. *Effective Date of Termination:* Unless otherwise demanded by Owner, the terminating party under Paragraph 6.05.B may set the effective date of termination 30 days later than otherwise required to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination:

1. In the event of any termination under Paragraph 6.05.B.1.b or 6.05.B.2, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of a termination by Owner for convenience, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and receive payment of reasonable costs incurred by Engineer directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C. In no event shall the costs invoiced by Engineer pursuant to this Paragraph 6.05.D.2 exceed \$5,000.
3. Under no circumstances shall Engineer be entitled to incidental, consequential, special or punitive damage or lost or anticipated profits from Owner.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the laws of the Commonwealth of Pennsylvania.

6.07 *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 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents to extent set forth in the “Standard General Conditions of the Construction Contract” as prepared by Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition), as modified by Owner’s legal counsel.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall (1) notify Owner and (2) allow the Owner the opportunity to notify appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. 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 an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then the Owner will retain appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer’s services under this Agreement, then Engineer shall be entitled equitable adjustment in its compensation or in the time of completion.
- 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.

- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Equal Opportunity:*
1. Engineer will 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 will, 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 6.11.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. *Right to Audit Records.* Owner shall be entitled to audit the books and records of Engineer or any of its Consultants to the extent that such books and records relate to this Agreement or the performance of the Project. Such books and records shall be maintained by Engineer and its Consultants for a period of three (3) years from the date of final payment under this Agreement unless a shorter period is otherwise authorized in writing.
- I. *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 account or performance of services this Agreement without prior written consent of Owner. Engineer shall indemnify 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 account 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 provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer not within scope of Basic Services.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with this Agreement for the completion of the Project.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. 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 properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

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 the 6th Street P.S. shall not be a Constituent of Concern.

8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual or, in the case of multiple prime contractors, entities or individuals, with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *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.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into 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.
18. *PCBs* – Polychlorinated biphenyls.

19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer and based solely 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.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *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 at the Site.

30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *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 Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, 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 pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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 and the Schedules. In interpreting this Agreement and resolving any conflicts, inconsistencies, discrepancies or ambiguities between and/or within this Agreement and the Schedules attached hereto, the main body of this Agreement takes precedence over the Schedules. Any conflict, inconsistency, discrepancy or ambiguity between or among the Schedules shall be governed by the provisions of the Schedules in the following listed order:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, INTENTIONALLY DELETED
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, INTENTIONALLY DELETED
- 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.
- L. Exhibit L, Owner's RFP.
- M. Exhibit M, Engineer's Proposal.

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified 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 duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

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

8.04 *Engineer's Certifications:*

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

[Signatures on the following page]

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

Owner: _____

Engineer: _____

By: _____

By: _____

Title: _____

Title: _____

Date _____

Date _____

Signed: _____

Signed: _____

Engineer License or Firm's
Certificate No. _____
State of: _____

Address for giving notices:

Address for giving notices:

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: _____

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 _____, _____.

Engineer's Services

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

Engineer shall provide Basic Services as set forth in the Agreement, this Exhibit A, the RFP and Engineer's Proposal as if a single, integrated scope of services.

PART 1: BASIC SERVICES

A1.02 Study Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Concurrent with preparing the Preliminary Design Documents, identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Review all reports related to site and environmental conditions provided by the Owner and perform any and all additional site and environmental investigation necessary to design the Project in accordance with the standard of care set forth in Paragraph 6.01.A.
6. Engineer shall perform the services required under the Study and Permitting Phase as necessary throughout the entire Project as determined necessary by the Engineer in accordance with the standard of care set forth in Paragraph 6.01.A.

A1.03 Preliminary Design Phase

A. Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

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 Preliminary Design Phase documents, prepare an opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 5. Furnish three hard copies and one electronic copy of the Preliminary Design Phase documents and any other deliverables to Owner within 100 calendar days of authorization to proceed with this phase, and review them with Owner. Within 20 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
 6. Revise the Preliminary Design Phase documents 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 Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.04 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Provide technical criteria, written descriptions, and design data for Engineer's use in filing applications (to be signed by Owner) for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Intentionally deleted.
 5. Prior to preparing the bidding documents, review and comment on Owner's template Division 00 bidding documents. Engineer shall ensure Owner's legal counsel has sufficient

- information and at least two weeks prior to Engineer's deadline for submission of draft bidding documents to Owner for Owner's legal counsel to prepare of Division 00 of the bidding documents. In coordination with the Owner's legal counsel, prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 30 days of receipt of the complete set of bidding documents, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit 5 final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 15 calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
 - C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
 - D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is four. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.05 *Bidding Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
 2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
 6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.06 *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 as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. Intentionally deleted.
 3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
 4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
 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, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the 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 Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.

10. *Change Orders and Work Change Directives*: Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples*: Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the 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.
12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor at no additional compensation from Owner. Engineer shall be entitled to include a provision in the General Conditions that permit it to recover compensation at its hourly rates for its time reviewing substitutes and "or equal" products directly from the proposing Contractor.
13. *Inspections and Tests*: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the 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 Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. 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 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 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 Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. By recommending any 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 and the Contract Documents. 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 Contractor's Work in progress 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 moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, 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.
16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
 17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
 18. Intentionally deleted.
 19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in

writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.07 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
 - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
 - 2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

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

- A. 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 the 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 approved. 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.

Owner's Responsibilities

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

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

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the bidding documents, when applicable.
- B. Furnish to Engineer any other available information in Owner's possession pertinent to the Project including reports and data relative to previous designs, operations and maintenance manuals for the 6th Street P.S. and/or investigation at or adjacent to the Site. Provided, however, Engineer's use of any information provided by Owner shall be subject to any copywrite restrictions that may apply and Engineer shall be responsible for determining and obtaining any necessary licenses for the use of such information.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request (to the extent not required to be performed by the Engineer as a Basic Service), furnish or otherwise make available 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 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. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as deemed necessary or convenient by Owner in its sole discretion.
- F. 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.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- 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. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating (excluding the determination of the probable Cost of Construction), and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications to the extent not required of Engineer as a Basic Service.
- K. 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.
- L. Intentionally deleted.
- M. Owner may designate a program manager to, in addition to, Engineer represent Owner at the Site. Engineer shall coordinate its services with a program manager, if appointed by Owner.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors.

- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

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

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET: Basic Services – Not to Exceed

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services – Not to Exceed Method of Payment

- A. 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 Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project attached to this Exhibit C as Appendix 2.

- B. Owner shall pay Engineer for Basic Services set forth as follows:
 - 1. The maximum allowable amount (as identified in dollars and percent) of the total Not to Exceed Fee, as broken down for each phase, shall be:
 - a. Study Phase \$_____ (_____ %)
 - b. Preliminary Design Phase \$_____ (_____ %)
 - c. Final Design Phase \$_____ (_____ %)
 - d. Bidding Phase \$_____ (_____ %)
 - e. Construction Phase \$_____ (_____ %)
 - f. Post-Construction \$_____ (_____ %)
 - 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered if approved in advance by the Owner in writing.
 - 3. The Not to Exceed Fee includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Not to Exceed Fee to account for labor, overhead and profit.
 - 4. The portion of the Not to Exceed Fee billed for Engineer’s services will be based upon Engineer’s hours of the total services actually completed during the billing period.

5. The Standard Hourly Rates and Reimbursable Expenses Schedule shall not be adjusted.

- C. *Period of Service:* The compensation amount stipulated in Compensation Packet is to compensate Engineer for all Basic Services regardless of the period required to perform Basic Services unless otherwise provided for in the Agreement.

C2.02 *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, not to exceed \$_____.
- B. Reimbursable Expenses subject to the not to exceed limit in Section C2.02.A include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, bidding documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. 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 Section C2.02.A. Notwithstanding, Engineer shall notify Owner of the estimated fee as soon as reasonably practicable.
- D. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project without markup.
- E. In order to be entitled to reimbursement for Project-related internal Reimbursable Expenses, Engineer shall provide an 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.

C2.03 *Other Provisions Concerning Payment*

- A. Subject to the limitations to Engineer's compensation in Paragraph C.2.01, above, whenever Engineer is entitled to compensation for the charges of Engineer's Consultants performing Basic Services, those charges shall be in accordance with the hourly rates set forth in Appendix 2 to Exhibit C.

C2.04 *Invoicing*

1. By the 15th 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 Consultants in the preceding month. Each invoice shall clearly set forth in single line items: a detailed description of each action performed by each person (with their

- 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.
2. If the Owner reasonably determines that Engineer's invoice lacks sufficient detail or is inappropriately block billed, the 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 the Owner.
 3. 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 the Consultant of its responsibility to perform its services in a professional manner and in accordance with the terms of this Agreement.
 4. In the event of any dispute between the Owner and the Consultant as to the percentage or quality of work completed or the absence of supporting documentation, the 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, the Services, during the pendency of such dispute.
 5. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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

Reimbursable Expenses Schedule

Reimbursable expenses for services performed in connection with the Agreement are:

NOTE – The Reimbursable Expense Schedule will be filled in based on the RFP and Proposal.

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

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

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

B. Schedule:

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

| | |
|---------------------------|---------------|
| Billing Class VIII | \$ _____/hour |
| Billing Class VII | _____/hour |
| Billing Class VI | _____/hour |
| Billing Class V | _____/hour |
| Billing Class IV | _____/hour |
| Billing Class III | _____/hour |
| Billing Class II | _____/hour |
| Billing Class I | _____/hour |
| Support Staff | _____/hour |

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

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above 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 terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
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 under the Construction Contract referred to in this Notice, 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 and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

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

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.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 |
| 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, its 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 the General and Professional Liability Coverages. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Engineer’s Commercial General Liability and Umbrella/Excess Policy 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. Said policies shall remain in full force and effect until the expiration of the terms of the Agreement or until completion of all duties to be performed hereunder by Engineer, whichever shall occur later.

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

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. Either Owner or Engineer may request mediation of any dispute between the parties. The mediation will be governed by the Berks County Bar Association Mediation Rules in effect as of the Effective Date of the Agreement.
- B. In the event that the Owner and Engineer do not agree upon a mediator within ten (10) days of the request for mediation, both agree that the Berks County Bar Association will immediately appoint a mediator who will serve and comply with the aforementioned timeframe.
- 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 disputed arising out of or relating to this Agreement shall be resolved by a non-jury trial and shall be brought in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania and not 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 _____, _____.

FORM

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. *Background Data:*

a. Effective Date of Owner-Engineer Agreement: _____

b. Owner: _____

c. Engineer: _____

d. Project: _____

2. *Description of Modifications:*

a. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

i. _____

ii. _____

b. The responsibilities of Owner are modified as follows:

i. _____

ii. _____

c. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

i. _____

ii. _____

d. The schedule for rendering services is modified as follows:

i. _____

- ii. _____
- e. Other portions of the Agreement (including previous amendments, if any) are modified as follows:
 - i. _____
 - ii. _____

3. Agreement Summary

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

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. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date Signed: _____

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

RFP

Page 1
(Exhibit L – RFP)

EJCDC E-500 Agreement Between Owner and Engineer for Professional Services.
City of Reading Sixth and Canal Pump Station Short-Term Improvements
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ACTIVE 24763882v1 00/00/0000

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

Proposal
