

April 6, 2015

Mr. Rocky Martin  
Town of Hinesburg  
10632 Route 116  
Hinesburg, VT 05461

Re: Agreement  
Town of Hinesburg  
Wells 4 & 5 Final Design and Permitting  
A+E Project 14092

Dear Rocky:

This Agreement is written pursuant to the Town of Hinesburg's (OWNER) request for Aldrich + Elliott, PC (ENGINEER) to provide professional engineering consultant services as outlined below.

**SCOPE OF SERVICES**

Professional engineering services are to be performed by the ENGINEER as detailed in **Attachment No. 1** of this AGREEMENT. The OWNER may, from time to time, request changes in the scope of services to be performed under this AGREEMENT. Any changes in scope, including an increase or decrease in the amount of the ENGINEER's compensation, shall be mutually agreed upon in writing by and between the OWNER and the ENGINEER and shall be incorporated into this AGREEMENT by a written Amendment signed by both parties.

**BASIS OF COMPENSATION**

For services performed under this AGREEMENT, the OWNER agrees to compensate the ENGINEER as follows:

Basic Services - Final Design	\$88,200.00	LS
Subsurface/Geotechnical Investigation	\$7,300.00	NTE
Special Services	\$12,900.00	NTE
Easement Assistance	<u>\$3,100.00</u>	NTE
<b>Total amount of items in this AGREEMENT</b>	<b>\$111,500.00</b>	

Billing for the work item above shall be on a monthly basis as follows:



Lump Sum Services (LS): Includes all costs incurred in the performance of this Agreement, including all labor, subconsultants and other expenses listed in Attachment No. 2 and shall be invoiced/billed throughout the project duration based upon percentage complete. The cost to the OWNER will be limited to the lump sum fee indicated for each LS work item above.

Not-To-Exceed Services (NTE): A fee based on expenses incurred in the interest of the Project, to include direct labor equal to the actual salaries of personnel, overhead expense of 1.7 times direct labor and profit of 16% of direct labor and overhead, plus reimbursable expenses per **Attachment No. 2**. The cost to the OWNER will be at or below the NTE fee indicated for each work item above.

All invoices/bills will accurately depict all services provide from the Agreement and any authorized Amendment date through the date of each invoice/bill. All invoices/bills to the OWNER will be formatted to comply with the current State of Vermont Department of Environmental Conservation (DEC)/Facilities Engineering Division (FED) directive(s).

It is understood that the ENGINEER's labor rates are adjusted annually in January, and that the fees for services provided under this AGREEMENT and any fully executed Amendment(s) shall be the current rates at the time that the work is performed. Refer to **Attachment No. 2 – Schedule of Fees & Reimbursable Expenses**.

### **TERMS AND CONDITIONS**

Refer to **Attachment No. 3** for the **Terms and Conditions** that govern this AGREEMENT and any fully executed Amendment(s).

### **EXECUTED AGREEMENT**

This AGREEMENT and any fully executed Amendment(s) shall be considered binding when duly authorized agents of the ENGINEER and the OWNER sign the document and one (1) executed copy is returned to the office of the ENGINEER. If this AGREEMENT or any Amendment(s) are not executed within sixty (60) days of the date signed by the ENGINEER, it may be subject to re-negotiation.

### **DURATION OF SERVICES**

The ENGINEER shall commence services on the Date of Execution of this Agreement, and shall fully complete all authorized services within 270 consecutive calendar days.

## ATTACHMENT NO. 1

### SCOPE OF SERVICES

The ENGINEER will provide the following professional engineering consultant services under the scope of this Agreement:

#### BASIC SERVICES - FINAL DESIGN

##### **Basis of Final Design**

The ENGINEER will develop a Basis of Design for each of the project elements. The project will be as approximately defined in the recommended plan of the Town of Hinesburg Water Supply Improvements Preliminary Engineering Report prepared by Aldrich + Elliott, PC dated December 2014, which includes the following:

- Design Criteria

<b>Description</b>	<b>Maximum Contaminant Level</b>	<b>Raw Water</b>	<b>Treated Water</b>
<i>Permitted Source Capacity</i>			
Well 4	--	240 gpm	240 gpm
Well 5	--	90 gpm	90 gpm
Allowable Combined Yield	--	280 gpm	280 gpm
<i>Treatment Facility</i>			
Initial Year Capacity	--	280 gpm	280 gpm
Design Year Capacity	--	500 gpm	500 gpm
<i>Raw Water Characteristics</i>			
Hardness	None	322 mg/l	125 mg/l
Iron	0.30 mg/l	0.11 mg/l	0.11 mg/l
Manganese	0.05 mg/l	<0.020 mg/l	<0.020 mg/l

- Wells
  - Submersible well pumps and controls for new Wells 4 and 5.
- Water Treatment Facility (WTF)
  - Nanofiltration membrane treatment system for the removal of hardness to be direct purchased by the Owner
  - Clearwell and distribution booster pump system
  - Chlorine feed pumps and storage tanks
  - Fluoridation system as provided by the Vermont Department of Health
  - Control system for the new wells and WTF and tied into the Town's existing SCADA system
  - New emergency generator sized to provide emergency power for the new WTF and wells
  - New building to house the office lab, controls, mechanical room, bathroom, chemical feed pumps and storage, nanofiltration membrane treatment system, clearwell, and distribution pump system
  - New wastewater pump station for wastewater generated from the new building

**OFFER OF PROFESSIONAL ENGINEERING SERVICES**

The ENGINEER, as an independent agent, offers to provide the professional engineering services described in this AGREEMENT, for the compensation and duration specified.

**Aldrich + Elliott, PC**



Bradley F. Aldrich, P.E., F.NSPE  
President

Dated: April 6, 2015

**OWNER ACCEPTANCE**

The OWNER acknowledges this to be a binding AGREEMENT and agrees to the conditions as stated. The ENGINEER is hereby directed to proceed with the scope of services on the Date of Execution identified below.

The OWNER acknowledges that it has the financial resources and intends to pay for services rendered in accordance with the conditions as stated herein and acknowledges that if invoices are not paid in full within sixty (60) days of date of invoice, that the ENGINEER may stop work, without consequence or liability of any kind, until the invoices are paid.

The OWNER warrants that the signature below is that of its duly authorized representative of the OWNER who possesses the full legal authority to execute this AGREEMENT on behalf of OWNER.

The OWNER acknowledges that this AGREEMENT is comprised of, and incorporates by reference, **Attachment Nos. 1 through 3.**

**TOWN OF HINESBURG**

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Witness to Signature

Executed in Duplicate

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- Sitework
  - Water transmission piping between the wells and the WTF and from the WTF to the existing distribution system on Shelburne Falls Road
  - Electric, gas, and communication utilities to the WTF
  - New access roadway and parking area for the new building
  - Miscellaneous yard piping at the WTF site for water, sewer, and stormwater at the site
  - New 4" waterline west along Shelburne Falls Road to the Fortin property with water services to the 5 residential properties along the route

### **Preparation of Final Design Plans and Specifications**

The ENGINEER will make engineering investigations as are necessary and will compile such data as required for the design and drawings for the project. Drawings (plans), technical and construction specifications, and contract forms shall be prepared setting forth in sufficient detail the requirements for bidding and constructing the project.

This design will include the following:

- Utilization of existing designs, maps, aerial photography, soil borings and other available information to the maximum extent feasible.
- Specific information to be included on the plans will be roadway and driveway limits, curb locations, house locations, street addresses, existing utilities and service lines derived from as-built plans and field locations by "Dig Safe", test boring locations, specimen trees and hedge rows, fences, approximate right-of-way locations, and street names.
- The profile will include the existing grade along the centerline of the proposed improvements and the approximate elevations of the existing utilities at the points of intersection. All elevations will be referenced to NGVD 29 or NAVD 88 vertical control datum as appropriate.
- Designated wetlands and/or archeologically sensitive areas will be surveyed as appropriate and located on the drawings.
- The design of the treatment system will be based upon a nanofiltration membrane treatment system direct purchased by the OWNER and manufactured by Industrial Services, Inc. (ISI).
- Technical specifications for the project will be prepared and provided in the CSI 16 Division format.
- The technical specifications will be supplemented with the DEC required "front-end" documents to make a set of construction contract documents suitable for public bidding purposes and will include:
  - Advertisement for Bids
  - Information for Bidders
  - Bid Form
  - Contract Form
  - General and Supplemental General Conditions
  - Special Conditions
  - Technical Specifications
- For the "90% design review" draft, set of blueprints of the construction drawings, the specifications, and the contract documents will be provided by the ENGINEER as follows:
  - Two (2) copies for the OWNER

- Two (2) copies for review agencies
- For the final design plans, contract documents and specifications (construction set) the ENGINEER will provide two (2) OWNER'S copies and two (2) copies to the VTDEC Drinking Water and Groundwater Protection Division (DWGWPD).

### **Equipment Direct Purchase Assistance**

The OWNER is planning to utilize local funds to direct purchase the nanofiltration membrane treatment system from ISI. The ENGINEER will assist the OWNER in direct purchasing the membrane equipment from ISI as follows:

- Coordinate with ISI on the Basis of Design for their proposed equipment
- Identify the required scope of work with ISI
- Coordinate the WTF building, piping, electrical, and control requirements for the proposed ISI equipment
- Review and comment on shop drawings provided by ISI

### **Field Surveys**

Existing conditions mapping and boundary survey work for the Wainer site have been previously conducted under the preliminary engineering. The proposed project involves providing water service along Shelburne Falls Road west to the Fortin property. As a result, additional topographic and boundary survey work is required from the Wainer property to the Fortin property. The ENGINEER will retain a land surveyor to conduct additional topographic and boundary survey work from the Wainer property to the Fortin property. The topographic survey will include existing grade contours, existing building footprints, pertinent floor elevations, roadways, observed surface indications of underground utilities, specimen trees, and other significant features.

Boundary survey will include a certain amount of research to adequately document the property boundaries. Property lines will be based on information abstracted from the Town of Hinesburg land records and existing monumentation recovered during the survey. Property lines will be flagged and missing corners replaced as part of the survey.

The data gathered will be used to prepare a plan of existing conditions and proposed improvements for the project design.

### **ENGINEER'S Opinion of Probable Construction Cost**

An opinion of probable construction cost and total project cost, based upon completed final drawings and specifications, will be furnished to the OWNER.

### **Preparation of Construction Phase Schedule**

A general schedule for the construction phase of the project will be furnished to the OWNER. This schedule will identify the following for which the construction contract WORK duration (continuous calendar days) is based:

- Execution of the Notice to Proceed
- Field work commencement
- Field work seasonal stoppage/start-up (if applicable)
- Substantial and/or Final Completion of WORK

## **Design Meetings**

The ENGINEER will meet at reasonable and customary intervals to provide a close liaison with the OWNER, the Vermont Department of Environmental Conservation (VTDEC) representatives, and other recognized authorities having jurisdiction in regard to the engineering phases of the project. Review meetings at the 30%, 60%, and 90% design review stages are included in this scope of services.

## **SUBSURFACE/GEOTECHNICAL EXPLORATIONS**

The ENGINEER will use all existing subsurface and soil information wherever possible and shall retain a geotechnical subconsultant to perform additional subsurface explorations and conduct related office work as necessary to assess the subsurface conditions relative to the foundation for the new building. The findings of the geotechnical evaluation shall be presented in a written report from the geotechnical subconsultant. In addition, ledge probes will be performed at designated intervals along the water line routes to identify any conditions (i.e. ledge, groundwater, unsuitable soils, etc.) that should be noted in the final design.

## **SPECIAL SERVICES**

### **Permitting Assistance**

#### **Environmental Information Document**

- The preparation of an environmental information document is included under the preliminary engineering phase and is not provided under this design scope of services.

#### **Vermont DWGWPD Permit to Construct**

- The ENGINEER will assist the OWNER in obtaining the DWGWPD Permit to Construct for the proposed improvements.

#### **Vermont Stormwater Construction General Permit**

- The ENGINEER will assist the OWNER in obtaining the State of Vermont Watershed Management Division Stormwater Construction General Permit for this project. It is anticipated that the project will be Low Risk. Therefore, this scope of services is based upon a Low Risk application.

#### **Vermont Wetlands Permit**

- The delineation of wetlands within the project area has been previously conducted and documented during the facility planning phase. Based upon the existing mapping, no project elements are anticipated to be in the wetlands but will be in the wetland buffer. No additional wetlands delineation is included under this scope of services.
- The ENGINEER will assist the OWNER in obtaining a Vermont Wetlands Permit to construct the proposed improvements.

#### **State of Vermont Act 250 Land Use Permit Amendment**

- The ENGINEER will assist the OWNER in obtaining an Act 250 Permit Amendment for the project.
- Existing data will be gathered and reviewed for incorporation into the amendment application.

- The ENGINEER will prepare the required application for the amendment. It is anticipated that a full Act 250 application will be required for submittal and this scope of services is based upon a full application submittal.
- A draft of the application will be submitted to the OWNER for review and comment. The review comments will be incorporated as necessary prior to submittal.
- The application will be submitted to the necessary parties as required by Act 250.
- The ENGINEER will attend Act 250 meetings as directed by the OWNER and as necessitated by the demands of the Act 250 process. Meetings budgeted are as follows:
  - An initial coordination meeting will be conducted with the District Coordinator to discuss the project and submittal requirements for the amendment application.
  - One (1) progress meeting conducted with the OWNER to discuss and review the preparation of the application.
  - Two (2) Act 250 public hearings.
  - One (1) coordination meeting after the initial Act 250 hearing. This meeting will be held between the Act 250 hearings and will develop responses and strategies for the next Act 250 hearing.
- The draft of the amended Act 250 permit will be reviewed and items addressed once the public notice is distributed. Comments will be addressed during the review period and related correspondence distributed to the parties in compliance with the Certificate of Service.

#### Vermont Division of Fire Safety

- The ENGINEER will assist the OWNER in obtaining the necessary approvals from the Division of Fire Safety for the new WTF building.

#### Town Zoning

- The ENGINEER will assist the OWNER in obtaining the necessary Town Zoning permits for the pump stations.

#### Archeological

- During the preliminary engineering phase, an Archeological Resource Assessment (ARA) was conducted. The ARA recommended additional testing at the proposed building location. The OWNER will retain an archeological consultant to conduct Phase IB archeological field reconnaissance work to further investigate the previously identified potentially archeologically sensitive areas at the building site. The ENGINEER will coordinate with the OWNER's archeological subconsultant during the Phase IB work.
- This scope of services does not include any additional archeological services that may be required if the Phase IB recommends further archeological review and field testing.

#### **EASEMENT ASSISTANCE**

The ENGINEER will assist the OWNER in obtaining the necessary easements for the proposed improvements. Temporary and permanent easements will be indicated on the Contract Drawings and an index of temporary and permanent easements will be prepared to identify the easements required. Coordination will be provided by the OWNER and their attorney during the preparation of the easement documents. The ENGINEER will prepare for and attend up to three (3) meetings related to easement issues.

## **ADDITIONAL SERVICES**

In addition to the foregoing being performed, the following services shall be provided only when mutually agreed upon in writing by and between the OWNER and the ENGINEER's compensation and time duration of the AGREEMENT. Additional Services will commence when incorporated into this scope of services by written Amendment signed by both parties. Examples of Additional Services available are:

- Sewer design other than sewer required for the new WTF
- Preparation of plans for recording
- Redesigns ordered by the OWNER or REGULATORY AGENCIES after final design plans have been reviewed and accepted
- Assistance to the OWNER on matters of land acquisition, litigation or arbitration in regard to the project
- Bid phase services
- Construction phase services
- Other additional services not identified herein, but which may become necessary at a later date

**END ATTACHMENT NO. 1**

**ATTACHMENT NO. 2**

**SCHEDULES OF FEES & REIMBURSABLE EXPENSES**

Hourly rates for services rendered shall be invoiced as set forth in the Agreement. A schedule of billing rates for ENGINEER's personnel is as follows:

Project Principal	\$125.00 - \$150.00/hour
Project Manager	\$100.00 - \$130.00/hour
Senior Engineer	\$ 80.00 - \$110.00/hour
Staff Engineer	\$70.00 - \$90.00/hour
Staff Technician	\$50.00 - \$70.00/hour
Field Technician	\$60.00 - \$85.00/hour
AutoCAD Operator	\$55.00 - \$65.00/hour
Administrative Staff	\$50.00 - \$65.00/hour

The expense items listed below will be billed as follows:

**Subconsultant & Vendor Expenses:** @ cost

**Travel Related Expenses:**

- Auto Travel (to include gas and other service charges) @GSA rate
- Meals & Lodging @ cost

**Reproduction Expenses (provided in-house):**

- Reproductions (provided in-house)
  - 82 x 11 one sided copy @ \$0.08/each
  - 82 x 11 two sided copy @ \$0.12/each
  - 24 x 36 copy @ \$2.00/each
  - 36 x 48 copy @ \$3.00/each
  - mylar or velum plots @ \$8.00/each

**Administrative Expenses:**

- Postage @ cost
- Shipping @ cost
- Other Administrative Expenses @ cost

**END OF ATTACHMENT NO. 2**

## ATTACHMENT NO. 3

### TERMS AND CONDITIONS

**Extent of Agreement:** This Agreement comprises the final and complete agreement between the Owner and the ENGINEER. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had any questions explained by independent counsel, and is satisfied. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Owner and the ENGINEER.

- 1. Billings/Payments:** Invoices will be submitted monthly by the ENGINEER, in the format required by the Vermont DEC/FED, to the OWNER for all services provided and expenses incurred to date and, unless other mutually satisfactory arrangements have been made between the OWNER and the ENGINEER, are due upon receipt. The invoices shall be considered past due if not paid within sixty (60) days after the invoice date and the ENGINEER may, without waiving any claim or right against the OWNER, and without liability whatsoever to the OWNER, terminate the performance of the service. A finance charge will be assessed in the amount of 1.5% per month on unpaid balances. If the OWNER fails to make payments when due or otherwise is in breach of this AGREEMENT and any fully executed Amendments, the ENGINEER may suspend performance of services upon five (5) calendar days' notice to the OWNER. The ENGINEER shall have no liability whatsoever to the OWNER caused by any breach of this AGREEMENT and any fully executed Amendments by the OWNER. If the OWNER fails to make payment to the ENGINEER in accordance with the payment terms herein, this shall constitute a material breach of this AGREEMENT and shall be cause for termination by the ENGINEER. Payment of invoices is in no case subject to unilateral discounting or set-offs by the OWNER, and payment is due regardless of suspension or termination of the AGREEMENT by either party.
- 2. Standard of Care:** Services provided by the ENGINEER under this agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and under their licensure by the State of Vermont.
- 3. Termination:** The OWNER or the ENGINEER may suspend the Agreement upon giving seven (7) calendar days written notice. This AGREEMENT and any fully executed Amendments may be terminated upon no less than thirty (30) calendar days prior written notice by either party. In the event of termination by written notice, the OWNER shall pay the ENGINEER for all services rendered to the date of termination, all reimbursable expenses, and may include reasonable termination expenses if the termination is initiated by the OWNER.
- 4. Access to Site:** Unless otherwise stated, the ENGINEER will have safe and legal access to the Site for activities necessary for the performance of the services. The ENGINEER will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage. Arrangements and/or permission for access to the site shall be made by the OWNER unless otherwise

stated. The OWNER shall provide for the ENGINEER's right to enter the property owned by the OWNER and/or others in order for the ENGINEER to fulfill the scope of services included hereunder. The OWNER understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this AGREEMENT or any fully executed Amendments.

5. **Buried Utilities:** The ENGINEER and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary with respect to the assumed locations of underground improvements. Such services by the ENGINEER or its subconsultant will be performed in a manner consistent with the ordinary standard of care. The OWNER recognizes that the research may not identify all underground improvements and that the information upon which the ENGINEER relies may contain errors or may not be complete. The OWNER agrees, to the fullest extent permitted by law, to waive all claims and causes of action against the ENGINEER and anyone for whom the ENGINEER may be legally liable, for damages to underground improvements resulting from subsurface penetration locations established by the ENGINEER.
6. **Timeliness:** The ENGINEER will perform its services with due and reasonable diligence consistent with sound professional practices.
7. **Delays:** The ENGINEER is not responsible for delays caused by factors beyond the ENGINEER's reasonable control. When such delays beyond the ENGINEER's reasonable control occur, the OWNER agrees that the ENGINEER is not responsible for damages, nor shall the ENGINEER be deemed to be in default of this AGREEMENT or fully executed Amendment.
8. **Hidden Conditions:** A condition is hidden if it cannot be investigated by reasonable visual observation or records reviewed as customary in the performance of the services being rendered. If the ENGINEER has reason to believe that such a condition may exist, the ENGINEER shall notify the OWNER who shall authorize and pay for costs associated with the investigation of such a condition and, if necessary, costs necessary to correct said condition. If the OWNER fails to authorize such investigation or correction after due notification, or the ENGINEER has no reason to believe that such a condition exists, the OWNER is responsible for all risks associated with this condition, and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property.
9. **Hazardous Materials:** Unless specifically agreed upon prior to the commencement of service, the ENGINEER shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials of any form.
10. **Subconsultants:** The ENGINEER may use the services of subconsultants when, in the ENGINEER's sole opinion, it is appropriate and customary to do so.
11. **Ownership of Documents:** All documents produced by the ENGINEER under this AGREEMENT and any fully executed Amendment(s) shall remain the property of the ENGINEER and will not be used by the OWNER for any other endeavor without the consent of the ENGINEER. The OWNER has, and will retain the right to use the documents for all project purposes. The OWNER shall indemnify and hold harmless the ENGINEER for any re-use, mis-use or alteration of said documents.

- 12. Additional Services:** Services not explicitly detailed in this AGREEMENT or fully executed Amendment(s) will not be provided without the OWNER's prior written authorization.
- 13. Unauthorized Changes:** In the event that the OWNER consents to, allows, authorizes, or approves of changes to any plans, specifications, or other documents, and these changes are not approved in writing by the ENGINEER, the OWNER recognizes that such changes and results thereof are not the responsibility of the ENGINEER. Therefore, the OWNER agrees to release the ENGINEER from any liability arising from the construction, use, or result of such changes.
- 14. Code Compliance:** The ENGINEER shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of the execution of this AGREEMENT and any fully executed Amendment(s). Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the ENGINEER to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this AGREEMENT.
- 15. Information Provided by Others:** The OWNER shall furnish, at the OWNER's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT or any fully executed Amendment(s). The ENGINEER may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.
- 16. Opinions of Probable Cost:** In providing opinions of probable cost (formerly referred to as cost estimates), the Owner understands that the ENGINEER has no control over the contractor's methods of pricing, or the cost of materials and labor, and that such opinions are provided on the basis of the ENGINEER's experience and qualifications. The Engineer makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual cost.
- 17. Indemnifications:** The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, to the extent caused by the ENGINEER's negligent performance of professional services under this AGREEMENT or any fully executed Amendment(s) and that of its sub-consultants or anyone for whom the ENGINEER is legally liable. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and sub-consultants (collectively, ENGINEER) against all damages, liabilities or costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable. Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- 18. Professional Liability Insurance:** The ENGINEER will maintain and provide evidence of Professional Liability Insurance in the amount not less than \$ 250,000 covering services to be provided under this Agreement and any duly executed Amendments.

**19. Insurances:** Before commencing work on this contract the ENGINEER will provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the ENGINEER to maintain current certificates of insurance on file with the OWNER through the term of the contract.

- a. Workers Compensation: With respect to all operations performed, the ENGINEER shall carry workers compensations insurance in accordance with the laws of the State Of Vermont.
- b. General Liability and Property Damage: With respect to all operations under the contract, the ENGINEER shall carry general liability insurance having all major divisions of coverage including, but not limited to:  
Premises – Operations  
Independent Contractor’s Protective  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability  
The policy shall be on an occurrence form and limits shall not be less than:  
\$ 1,000,000 per Occurrence  
\$ 1,000,000 General Aggregate  
\$ 1,000,000 Products/ Completed Product Aggregate  
\$ 50,000 Fire Legal Liability
- c. Automotive Liability: The ENGINEER shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with the contract. Limit of coverage shall not be less than:  
\$ 1,000,000 Combined Single Limit.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the ENGINEER for the ENGINEER’s operations. These are solely minimums that have been set to protect the interests of the OWNER.

**20. Dispute Resolution:** Any claim or dispute between the OWNER and the ENGINEER shall be negotiated in good faith for a period of 30 days from the date of written notice served by either party prior to exercising their rights under law.

**21. Consequential Damages:** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the OWNER or the ENGINEER, their employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**22. Electronic Files:** The OWNER acknowledges that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by ENGINEER and electronic files, the signed or sealed hard-copy construction documents shall govern. In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants, against all damages, liabilities or costs, including reasonable attorneys’ fees and defense costs, arising from any changes made by anyone other than the ENGINEER or from any reuse of the electronic files without the prior written consent of the ENGINEER. Under no circumstances

shall delivery of electronic files for use by the OWNER be deemed a sale by the ENGINEER and the ENGINEER makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. In no event shall the ENGINEER be liable for indirect or consequential damages as a result of the OWNER's use or reuse of the electronic files. The ENGINEER will provide upon request from the State of Vermont, electronic files relating to services performed under this Agreement. Record Drawings will be provided to the State in digital format (CD).

- 23. Severability:** Any provision of this AGREEMENT and any fully executed Amendment(s) later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.
- 24. Governing Law:** The OWNER and the ENGINEER agree that all disputes arising out of or in any way connected to this Agreement and any fully executed Amendment(s), its validity, interpretation and performance, and remedies for breach of contract, or any other claims related thereof shall be governed by the laws of the State of Vermont.
- 25. Assignment:** Neither party to this AGREEMENT and any fully executed Amendment(s) shall transfer, sublet or assign any rights under or interest (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.
- 26. Job-site Safety:** Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees and subconsultants at a construction site, shall relieve the Construction Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The OWNER agrees that the Construction Contractor is solely responsible for job-site safety, and warrants that this intent shall be made evident in the OWNER's agreement with the Construction Contractor. The OWNER also agrees that the OWNER, the ENGINEER, and the ENGINEER's consultants shall be indemnified and shall be made additional insured under the Construction Contractor's general liability insurance policy.

**END OF ATTACHMENT NO. 3**

