



June 13, 2024

Mr. Adam Lanning  
Rochelle Municipal Utilities  
333 Lincoln Highway  
Rochelle, IL 61068

Via: alanning@rmu.net

Re. Project: IL Route 251 (IL 38 to N. of Flagg Road)  
Contract 64B20  
Section (107 & 108W)R  
P-92-083-05 / D-92-083-05

Watermain Replacement along IL Route 251


Dear Mr. Lanning:

Please find attached the proposal package for the proposed City of Rochelle watermain design related to the project referenced above. The fee breakdown is as follows:

- Watermain Replacement Design performed by Willett Hofmann (\$72,000). The scope and fee breakdown is attached.
- Peralte-Clark's fee to coordinate with the subconsultants and to integrate the watermain construction documents into our construction documents is \$8,000.

Our Standard Terms and Conditions are attached. Please provide your approval and notice to proceed by signing below.

Cordially,  
PERALTE-CLARK, LLC

  
6/12/2024  
Jean-Alix Peralte, P.E., PTOE  
President

\_\_\_\_\_  
Jeff Fiegenschuh  
City Manager

City of Rochelle  
IL Route 251 Water Main Improvements

A. Project Scope

Construct approximately 2,800 feet of 12" water main on IL Route 251 from IL Route 38 to Flagg Road and approximately 1,000 feet of 6" water main on IL Route 38 from IL Route 251 to Lincoln Highway, at Carrie Avenue, and at Fairview Drive. Also new water service lines will be constructed for 25 customers.

B. WHA Engineering Scope of Services

1. Design Phase

- a. Prepare water main plan and profile sheets.
- b. Prepare schedule and summary of quantities.
- c. Prepare construction sequence for the water main and water testing.
- d. Prepare a location list for all the bacteriological samples that must be taken.
- e. Prepare standard construction details.
- f. Prepare technical specifications for the water main construction.
- g. Prepare bidding and contracts documents and IEPA loan program documents.
- h. Prepare IEPA Public Water Supplies construction permit application.
- i. Prepare IDOT Utility Permit.
- j. Coordinate water main design with Prealte-Clark LLC who is working on the IDOT IL Route 251 Improvements.
- k. Three (3) in-person or TEAMS design meetings with the City and Prealte-Clark LLC.

Design phase service notes:

- a. Topographical survey has not been included.
- b. Plan/Profile sheets that can be used for the water main design will be provided to WHA by Prealte-Clark LLC.
- c. Geotechnical has not been included.

2. IEPA Loan Application

- a. Prepare draft IEPA Public Water Supply Loan Program Authorizing Ordinance.
- b. Prepare Engineering or Professional Services Certification Form.
- c. Prepare Tax Certificate Form.
- d. Prepare Federal Reporting Requirements Form.
- e. Prepare Loan Application Form.
- f. Prepare Water Division Budget Projections and Evaluate Existing Water Rates.
- g. Prepare Plans-Specs Checklist Form.
- h. Prepare Bidding Review Certification and Checklist for Construction Form.

C. WHA Engineering Fee

1. Design Phase

WHA will perform the design phase services detailed above on an hourly basis at for a fee not to exceed \$62,000.00.

2. IEPA Loan Application

WHA will perform the IEPA Loan Application services detailed above on an hourly basis at for a fee not to exceed \$10,000.00.

D. Engineering Agreement IEPA Loan Program Requirements

Insert the section below into Prealte-Clark's engineering agreement. This is language that must be in the engineering agreement for an IEPA loan program project.

PUBLIC WATER SUPPLY LOAN PROGRAM ENGINEERING REQUIREMENTS

Period of Service

This Agreement shall remain in force for period of sixty (60) days after the final contractor pay request and closeout documents have been approved by the OWNER.

Audit and Access to Records

1. The ENGINEER agrees to include subsections 6.6.2 through 6.6.5 below in all his contracts and all subcontracts directly related to project performance which are in excess of \$25,000.
2. The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance of Agency grant work under this agreement consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards (666 Fifth Avenue, New York, New York 10019; June 1, 1987). The local agency shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The ENGINEER will provide facilities for such access and inspection.
3. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
4. The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection 6.6.2 above, to the Agency. Where the audit concerns the ENGINEER, the auditing agency will afford the ENGINEER an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
5. Records under subsection 6.6.2 above shall be maintained and made available during performance on Agency loan work under this agreement and until three years from date of final Agency loan audit for the project. In addition, those records which relate to any "dispute" appeal under an Agency loan

agreement, or litigation, or the settlement of claims arising out of such performance, costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

#### Covenant Against Contingent Fees

The ENGINEER warrants that no person or sealing agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

#### USEPA Nondiscrimination Clause

The ENGINEER shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements.

Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

#### USEPA Fair Share Percentage Clause

1. Evidence that affirmative steps have been taken, such as, but not limited to, a copy of the advertisement(s) and the record of negotiation in accordance with federal Executive Order 11625 and 12138, to assure that Disadvantaged Business Enterprises are used when possible as sources of supplies, equipment, construction, and services.

2. The ENGINEER agrees to take affirmative steps to assure that Disadvantaged Business Enterprises are utilized when possible as sources of supplies, equipment, construction, and services in accordance with the Public Water Supply Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with IEPA, the ENGINEER acknowledges that the fair share percentages are 5% for MBE's and 12% for WBE's.



## PERALTE-CLARK, LLC STANDARD TERMS AND CONDITIONS



### TIMES FOR RENDERING SERVICES

#### **General**

- A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CLIENT has requested changes in the scope, extent, or character of the PROJECT, the time of performance of ENGINEER's services shall be adjusted equitably.
- C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

#### **Suspension**

- A. If CLIENT fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to CLIENT, suspend services under this Agreement.
- B. If ENGINEER's services are delayed or suspended in whole or in part by CLIENT, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

### PAYMENTS TO ENGINEER

#### **Methods of Payment for Services and Reimbursable Expenses of ENGINEER**

- A. For Basic Services. CLIENT shall pay ENGINEER for Basic Services performed or furnished under the "Scope of Work" section of this AGREEMENT.
- B. For Additional Services. CLIENT shall pay ENGINEER for Additional Services performed not included under the "Scope of Work" section of this Appendix but requested by the CLIENT.
- C. For Reimbursable Expenses. In addition to payments provided for in A and B outlined in the PAYMENTS TO ENGINEER section above, CLIENT shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants.

#### **Other Provisions Concerning Payments**

- A. Preparation of Invoices. Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to CLIENT by ENGINEER, unless otherwise agreed.
- B. Payment of Invoices. Invoices are due and payable within 30 days of receipt. If CLIENT fails to make any payment due ENGINEER for services and expenses within 30 days from billing date of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to CLIENT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.
- C. Disputed Invoices. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- D. Payments Upon Termination.
  - 1. In the event of any termination, ENGINEER will be entitled to invoice CLIENT and will be paid for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
  - 2. In the event of termination by CLIENT for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 1 noted above, shall be entitled to invoice CLIENT and shall be paid 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.
- E. Records of ENGINEER's Costs. Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon CLIENT's timely request, copies of such records will be made available to CLIENT at cost.
- F. Legislative Actions. In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this PROJECT or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by CLIENT as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

### OPINIONS OF COST

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

- A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made based on ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's 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 CLIENT wishes greater assurance as to probable Construction Cost, the CLIENT shall employ an independent cost estimator.

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

- A. If a Construction Cost limit is established between CLIENT and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in attached separate exhibit entitled, "Construction Cost Limit," and attached to this Agreement.

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

- A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

### GENERAL CONSIDERATIONS

#### **Standards of Performance**

- A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CLIENT shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CLIENT-furnished information.
- C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the PROJECT to which this Agreement applies. ENGINEER shall serve as CLIENT's prime professional for the PROJECT. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.
- D. ENGINEER and CLIENT shall comply with applicable Laws or Regulations and CLIENT-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to CLIENT's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- E. CLIENT shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. CLIENT shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.
- H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. CLIENT 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's signing any such certification.
- I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by CLIENT without consultation and advice of ENGINEER.



## PERALTE-CLARK, LLC STANDARD TERMS AND CONDITIONS



### Authorized Project Representatives

- A. Contemporaneous with the execution of this Agreement, ENGINEER and CLIENT shall designate specific individuals to act as ENGINEER's and CLIENT's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of CLIENT under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the PROJECT on behalf of each respective party.

### Design without Construction Phase Services

- A. Should CLIENT provide Construction Phase services with either CLIENT's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase.
- B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Construction observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by CLIENT, then CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

### Use of Documents

- A. All Documents are instruments of service in respect to this PROJECT, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the PROJECT is completed.
- B. Copies of CLIENT-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to "CLIENT's Responsibilities" section of these conditions. Files in electronic media format of text, data, graphics, or of other types that are furnished by CLIENT to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.
- E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this PROJECT.
- F. CLIENT may make and retain copies of Documents for information and reference in connection with use on the PROJECT by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. CLIENT shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.
- G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- H. Any verification or adaptation of the Documents for extensions of the PROJECT or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.

### Insurance

- A. ENGINEER shall procure and maintain Professional Liability insurance. Copies of insurance certificates are available upon request.
- B. CLIENT shall procure and maintain general liability and property insurance. CLIENT shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by CLIENT which are applicable to the PROJECT.
- C. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the PROJECT.
- D. CLIENT and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages. 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 shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.
- F. At any time, CLIENT may request that ENGINEER, at CLIENT's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those presently held by the ENGINEER. If so requested by CLIENT, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by CLIENT.

### Termination

- A. 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 ENGINEER believes that ENGINEER is being requested by CLIENT to 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.
      - 3) ENGINEER shall have no liability to CLIENT on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  - 2. For convenience,
    - a. By CLIENT effective upon the receipt of notice by ENGINEER.
- B. The terminating party outlined under paragraphs 1 or 2 above may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble PROJECT materials in orderly files.

### Controlling Law

- A. This Agreement is to be governed by the law of the state in which the PROJECT is located.

### Successors, Assigns, and Beneficiaries

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

### Hazardous Environmental Condition

- A. CLIENT represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.
- B. CLIENT has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located within the PROJECT limits, including type, quantity and location.
- C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify CLIENT and, to the extent of applicable Laws and Regulations, appropriate governmental officials.



## PERALTE-CLARK, LLC STANDARD TERMS AND CONDITIONS



- D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, 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 CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. CLIENT acknowledges that ENGINEER is performing professional services for CLIENT and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.
- F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on a 30-day notice.

### **Allocation of Risks**

#### **A. Indemnification**

- 1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.
- 2. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and CLIENT's consultants with respect to this Agreement or the PROJECT.
- 3. To the fullest extent permitted by law, ENGINEER's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of CLIENT, ENGINEER, and all other negligent entities and individuals.
- 4. In addition to the indemnity provided under paragraph A.2 noted above in the "Allocation of Risks" section of this Agreement, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph A.4, in the "Allocation of Risks" section of this Agreement shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

### **Notices**

- A. 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, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

### **Survival**

- A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

### **Severability**

- A. 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 CLIENT and ENGINEER, who 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.

### **Waiver**

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

### **Headings**

- A. The headings used in this Agreement are for general reference only and do not have special significance.

### **ADDITIONAL PROVISIONS AND CONDITIONS**

- A. Relationship between ENGINEER and CLIENT: ENGINEER shall serve as CLIENT'S professional Civil Engineer Consultant in those phases of the PROJECT to which this agreement applies. This relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. The ENGINEER shall not be considered to be the AGENT of the CLIENT.
- B. When dealing with Civil Engineering work, information on existing underground utilities or conditions is provided from the best information available. This information is obtained from utility company records or soil borings and is not represented to be the exact location of these utilities or soils in the field. Final engineering plans for construction require that the contractor contact the utility companies for exact locations. At that time, conflicts can arise that require revisions to engineering plans and construction procedures. In addition, the CLIENT may incur extra costs in order to resolve these conflicts or unforeseen conditions. CLIENT is advised that these circumstances may occur and should budget accordingly for these situations. ENGINEER cannot be responsible for these unforeseen conditions. If CLIENT wishes to obtain the services of a contractor to provide test holes and exact utility locations, ENGINEER, will incorporate that information into the designs.
- C. The CLIENT IS RESPONSIBLE FOR OBTAINING ALL PERMITS. The ENGINEER shall assist in the CLIENT in preparing the ENGINEERING portion of the permit applications required by the various agencies of government. The ENGINEER does not have control over the issuance of permits and cannot guarantee that permits will be issued or under what conditions permits will be issued. The ENGINEER shall submit plans, calculations and permit applications to the various agencies when requested by the CLIENT. The ENGINEER shall revise the plans to conform to the various agencies' requirements.

### **STANDARD CONDITIONS APPLICABLE TO THIS PROPOSAL**

- 1. All required permit costs, review fees, bonds, inspection costs and charges associated with the review and approval of the plans, specifications and documents will be borne by the CLIENT.
- 2. The SCOPE OF WORK shall not be changed without written agreement between the ENGINEER and the CLIENT.
- 3. Outside consultants and services, such as professional land surveyors, soil testing services and environmental consultants are not included in the above FEE (unless mentioned in the SCOPE OF WORK).
- 4. Studies, engineering, and reviews pertaining to floodplains, floodways and wetlands are not included in this contract (unless mentioned in the SCOPE OF WORK).
- 5. Plans and specifications that are prepared by the ENGINEER are not considered final until all permits and approvals have been obtained. The CLIENT is not to consider proposals and estimates or opinions of probable construction cost from the ENGINEER, Contractors or his own forces as complete or accurate until all permits and approvals are obtained.

### **PUBLIC WATER SUPPLY LOAN PROGRAM ENGINEERING REQUIREMENTS**

#### **Period of Service**

This Agreement shall remain in force for period of sixty (60) days after the final contractor pay request and closeout documents have been approved by the OWNER.

#### **Audit and Access to Records**

- 1. The ENGINEER agrees to include subsections 6.6.2 through 6.6.5 below in all his contracts and all subcontracts directly related to project performance which are in excess of \$25,000.
- 2. The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance of Agency grant work under this agreement consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards (666 Fifth Avenue, New York, New York 10019; June 1, 1987). The local agency shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The ENGINEER will provide facilities for such access and inspection.
- 3. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
- 4. The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection 6.6.2 above, to the Agency. Where the audit concerns the ENGINEER, the auditing agency will afford the ENGINEER an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

5. Records under subsection 6.6.2 above shall be maintained and made available during performance on Agency loan work under this agreement and until three years from date of final Agency loan audit for the project. In addition, those records which relate to any "dispute" appeal under an Agency loan agreement, or litigation, or the settlement of claims arising out of such performance, costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

Covenant Against Contingent Fees

The ENGINEER warrants that no person or sealing agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

USEPA Nondiscrimination Clause

The ENGINEER shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements.

Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

USEPA Fair Share Percentage Clause

1. Evidence that affirmative steps have been taken, such as, but not limited to, a copy of the advertisement(s) and the record of negotiation in accordance with federal Executive Order 11625 and 12138, to assure that Disadvantaged Business Enterprises are used when possible as sources of supplies, equipment, construction, and services.

2. The ENGINEER agrees to take affirmative steps to assure that Disadvantaged Business Enterprises are utilized when possible as sources of supplies, equipment, construction, and services in accordance with the Public Water Supply Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with IEPA, the ENGINEER acknowledges that the fair share percentages are 5% for MBE's and 12% for WBE's.

**No work will be undertaken until written authorization is received from the CLIENT.**