

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**

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

Copyright © 2014:

National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

**NOTE: EJCDC publications may be purchased at [www.ejcdc.org](http://www.ejcdc.org), or from any of the sponsoring organizations above.**

## TABLE OF CONTENTS

|   | <u>Page</u>                         |
|---|-------------------------------------|
| 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 .....                    | 3                                   |
| ARTICLE 4 – INVOICES AND PAYMENTS .....           | 3                                   |
| 4.01 Invoices.....                                | 3                                   |
| 4.02 Payments .....                               | 3                                   |
| ARTICLE 5 – OPINIONS OF COST .....                | 4                                   |
| 5.01 Opinions of Probable Construction Cost ..... | 4                                   |
| 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 Use of Documents .....                       | 6                                   |
| 6.03 Electronic Transmittals.....                 | 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 .....                     | 10                                  |
| 6.09 Environmental Condition of Site.....         | 10                                  |
| 6.10 Indemnification and Mutual Waiver .....      | 11                                  |
| 6.11 Records Retention .....                      | 12                                  |
| 6.12 Miscellaneous Provisions .....               | 12                                  |
| ARTICLE 7 – DEFINITIONS.....                      | 12                                  |
| 7.01 Defined Terms .....                          | 12                                  |
| ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS ..... | 16                                  |
| 8.01 Exhibits Included: .....                     | 16                                  |
| 8.02 Total Agreement.....                         | 17                                  |
| 8.03 Designated Representatives .....             | 17                                  |
| 8.04 Engineer's Certifications.....               | 17                                  |
| 8.05 Governmental Immunity.....                   | 17                                  |
| 8.06 Appropriation of Funds .....                 | 17                                  |
| 8.07 Costs and Attorney’s Fees.....               | 18                                  |
| 8.08 Illegal Aliens.....                          | <b>Error! Bookmark not defined.</b> |
| 8.09 Owner’s Indemnification Obligations.....     | <b>Error! Bookmark not defined.</b> |

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

|  |                     |                            |
|--|---------------------|----------------------------|
| THIS IS AN AGREEMENT effective as of   | <b>July 6, 2022</b> | ("Effective Date") between |
| <p><b>Town of Johnstown</b>, a Colorado home rule municipal corporation ("Owner")<br/>and<br/><b>BlueWater Engineering Ltd.</b>, a Colorado limited liability company("Engineer" or "Owner's Representative" (OR)).</p>  |                     |                            |
| Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:   |                     |                            |
| <b>Johnstown WTP Expansion Owner's Representative Services ("Project").</b>  |                     |                            |
| Other terms used in this Agreement are defined in Article 7.   |                     |                            |
| <p>Engineer's services under this Agreement are generally identified as follows:</p> <p><b>Customary professional engineering services supporting the Owner's design and construction of improvements to the Town of Johnstown Water Treatment Plant (WTP), increasing its rated design capacity to 12 MGD. Services include project management and technical services consisting of:</b></p> <ul style="list-style-type: none"> <li>• <b>coordination and monitoring of the Project's scope, schedule and budget for conformance with the Owner's project goals and agreement(s) with Owner's Design-Builder, Burns &amp; McDonnell Engineering Company, Inc., a Missouri corporation (Design-Builder or DB), and other consultants,</b></li> <li>• <b>supporting the Owner's oversight and management of the agreement and deliverables with the Design-Builder responsible for designing the Project,</b></li> <li>• <b>facilitating scheduled meetings with the Owner to review and evaluate the Project's conformance with the Owner's project goals and coordinate with the Design-Builder to incorporate the Owner's preferences, intent, and directions for the design of the Project,</b></li> <li>• <b>technical support to the Owner consisting of multi-discipline reviews and input evaluating conformance of construction documents to design criteria, design intent, regulatory agency requirements, value engineering and constructability considerations,</b></li> <li>• <b>assist the Owner with reviewing approaches to transitioning the Project to a progressive design-build construction contract, procuring equipment and identifying phased construction packages.</b></li> </ul> <p><b>While the Project will consist of constructing the WTP expansion (by others), this Agreement only consists of Owner's Representative services for the design phase of the Project for which the scope of this Agreement is detailed in Exhibit A – Scope of Services. Subsequent to completion of the design phase of the Project, the Parties anticipate, but are not obligated, to amend this Agreement to include Engineer's construction-phase support services as the Owner's Representative during construction.</b></p> |                     |                            |

Owner and Engineer further agree as follows:

## **ARTICLE 1 – SERVICES OF ENGINEER**

### **1.01** *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. Engineer shall perform its services in accordance with the standard of care for professional engineering services, including, but not limited to, the regulations and Design Criteria for Potable Water Facilities issued by the Colorado Department of Public Health and Environment regarding the design and permitting of drinking water facilities.

## **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

### **2.01** *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C, up to the Not-To Exceed Amount (defined therein).
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall endeavor to provide prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  - 1. any development that affects the scope or time of performance of Engineer’s services;
  - 2. the presence at the Site of any Constituent of Concern that is not already known or discovered as described in Paragraph 6.10; or
  - 3. any relevant, material defect or nonconformance in: (a) Engineer’s services, (b) the Work, (c) the performance of any Constructor to the extent such performance impacts the Engineer’s obligations hereunder, or (d) Owner’s performance of its responsibilities under this Agreement.

## **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

### **3.01** *Commencement*

- A. Engineer is authorized to begin rendering services as of the Agreement’s Effective Date, except that Engineer may perform at-risk work or services requested and authorized by the Owner prior to the Effective Date.
- B. At-risk work is defined to be professional services provided by Engineer as requested and authorized by the Owner prior to execution or modification of the Agreement, with the

intent of expediting agreed tasks or progress of the services for which the Engineer incurs labor and reimbursable costs. The Engineer may only incur at-risk costs up to the amount authorized by the Owner. Compensation for at-risk work is included in, and a part of, the Not-To-Exceed amount set forth and defined in Exhibit C.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. A preliminary projection, subject to change based on the progression of the Work and other circumstances, is that the services are to coincide with the Owner's schedule with its Design-Builder for completing design phase service, with an anticipated completion date by December 31, 2022. The subject schedule is attached hereto and incorporated herein as Exhibit J, 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 if such delay results in additional cost to Engineer.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably, but shall only be increased if such change expands the scope, extent or character of the Project or Engineer's services.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. Notwithstanding the foregoing, Engineer shall at all times complete its obligations hereunder in a timely manner to allow the Owner to meet the Project requirements and schedule.

## **ARTICLE 4 – INVOICES AND PAYMENTS**

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges, except that Engineer shall not suspend services for the Owner's failure to pay the portion of an invoice that is disputed. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

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

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the Project's engineering design prepared by others, cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

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

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

### **5.03 *Opinions of Total Project Costs***

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

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### **6.01 *Standards of Performance***

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the reasonable care and

skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the State of Colorado. Without limiting Engineer's obligations to comply with this Agreement and perform its services in accordance with the standard of care for professional engineering services, Engineer makes no warranty, express or implied, as to its professional engineering services rendered under this Agreement.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. Prior to the retention of additional Consultants, Engineer shall provide written notice to Owner and allow Owner a reasonable period of time to object to the retention of, and expense related to, the additional Consultants.
- 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, the Project's Design-Builder, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.



- G. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- H. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents, except that Engineer shall be obligated, if retained in an amendment to this Agreement, to act as Owner's Representative related to the construction phase of the Project and provide all services incidental thereto, including but not limited to, providing certain notifications regarding Constructor's work to Owner.
- I. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents prepared by the Owner's Design-Builder.
- J. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer's services do not include providing legal advice or representation.
- L. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- M. In addition to exercising the standard of care set forth in 6.01A, while at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 6.02 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. Owner may make and retain copies of final Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited irrevocable license to use the final Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented

to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; and (3) such limited license to Owner shall not create any rights in third parties.

- C. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.03 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer. Engineer shall further require that Consultants procure and maintain insurance in appropriate limits and that Consultants list Owner as an additional insured.
- B. Owner shall procure and maintain insurance.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to

the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, to recover for losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, subsequent to the execution of this Agreement, 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:* In its sole discretion, Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.
- 3. *Force Majeure:* Engineer shall not be responsible for damages or delays in performance of its services caused by force majeure events, such as acts of God, pandemics or other events beyond its reasonable control. If Engineer claims that it is delayed based on a force majeure event, Engineer shall provide prompt notice to Owner.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

- b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed or previously unknown Constituents of Concern, as set forth in Paragraph 6.10.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may, in its discretion, set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
- 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  - 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C. Prior to invoicing, Engineer shall forward to Owner the proposed "reasonable amount" and Owner shall have ten days to review and, in its discretion, object to such amount, in which case the parties shall endeavor to agree upon the "reasonable amount" for such delineated services and expenses.

#### 6.06 *Controlling Law*

This Agreement is to be governed by the Laws and Regulations of the State of Colorado. Venue for any action shall be in Weld County, State of Colorado.

#### 6.07 *Successors, Assigns, and Beneficiaries*

- A. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- B. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. At the time of negotiation of the Construction Contract Documents, upon written request of Engineer, Owner agrees to request that the substance of the provisions of this Paragraph 6.08.B appear in the Construction Contract Documents.

#### 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 at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

#### 6.09 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern exist at or adjacent to the Site, other than those (i) disclosed in writing to Engineer, (ii) regularly occurring or existing at a wastewater treatment site or (iii) discovered, or should have been discovered, by Engineer during the Engineer's requisite due diligence conducted prior to the execution of this Agreement.
- B. If Engineer encounters or learns of an undisclosed or unknown Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- C. If Engineer or any other party encounters, uncovers, or reveals an undisclosed or unknown Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed or unknown Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, as allowed by parties to a contract, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from or relating to the Project, but only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, as may be determined pursuant to Section 13-50.5-102(8)(c), C.R.S.
- B. *No Defense Obligation:* The indemnification commitment in this Agreement does not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- D. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special,

incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.11 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.
- B. Engineer recognizes and agrees that Owner is a public entity subject to the provisions of the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, *et seq.* ("CORA"), and that Owner may be required to disclose Documents, records (including cost records), and design calculations pursuant to CORA.

#### 6.12 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. Notwithstanding the foregoing, notice may be provided by electronic mail ("E-mail") on the condition that the receiving party acknowledges receipt of the E-mail and does not, upon such acknowledgment, object to the form of notice.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

### **ARTICLE 7 – DEFINITIONS**

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.



11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall:  
(a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
  34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
  35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. *Day*:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit G, Insurance.
- E. Exhibit H, Dispute Resolution.

- F. Exhibit K, Amendment to Owner-Engineer Agreement.

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

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

#### 8.04 *Engineer's Certifications*

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

#### 8.05 *Governmental Immunity*

- A. Nothing contained in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities or defenses provided to, or enjoyed by, Owner under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended from time to time.

#### 8.06 *Appropriation of Funds*

- A. Pursuant to C.R.S. § 24-91-103.6, as may be amended from time to time, Owner has appropriated the money necessary to fund this Project and compensate the Engineer as set forth herein. No change order or other form of directive shall be issued by Owner requiring additional compensable work to be performed by Engineer, which causes the aggregate

amount payable under this Agreement to exceed the amount appropriated for the original contract amount, unless the Engineer is given written assurance by Owner that lawful appropriations have been made by Owner to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of this Agreement.

- B. Pursuant to C.R.S. § 29-1-110, as may be amended from time to time, financial obligations of Owner payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

#### 8.07 *Costs and Attorney's Fees*

- A. In the event of litigation enforcing or interpreting the terms of the Agreement, the prevailing party shall be entitled an award of reasonable attorney fees adjudicated to be damages and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses, except that Owner shall only be required to pay such fees to the extent permitted by law considering the limitations set forth in the Colorado Constitution, the Johnstown Home Rule Charter and Colorado statues, including, but not limited to, those relating to budgeting and appropriations.

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

Owner: [ ]

Engineer: BlueWater Engineering Ltd.

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

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

Print name: Gary Lebsack

Print name: Brian Daw

Title: Mayor

Title: Principal

Date Signed: [ ]

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

ATTEST:

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

\_\_\_\_\_  
Diana Seele, Town Clerk

State of: \_\_\_\_\_

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534

333 Elm Street  
Denver, Colorado 80220

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Matt LeCerf [ ]

**Brian C. Daw, PE**

Title: Town Manager [ ]

Title: Principal

Phone Number: 970-587-4664 [ ]

Phone Number: 303-249-7510

E-Mail Address: mlecerf@townofjohnstown.com

E-Mail Address: bdaw@bluewatereng-co.com

STATE OF COLORADO)

) ss

COUNTY OF \_\_\_\_\_)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Brian C. Daw as the Principal of BlueWater Engineering Ltd.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

This is **EXHIBIT A**, consisting of [ ] 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 and Additional Services as set forth in the attached Table.

### **PART 1 – BASIC SERVICES**

The Town is currently expanding the Johnstown Water Treatment Plant (WTP) ["the Project"]. The design contract will be transitioning to a progressive design-build contract with Burns & McDonnell (Design Builder or DB). This scope of work defines the tasks associated with the Owner's Representative (OR) services for the project through Phase 1. Phase 1 is defined as the design period up to the agreement of a guaranteed maximum price and completion of the Issued for Construction (IFC) design documents.

#### **1. Task Series 100: Project Coordination**

Project Coordination will generally consist of coordinating project management responsibilities with the Town and providing oversight and monitoring of the Project. Activities will consist of providing oversight of the DB's activities; providing input on managing the overall Project's scope, schedule and budget; coordinating with the Town to provide timely input to the DB for design; facilitate decisions by the Town regarding Project issues; and, preparing monthly Project status reports for the Town.

##### **101: Project Management**

The OR Project Manager will provide oversight and monitoring of the Project activities and coordinate with the Town to facilitate decisions, changes and correspondence with the DB. Specific activities consist of:

- Reviewing and tracking overall Project scope, schedule and cost categories representing the Total Project Costs including design activities, construction-phase costs, additional services by the DB or independent consultants, and other similar Project costs.
- Tracking determined Project-level line items, encumbered funds, spent to date and forecast to complete costs.
- Monitoring progress and performance of the DB's scope, budget and schedule on behalf of the Town, and implementing contract administration obligations, e.g. invoice approval, negotiating amendments.
- Preparing monthly Project design phase status reports and submitting to the Town for review.
- Maintaining a risk register that outlines design and construction risks identified at the design review workshops. The OR will identify risk mitigation strategies for each identified risk to help control cost, schedule and/or quality for the Town's consideration.
- Monitoring progress of permitting requirements based on the matrix provided by the DB and coordinating with the DB to provide the Town's input and/or information for formalizing permit submittals to authorities having jurisdiction, e.g. CDPHE, Weld and/or Larimer Counties, and the Town of Johnstown building, public works and other departments.
- Assisting the Town with preparing permit applications not to be otherwise prepared by the DB or the general contractor selected to construct the Project. *OR assumes that permit matrix prepared by the DB will outline the required local permits for the Town.*

- Managing requests for and preparing scopes for additional services or studies to be provided by the DB, other independent consultants, or the OR.

Progress reports will be prepared monthly following review of the DB's invoice and progress report for the preceding period. The progress report will identify work accomplished during the invoiced period, work planned for the next period, budget summary for both the design and project-level, and schedule progress. The reports will be provided to Town staff for review and distribution. The Phase 1 DB budget will be tracked electronically using a schedule of values or design fee breakdown provided by the Town for the DB contract. The DB monthly progress invoices and reports will be used to update the electronic budget tracking spreadsheet.

Preparation of requests or scopes for services or studies to be provided by the DB are not included, i.e. CDPHE construction approval permit, geotechnical investigation, and feature and topographic surveying are not included in OR's scope of services.

**102: Coordination Meetings with Town**

This task consists of an initial Kickoff Meeting and biweekly status meetings between the Town and OR.

- The Town/OR Kickoff Meeting (Internal Kickoff Meeting) will be facilitated by the OR at the Town's offices to initiate the project, review past progress from the Town's perspective, identify Project goals and identify sources of data or other inputs reasonably required for the OR to perform its services.
  - The OR will provide meeting notes detailing key items discussed, action items, and decisions. Internal Action Item and Decision Logs will be prepared to facilitate follow up of key issues requiring follow-up or correspondence with the DB.
  - The meeting will be held immediately following execution of the contract and prior to the OR's engagement in design phase .
- The OR Project Manager will meet biweekly with the Town's Project Manager at the Town's offices to review the status of the Project, exchange ideas, discuss issues or concerns, facilitate decisions, and coordinate correspondence with the DB and other independent consultants providing services to the Town for the Project.
  - The OR will provide a standing agenda and update Action Item and Decision Logs following the meetings.
  - Progress with design deliverables, schedule control and contract administration will be reviewed.

Monthly Project progress reports will be coordinated with the Town for issue following the meetings.

**103: Miscellaneous Stakeholder Meeting Allowance**

An allowance budget of \$2,400 is allocated for additional meetings not identified in the Scope of Services. Examples of additional meetings are presentations to the Town's Council or other stakeholders. The Town will authorize use of any hours for additional meetings at its discretion by email correspondence.

**2. Task Series 200: Phase 1 Design Oversight**

**201: Design Integration Kickoff Meeting**

A Design Integration Kickoff Meeting will be held at the Town's office with the Town, OR, and DB to integrate the OR into the project, introduce team members, review scope and schedule, discuss roles and responsibilities and facilitate team building. This Kickoff Meeting will be led by the OR and is planned for a two-hour session and will be attended by the OR Project Manager and Project Technical Lead. Meeting notes will be prepared by the OR team.



## **202: Town Operations/Engineering Coordination**

The OR will coordinate the Town's engineering and operations staff to solicit input to the design, identify key issues to be addressed by the DB and coordinate with the DB to address and/or incorporate the Town's input and preferences into the Project. The OR will facilitate the Town's input via scheduled meetings following the OR and Town review of the 60% and 90% design documents and will review:

- Major equipment, potential maintenance needs, warranties specified in the design documents, and spares. Ease of operations and maintenance will be prioritized with the Town's operations and engineering staff and comments provided to the DB for their response and/or incorporation into the Project.
- The OR will facilitate a walk-through of the 60% and 90% design documents to incorporate staff comments and concerns. A Navisworks 3D model will be requested from the DB to review with staff, if a model is to be provided by the DB by contract.

## **203: Biweekly Design Workshops and Review Meetings**

The OR will provide the following activities in coordination with the Town for overseeing design progression by the DB:

- The OR will virtually participate in biweekly project review meetings with the Town and DB. The OR Project Manager and/or Project Technical Lead will attend each biweekly meeting to provide oversight of design progression, discuss major decisions and provide input on design intent for the Town's and DB's consideration.
  - The OR will facilitate decisions or input from the Town required for the design, review meeting minutes prepared by the DB for consistency with the topics discussed, identify additional design considerations or provide input, and track decisions versus budget and schedule.
  - The OR will update the Town's internal action item log for items to be coordinated between the OR and the Town for providing input or direction to the DB.
- The OR will participate in Biweekly Design Workshops hosted by the DB. The OR Project Manager and Project Technical Lead will attend, and allocate time for OR Discipline Leads to attend as needed for specific design topics such as instrumentation and controls. It is anticipated that the DB will provide an agenda to the Town and OR prior to each workshop to allow OR to determine attendance by the OR Discipline Leads.
  - The OR will participate in each workshop, provide input on design issues, review notes and design decision logs, and coordinate with the Town's staff for providing input and responses to action items. Workshop progress will be tracked against the project schedule.

## **204: Monthly Design Workshops Allowance**

A budget allowance of \$6,320 has been allocated for intermittent participation by OR Discipline Leads to coordinate review comments and specific design decisions with the DB. The OR and Town will coordinate attendance with the DB to address specific discipline items requiring input by OR's Discipline Leads.

## **205: 30% Design Package Review and Workshop**

The OR will perform the following activities to provide the Town with technical support during the DB's progression from the 30% design to the 60% design package:

- The OR will review technical memoranda (TM) and the Basis of Design Report (BODR) associated with the WTP design. Technical memoranda are expected to include TM 1 through TM 3 as referenced in the BODR and two pilot study reports. The Town will also provide additional TMs

related to the taste and odor study that identified compounds of interest and treatment approaches.

- The OR will provide electronic review comments in a comment tracking document for review with the Town, and coordinate responses and/or incorporation of comments by DB in the design documents.
- The OR will provide a multi-disciplinary review of the 30% Design Package provided by the DB. Reviews will generally consist of noting completeness and general conformance with Town requirements and goals, industry design standards, design intent, WTP functionality, CDPHE design criteria and guidelines, and suggested value engineering ideas. The OR will incorporate comments into a single electronic design tracking document for review with the Town. The OR will facilitate decisions required by the Town and track responses to the review comments with the DB.
  - The OR Project Manager and Project Technical Lead will attend a design progression workshop hosted by the DB to discuss OR and Town review comments, providing input into the design basis as required.
  - The OR Project Manager and Project Technical Lead will participate in a dedicated value engineering workshop with the Town and DB to review suggestions and ideas and coordinate items and key decisions for including in the 60% design .
  - The OR assumes that the DB is responsible for leading the workshops and preparing meeting notes per their authorized scope.
  - The OR Discipline Leads will virtually attend portions of the meeting relevant to their discipline, as the need arises.

The OR is expressly not providing QAQC review of design assumptions, calculations, or other documents for which the responsible engineer is required to provide and/or document for meeting applicable codes and regulations. The OR assumes that all such QAQC is completed by the DB through their quality management program and that the DB responsible engineers will provide all necessary seals and signatures for design documents.

#### **206: 60% Design Package Review and Workshop**

OR will provide a multi-disciplinary review of the 60% Design Package provided by the DB. Review will consist of compliance with Town requirements and goals industry design standards, compliance to CDPHE design criteria and guidelines, review detailed design against design criteria established in the BODR, and provide constructability reviews. The OR will incorporate comments into a single electronic design tracking document for review with the Town. The OR will facilitate decisions required by the Town and track responses to the review comments with the DB.

The OR will also review and comment on cost comparisons of chemical usage and analysis to assess the estimated long-term operations and maintenance costs of the Project. Chemical consumption calculations are assumed to be prepared, checked and provided by the DB.

The OR Project Manager and Project Technical Lead will attend the 60% Design Document review workshop hosted by the DB and discuss compiled OR/Town comments, providing input into the design basis as required. The OR assumes that the DB is responsible for leading the workshop and preparing meeting minutes per their authorized scope. The OR Discipline Leads will virtually attend portions of the meeting relevant to their discipline, as the need arises.

The OR is expressly not providing QAQC review of design assumptions, calculations, or other documents for which the responsible engineer is required to provide and/or document for meeting applicable codes and regulations. The OR assumes that all such QAQC is completed by the DB through their quality management

program and that the DB responsible engineers will provide all necessary seals and signatures for design documents.

**207: 90% Design Package Review and Workshop**

OR will provide a multi-disciplinary review of the 90% Design Package provided by the DB. Review will consist of compliance with Town requirements and goals industry design standards, compliance to CDPHE design criteria and guidelines, review detailed design against design criteria established in the BODR, and provide constructability reviews. The OR will incorporate comments into a single electronic design tracking document for review with the Town. The OR will facilitate decisions required by the Town and track responses to the review comments with the DB.

The OR will also update the review of the cost comparisons of chemical usage and meet with Johnstown staff on long-term operations and maintenance costs in the capital design of the WTP during a monthly meeting. Chemical consumption calculations will be provided by the DB.

The OR Project Manager and Project Technical Lead will attend the 90% Design Document review workshop hosted by the DB and discuss compiled OR/Town comments, providing input into the design basis as required. The OR assumes that the DB is responsible for leading the workshop and preparing meeting minutes per their authorized scope. The OR Discipline Leads will virtually attend portions of the meeting relevant to their discipline, as the need arises.

The OR is expressly not providing QAQC review of design assumptions, calculations, or other documents for which the responsible engineer is required to provide and/or document for meeting applicable codes and regulations. The OR assumes that all such QAQC is completed by the DB through their quality management program and that the DB responsible engineers will provide all necessary seals and signatures for design documents.

**208: Issued for Construction Design Package Review and Workshop**

The OR will provide a multi-disciplinary review of the IFC Design Package provided by the DB. Review will consist of compliance with Town requirements and goals industry design standards, compliance to CDPHE design criteria and guidelines, review detailed design against design criteria established in the BODR, and provide constructability reviews. The OR will incorporate comments into a single electronic design tracking document for review with the Town. The OR will facilitate decisions required by the Town and track responses to the review comments with the DB.

The OR Project Manager and Project Technical Lead will attend the IFC Design Document review workshop hosted by the DB and discuss compiled OR/Town comments, providing input into the design basis as required. The OR assumes that the DB is responsible for leading the workshop and preparing meeting minutes per their authorized scope. The OR Discipline Leads will virtually attend portions of the meeting relevant to their discipline, as the need arises.

The OR is expressly not providing QAQC review of design assumptions, calculations, or other documents for which the responsible engineer is required to provide and/or document for meeting applicable codes and regulations. The OR assumes that all such QAQC is completed by the DB through their quality management program and that the DB responsible engineers will provide all necessary seals and signatures for design documents.

**209: Asset ID Management Coordination**

The OR will prepare information on asset inventory numbering approaches as a basis for implementing throughout the Town's system(s). A review meeting will be facilitated by the OR to outline options for a plant-wide inventory tagging system to be incorporated into the design by the DB. The OR will prepare a summary TM providing details for the plan to be completed in parallel with the 60% Design Documents.

**3. Task Series 300: Pre-Construction Services**

**301: Construction Delivery Method Review**

The OR will review the proposed Design Build Institute of America (DBIA) contract for progressive design-build services to be provided by the DB. Comments will be provided via email and virtual meetings to the

Town for consideration in negotiation of the contract with the DB. The OR will support the Town as the contract is finalized to answer further questions or provide information on specific clauses and potential implications to the Project.

The OR will assist Town with reviewing the scope of construction contract and identifying opportunities for cost-savings or overlap from the current DB design contract.

**302: Procurement and Construction Phasing**

The project schedule provided by the DB will be reviewed for phasing of the construction to minimize interruptions to operations and meet the Town's goals for startup. Construction phasing suggestions will be reviewed with the DB at the schedule design workshops. The DB will modify the construction schedule and implement early construction or procurement packages as agreed upon with the Town.

- Coordinate with DB to identify long-lead equipment and materials that may impact the timely construction of the Project. Prepare a list of proposed early procurement equipment and materials for the Town's consideration.
- Review the DB's schedule and prepare recommendations for procuring equipment to meet project schedules.

**PART 2 – ADDITIONAL SERVICES**

Upon mutual written agreement of the Parties, in the form of an amendment to this Agreement as set forth in Exhibit K, Engineer may provide Additional Services to Owner.

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

## **Owner's Responsibilities**

---

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

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

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.
  - 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  - 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  - 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- D. Arrange for safe access to and make all provisions for Engineer to enter upon public property as required for Engineer to perform services under the Agreement.

---

**Exhibit B – Owner's Responsibilities**

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

**Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.**

- E. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose the Design-Builder, Owner's independent consultants, and/or Contractor has used the money paid.
- F. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. If requested, provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- G. 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.
- H. Upon request, 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.
- I. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner during the Project and at the Site, the parties may define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- K. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

- L. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- M. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- N. Place and pay for advertisement for Bids in appropriate publications.
- O. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- P. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

This is **EXHIBIT C**, consisting of [ ] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated July \_\_, 2022.

## **Payments to Engineer for Services and Reimbursable Expenses**

### **COMPENSATION PACKET : Basic Services**

---

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

#### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

##### **C2.01 Compensation for Basic Services (other than Resident Project Representative) – Hourly Rate Method of Payment**

1. Owner shall pay Engineer for Basic Services set forth in Exhibit A in an amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any, up to the Not-To-Exceed Amount (defined below).
2. The Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Hourly Rates do not include Reimbursable Expenses.
3. Engineer’s Reimbursable Expenses schedule are attached.
4. The total not-to-exceed compensation for services is \$345,830 (“Not-To-Exceed Amount”), which is based on the estimated distribution set forth on the spreadsheet attached hereto and incorporated herein by reference as Appendix 2 to this Exhibit C.
5. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Not-To-Exceed Amount unless approved in writing by the Owner.
6. The total Not-To-Exceed Amount includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. This amount incorporates all estimated labor, overhead, profit, Reimbursable Expenses, and Engineer’s Consultant charges.
7. The portion of the Not-To-Exceed Amount billed for Engineer’s services will be based upon the cumulative hours incurred by the Engineer during the billing period for each employee multiplied by their respective Hourly Rate, plus Reimbursable Expenses.

##### **C2.02 Compensation For Reimbursable Expenses**

---

**Exhibit C – Compensation Packet AS-1: Additional Services –  
Standard Hourly Rates Method of Payment.**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.  
Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies,  
and American Society of Civil Engineers. All rights reserved.**

**Page 1**



- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C. To the extent the Reimbursable Expenses are not expressly set forth in Appendix 1, Engineer shall invoice Owner for such expenses based on their direct cost.
- B. Reimbursable Expenses include the following, to the extent reasonable: transportation (including mileage), lodging, and subsistence incidental thereto; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.05.

#### **C2.03 Other Provisions Concerning Payment**

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.05. If additional Consultants are retained, Engineer shall obtain the prior written consent of Owner.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. 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.

### **Additional Services – Standard Hourly Rates**

---

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

#### **C2.04 Compensation for Additional Services – Hourly Rates Method of Payment**

Owner shall pay Engineer for Additional Services, if any, in the amount mutually agreed by the Parties based generally on the Hourly Rates and Reimbursable Expenses calculation set forth in Appendix 1 to this Exhibit C. Such amount shall be set forth in an amendment to this Agreement, in the form attached as Exhibit K.

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

## Hourly Rates and Reimbursable Expenses Schedule

---

### *Engineer's Hourly Rate Sheet and Reimbursable Schedule*

| <b>Category</b>                          | <b>Rate (\$/hr)</b> |
|--|---------------------|
| Principal Engineer, Treatment Specialist | \$230 to \$285      |
| Principal Project Manager                | \$195 to \$220      |
| Principal Engineer                       | \$190 to \$230      |
| Project Engineer III                     | \$170 to \$190      |
| Staff Engineer II                        | \$140 to \$170      |
| Engineer I                               | \$95 to \$140       |
| Senior Designer III                      | \$125 to \$150      |
| Designer II                              | \$110 to \$125      |
| Designer I                               | \$85 to \$110       |
| Senior Administrative, CDT or similar    | \$85 to \$100       |
| Asst Administrative                      | \$65 to \$85        |

Reimbursable expenses (direct costs) incurred by Engineer during execution of its services may include, but are not limited to, travel, mileage, shipping or delivery services, approved project related purchases, professional subconsultant (retained with written consent of Owner) or other outside services, and reproduction costs of drawings, reports, etc. Engineer's Scope of Services indicates the estimated direct costs for travel to workshops, plus other incidental direct expenses that may be incurred.

- Incidental expenses will be invoiced at direct cost plus an administration markup of 5 percent.
- Project mileage will be charged at the current-year business mileage rate as issued by the Internal Revenue Service.
- Subconsultants (retained with written consent of Owner) will be invoiced at direct costs plus 5 percent; all other reimbursable expenses will be invoiced as the direct cost plus an administration markup of 5 percent.
- Incidental expenses, e.g., miscellaneous copying, phone calls, and office supplies, necessary to complete the work are included in the fee.



This is **EXHIBIT G**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July \_\_\_\_, 2022.

## Insurance

---

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

### G6.05 Insurance

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

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$[ 1,000,000 ]
  - 2) Bodily injury by disease, each employee: \$[ 1,000,000 ]
  - 3) Bodily injury/disease, aggregate: \$[ ]
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$[1,000,000 ]
  - 2) General Aggregate: \$[ 2,000,000 ]
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$[ 0 ]
  - 2) General Aggregate: \$[ 0 ]
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$[1,000,000 ]
- f. Professional Liability --
  - 1) Each Claim Made \$[2,000,000 ]
  - 2) Annual Aggregate \$[2,000,000 ]
- g. Other (specify): \$[ ]

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

---

Exhibit G – Insurance.

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

## **Dispute Resolution**

---

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

### H6.09 *Dispute Resolution*

C. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by, unless the parties otherwise agree, the Judicial Arbitrator Group in Denver, Colorado. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. Owner and Engineer shall share equally in the cost of the mediation. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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

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

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

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

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

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

Description of Modifications:

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

Agreement Summary:

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

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

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

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

OWNER:

ENGINEER:

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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