



# O'Leary-Burke Civil Associates, PLC

CIVIL ENGINEERING | REGULATORY AND PERMIT PREPARATION | LAND SURVEYING | CONSTRUCTION SERVICES | LAND USE PLANNING

Name of OWNER's Representative:  
OWNER's address:

Marc Maheux  
Jericho-Underhill Water District  
Steam Mill Road  
Jericho, VT 05489

Re: Engineering Services Agreement for BID and Construction Phase  
Browns River Stream Crossing  
Engineer's Project No. 9018

This AGREEMENT is written pursuant to the Jericho-Underhill Water District (OWNER) request for O'Leary-Burke Civil Associates (ENGINEER) to provide professional engineering 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 CLIENT agrees to compensate the ENGINEER as follows:

I. Bidding Phase Services:	\$	240.00 (Lump Sum)
II. Construction Phase Services:		
A. Contract Administration	\$	210.00 (Lump Sum)
B. Resident Project Representative	\$	480.00 (Lump Sum)
III. Special Services:	\$	240.00 (Lump Sum)
Total amount of all items included in this AGREEMENT -	\$	1,170.00

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

Lump Sum Services: Includes all engineering costs and direct expenses per **Attachment No. 2**. Shall be invoiced / billed throughout the project duration based upon percentage complete. The cost to the CLIENT will be limited to the lump sum fee indicated for each LS work item above.

Not-To-Exceed Services: 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 1.5 times direct labor and profit of 15 % of direct labor and overhead, plus reimbursable expenses per **Attachment No. 3**. The cost to the CLIENT will be at or below the NTE fee indicated for each work item above.

All invoices/bills (see **Attachment No. 5**) 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.

It is understood that the ENGINEER's labor rates may be adjusted annually in January. 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, Attachment No. 3 – Reimbursable Expenses and Attachment No. 4 – Level of Effort**.

### **TERMS AND CONDITIONS**

Refer to **Attachment No. 6** for the **Terms and Conditions** that govern this AGREEMENT and any fully executed Amendment(s).

### **RESIDENT PROJECT REPRESENTATIVE**

Refer to **Attachment No. 7** for “**Duties, Responsibilities and Limitations of Authority of the Resident Project Representative**”.

### **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.

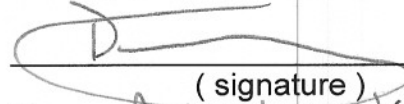
### **DURATION OF SERVICES**

The Engineer shall commence services on the Date of Execution of this Agreement, and shall fully complete all authorized services within 90 consecutive calendar days.

**OFFER OF PROFESSIONAL ENGINEERING SERVICES**

The ENGINEER, as an independent agent, offers to provide the professional engineering services described in this AGREEMENT, including Attachment Nos. 1 through 7, for the compensation and duration specified.

O'Leary-Burke Civil Associates, PLC

  
( signature )

By: Paul O'Leary Jr.

Title: President/owner

\_\_\_\_\_  
( signature )

By:

Title:

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

**OWNER ACCEPTANCE**

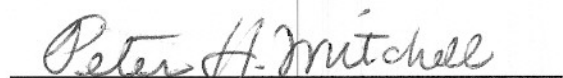
The OWNER acknowledges this to be a binding AGREEMENT and agrees to the conditions as stated. The ENGINEER is hereby directed to proceed with the scope of services on the Date of Execution identified below.

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 7.

OWNER: Jericho-Underhill Water District

  
Authorized Representative

6-3-2009  
Date of Execution

  
Witness to Signature

Executed in Duplicate

## ATTACHMENT NO. 1

### SCOPE OF SERVICES

The ENGINEER will perform the following scope of services.

#### I. BID PHASE SERVICES

A. The ENGINEER will provide the following support services to assist the OWNER in obtaining bids from contractors. The bid period for this project is 30 consecutive calendar days to allow bidders adequate time to become familiar with the work. The ENGINEER will:

1. Assist with procurement of the contract WORK and/or equipment to be purchased directly by the OWNER.
2. Coordinate the notification process for Disadvantaged Business Enterprises (DBEs) as required by the funding agency.
3. Utilize Bid Documents previously developed for the OWNER, prepare the Advertisements for Bid for publication in a Vermont newspaper of major circulation, and notify appropriate industry publications such as Dodge Reports and Works-in-Progress. Publication fees will be invoiced separately and are not included in this proposal.
4. Prepare necessary copies of drawings, contract/bid documents and technical specifications, and distribute them to interested parties. Construction contract documents will be distributed from the ENGINEER's office.
5. Conduct one Pre-Bid Meeting with interested contractors, representatives of regulatory and funding agency, and the OWNER. The ENGINEER will schedule the meeting no later than two weeks prior to the bid opening to allow bidders to become more familiar with the site and contract requirements. Bidder general and technical questions with the ENGINEER's responses will be published in the form of an addendum no later than five (5) consecutive calendar days before the bid date.
6. Attend the Bid Opening, administer the receipt of bids, compare bids, check for compliance with the contract requirements, call references, confirm math and tabulate the results. Based upon this review, the ENGINEER will make a written recommendation to the OWNER for award of the contract.
7. Modify Contract Documents to incorporate information included in bid addenda and publish five construction sets for contract signing.

## II. CONSTRUCTION PHASE

A. Contract Administration - Throughout the construction period, the ENGINEER will act as the OWNER's representative and liaison to the Contractor as defined and authorized under the Construction Contract Documents. As the OWNER's representative, the ENGINEER will:

1. Conduct a project Preconstruction Meeting with the OWNER, representatives of the regulatory and funding agency and the Contractor.
2. Review submittals for general conformance with the design plans and specifications, and provide the Contractor with a list of required submittals at the time of the Preconstruction Meeting. Submittals will be required for estimated work and payment schedules, and specified equipment and materials. The Contractor is responsible for the means and methods of completing all of the work, and all safety programs. Copies of reviewed submittals indicating equipment and materials utilized will be incorporated into the Operation and Maintenance Manual for the OWNER reference.
3. Make recommendations to the OWNER on the Contractor's regular monthly pay requisitions and the initial and updated work schedules, and assist the OWNER, as necessary, with applications to the funding agency.
4. Prepare Change Orders for review and approval by the Contractor and OWNER, and process them to the funding agency for approval.
5. Coordinate regular project meetings with representatives of the OWNER, and monthly meetings with the Contractor, OWNER and funding agency.
6. Conduct substantial and final completion review with the OWNER and funding agency and make recommendations for payment as set forth in the Contract Documents.
7. Provide to the OWNER a final project cost summary.
8. Conduct the first year performance evaluation (if required) , and an 11<sup>th</sup> month performance/contract warranty inspection with the OWNER, Contractor and the funding agency representative.

B. Resident Project Representative (RPR) - Throughout the active construction period, the ENGINEER will provide RPR services to assist the ENGINEER in reviewing the work of the Contractor. The RPR (s) will:

1. Conduct on-site observations of the work to determine if it is in accordance with the Contract Documents.

2. Interpret the Contract Documents to address questions raised by the Contractor.
3. Make recommendations to the OWNER regarding work not meeting the requirements of the Contract Documents.
4. Witness equipment and material testing, and determine compliance with the Contract Documents.
5. Prepare regular field reports to document progress of the work.
6. Review work quantities submitted for payment by the Contractor and make recommendations to the OWNER.
7. Prepare work lists of items requiring completion or correction by the Contractor.
8. Coordinate with sub-consultants and testing laboratories for specialty work and materials testing.
9. The project budget assumes (full-time or part-time) RPR services throughout the active on-site work period for construction, estimated at one week. The ENGINEER will adjust the RPR services coverage as necessary, subject to the contractors work activities.
10. See **ATTACHMENT No. 7 - "Duties, Responsibilities and Limitations of Authority of the Resident Project Representative."** This document more definitively outlines the requirements of the RPR.
11. The ENGINEER will monitor the Contractor's schedule, staffing, quality of workmanship and progress throughout the construction period and advise the OWNER of deviations from the work schedules and the budget. If the Contractor is permitted to work outside the specified work hours or a proposed Contractor Change Order will add or delete contract time, the ENGINEER will review the approved budget for RPR services and immediately advise the OWNER, in writing, of any impact that this modification will have on the RPR or any other previously approved services.

### **III. SPECIAL SERVICES**

1. **Compaction and Concrete Testing** – The ENGINEER will assure that independent quality control soil compaction testing and concrete cylinder

collection and testing will be completed by a sub-consultant of the ENGINEER.

2. Record Drawings - Through the course of construction, the ENGINEER and RPR will work with the Contractor in recording the location of installed work and deviations from the design drawings. Upon completion of the project, the ENGINEER will prepare record drawings of the site and facility isometric and schematic drawings. The ENGINEER will provide the OWNER with two sets and Vermont Agency of Natural Resources ANR with one printed set plus the electronic (CD) copy of record drawings for their files.

3. Operations and Maintenance (O&M) Manual - The ENGINEER will prepare an O&M manual for the OWNER detailing normal operations, routine maintenance, emergency operations, and equipment information. The ENGINEER will provide two copies to the OWNER, one copy to the ANR, and maintain one copy on file for reference, in order to assist the facility operators with questions.

4. Start-up Assistance – The ENGINEER will provide operator training during construction and at the time of start-up.

NOTE: The OWNER's involvement is strongly recommended along with the facilities operations staff during construction. Observations made during construction and knowledge of "how things went together" can be an invaluable asset to those responsible for the facility.

#### **IV. ADDITIONAL SERVICES**

A. The ENGINEER will provide additional project related engineering services as requested by OWNER and as agreed by ENGINEER. Eligibility for such services is not guaranteed without prior approval by said agency.

**END OF ATTACHMENT No. 1**

## ATTACHMENT NO. 2

### Schedule of Fees

#### Standard Hourly Rates:

Standard hourly rates include salaries and wages paid to personnel in each billing class plus the cost of customary benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

The billing rates listed apply (for the duration of this agreement unless it is specifically amended or until January 1, 2010 to services specified in this Agreement and Additional Services as described in Attachment No. 1 - Scope of Services, Section IV.

#### Schedule: (Example only)

<u>Billing Class</u>	<u>Position Title</u>	<u>Hourly Rate</u>
9	Principal	\$ 90.00
8	Staff Manager	\$ 65.00
7	Project Manager	\$ 65.00
6	Project Engineer	\$ 60.00
5	Senior Engineer	\$ 60.00
4	Staff Engineer	\$ 55.00
3	Junior Engineer	\$ 45.00
2	Senior Technician	\$ 45.00
1	Technician	\$ 45.00
Administrative Staff		\$ 45.00

**END OF ATTACHMENT NO. 2**

## ATTACHMENT NO. 3

### Reimbursable Expenses (Example)

The expense items listed below will be billed as follows:

#### Subconsultant & Vendor Expenses:

Subconsultants	@ cost or cost plus a maximum of 8%
Outside Vendors	@ cost or cost plus a maximum of 8%

#### Travel Related Expenses:

Auto Travel (to include gas and other service charges)	@ \$0.445/mile
Other Travel (to include air fares, rentals, tolls, etc.)	@ cost
Meals & Lodging	@ cost

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

	Reproductions (provided in-house)
8½ x 11 one sided copy	@ \$0.08/each
8½ x 11 two sided copy	@ \$0.12/each
24 x 36 blueline print	@ \$2.00/each
36 x 48 blueline print	@ \$5.00/each
Mylar or velum plots	@ \$8.00/each

#### Administrative Expenses:

Postage	@ cost
Shipping	@ cost
Other Administrative Expenses	@ cost

END OF ATTACHMENT NO. 3

**Attachment #4**

**O'LEARY-BURKE CIVIL ASSOCIATES, PLC**

**PROPOSAL COST ESTIMATE**

BY:	PJO	KEY PERSONNEL:
DATE:	3/25/2009 revised 4-13-09	Professional Engineer (PE)
PROJ:	Jericho-Underhill Water District Stream Crossing	Senior Engineer (SE)
PROJ #:		Licensed Surveyor(LS)
FILE:		Engineer (E)
		Technician (T)
		Surveyor (S)
		Survey Crew (SC)

This COST ESTIMATE together with the AGREEMENT and the PROPOSAL form the CONTRACT DOCUMENTS.

NO.	TASK	PERS.	HOURS	HOURLY RATE	COST ESTIMATE	TOTAL
1	Bidding Phase Services	PE	0	\$90	\$0	\$240
		E	4	\$60	\$240	
2	Construction Phase Services A. Contract Administration	PE	1	\$90	\$90	\$210
		E	2	\$60	\$120	
		E	8	\$60	\$480	
3	Special Services	SC	2	\$120	\$240	\$240
<b>Total Construction Services</b>						<b>\$1,170</b>

**ATTACHMENT NO. 5**

As a minimum, the following information must appear on each engineering invoice/bill to project Owners expecting loan or grant reimbursement from the VT FED

**Engineering Consultant's Letterhead**

To: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date \_\_\_\_\_  
 Payment Request No. \_\_\_\_\_  
 Engineer Invoice No. \_\_\_\_\_  
 Billing period: \_\_\_\_\_ to \_\_\_\_\_

Project #: Project Title: \_\_\_\_\_  
 State Loan and/or Grant No.: \_\_\_\_\_

List all engineering service categories as they appear in the approved Agreement. If a lump sum (LS) fee, identify the total \$ for each service, the total previously billed, the amount due this billing period and the % complete including this billing. If a not-to-exceed (NTE) fee, identify personnel, hourly billing rate, hours and reimbursable expenses. If under a single service category there are multiple line item services with corresponding NTE amounts, all line item services must be listed and tracked monthly to reflect the amount previously billed, amount due this period, total amount to date and % complete of line item based on the amount identified in the agreement

**Engineering Step & Service Summary\***

**Agreement date:** \_\_\_\_\_

<b><u>Step I Phase</u></b>	<b><u>Previously Billed</u></b>	<b><u>Due this period</u></b>	<b><u>Total to date</u></b>	<b><u>%</u></b>
<b>Feasibility Study and Report</b>				
Agreement: \$ _____ (LS)	\$ _____	\$ _____	\$ _____	_____
<b>Other:</b>				
List each service, \$ ____ (LS or NTE )	\$ _____	\$ _____	\$ _____	_____
<b>Amendments:</b>				
List each service, \$ ____ (LS or NTE )	\$ _____	\$ _____	\$ _____	_____
<b>Preliminary Design:</b>				
Agreement: \$ _____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>Other:</b>				
List each service, \$ ____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>Amendments:</b>				
List each service, \$ ____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<hr/> <hr/>				
<b>TOTAL Step I Phase</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>_____</b>

As a minimum, the following information must appear on each engineering invoice/bill to project Owners expecting loan or grant reimbursement from the VT FED

Agreement date: \_\_\_\_\_

<u>Step II Phase</u>	<u>Previously Billed</u>	<u>Due this period</u>	<u>Total to date</u>	<u>%</u>
<b>Final Design</b>				
Agreement: \$ _____ (LS)	\$ _____	\$ _____	\$ _____	_____
<b>Other:</b>				
List each service, \$ ____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>Amendments:</b>				
List each service, \$ ____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>TOTAL Step II Phase</b>	\$ _____			
<b>TOTAL</b>		\$ _____	\$ _____	_____

Agreement date: \_\_\_\_\_

<u>Step III Phase **</u>	<u>Previously Billed</u>	<u>Due this period</u>	<u>Total to date</u>	<u>%</u>
<b>Bidding Services</b>				
\$ _____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>Construction Basic (including 1 year performance evaluation and 11<sup>th</sup> month inspection when required)</b>				
\$ _____ (LS)	\$ _____	\$ _____	\$ _____	_____
<b>Resident Project Representative:</b>				
\$ _____ (NTE)	\$ _____	\$ _____	\$ _____	_____
<b>Other:</b>				
List each service, \$ ____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>Amendments:</b>				
List each service, \$ ____ (LS or NTE)	\$ _____	\$ _____	\$ _____	_____
<b>TOTAL Step III Phase</b>	\$ _____	\$ _____	\$ _____	_____

**\*Sub-consultant and other services:** provide the same billing/invoice information under the appropriate engineering service listing and attach a copy of their bill/invoice. (Note: allowable engineer mark-up NTE 8%)

**\*\* Construction Contract – Date of issuance of the “Notice to Proceed”:** \_\_\_\_\_

Original Construction Contract Completion date: \_\_\_\_\_

Latest Amended Construction Contract Completion date: \_\_\_\_\_

**Certification statement:** I certify that the services provided during this billing period are, to the best of my knowledge and belief, in accordance with the Agreement and any Amendments executed by the Owner and Engineer and as approved for funding by the State of Vermont.

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

(Engineer's signature)

## ATTACHMENT NO. 6

### 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 day 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 CLIENT 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 of, 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. Shop Drawing Review:** The ENGINEER will review the contractor's submittals for conformance with the design concept and the contract documents. The review shall be consistent with the standard of care referred to above. The ENGINEER expects each of the contractor's submittals to have been reviewed by the contractor for accuracy and completeness. The ENGINEER will either; a.) Approve the document as submitted, b.) Approve subject to resubmittal in response to comments or c.) Disapprove requiring resubmittal. The ENGINEER will give timely written notification to the OWNER if a contractor's repetitive resubmittal or failure to submit the specified materials or equipment will have an adverse impact the ENGINEER's services budget.

**18. 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 and 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.

**19. 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.

**20. 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.

- 21. 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.
- 22. 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.
- 23. 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).

- 24. 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.
- 25. 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.
- 26. 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.
- 27. 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. 6**

## ATTACHMENT NO. 7

### Duties, Responsibilities and Limitations of Authority of the Resident Project Representative

Resident Project Representative (RPR) assists the ENGINEER in observing performance of the work of Contractor.

Through on-site observations of the work in progress and field checks of materials and equipment by the RPR (and any assistants), the ENGINEER shall endeavor to provide protection for the OWNER against defects and deficiencies in the work of the Contractor, but the furnishing of such services will not make the ENGINEER responsible for or give the ENGINEER control over construction means, methods, techniques, sequences and procedures, or for safety precautions or programs, or for the Contractor's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of the ENGINEER in the ENGINEER'S agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

#### A. GENERAL:

The RPR is the ENGINEER'S agent at the site, will act as directed by and under the supervision of the ENGINEER, and will confer with the ENGINEER regarding the RPR's actions. The RPR's dealings in matters pertaining to the on-site work shall in general be with the ENGINEER and the Contractor keeping the OWNER advised as necessary. The RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of the Contractor. The RPR shall generally communicate with the OWNER with the knowledge of and under the direction of the ENGINEER.

#### B. DUTIES AND RESPONSIBILITIES OF RPR:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by the Contractor, and consult with the ENGINEER concerning acceptability.
2. Conferences and Meetings: Attend meetings with the Contractor, such as preconstruction conferences, progress meetings, job conferences, and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
  - a. Serve as the ENGINEER'S liaison with the Contractor, working principally through the Contractor's superintendent, and assist in their

understanding the intent of the Contract Documents, and assist the ENGINEER in serving as the OWNER'S liaison with the Contractor when the Contractor's operations affect the OWNER'S on-site operations.

- b. Assist in obtaining from the OWNER additional details or information, when required for proper execution of the Work.

4. Shop Drawings and Samples:

- a. Record date of receipt of Shop Drawings and samples.
- b. Receive samples which are furnished at the site by the Contractor, and notify the ENGINEER of availability of samples for examination.
- c. Advise the ENGINEER and the Contractor of the commencement of any Work requiring Shop Drawings or samples, if the submittal has not been stamped "No Exception Taken" by the ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspections and Tests:

- a. Conduct on-site observations of the Work in progress to assist the ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to the ENGINEER whenever the RPR believes that any Work is unsatisfactory, faulty or defective, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the ENGINEER of Work that the RPR believes should be corrected or rejected, or should be uncovered for observation, or requires special testing, inspection or approval.
- c. Verify that any tests, equipment and system start-ups and/or operating and maintenance training required under the construction contract are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records thereof; and review these records, and report to the ENGINEER appropriate details relative to the test procedures and start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the ENGINEER.

6. Interpretation of Contract Documents: Report to the ENGINEER when clarifications and interpretations of the Contract Documents are needed, and transmit to the Contractor clarifications and interpretations as issued by the ENGINEER.
7. Modifications: Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications, and submit any recommendation to the ENGINEER. Transmit to the Contractor decisions as issued by the ENGINEER.
8. Records:
  - a. Maintain orderly files for correspondence, reports of job conferences, Shop Drawings, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER'S clarification and interpretations of the Contract Documents, progress reports, and other Project related documents.
  - b. Keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions of Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the ENGINEER.
  - c. Record names, addresses and telephone numbers of all Contractors, sub-contractors, and major suppliers of materials and equipment.
9. Reports:
  - a. Furnish the ENGINEER periodic reports as required of progress of the Work and of the Contractor's compliance with the progress schedule, schedule of Shop Drawings and sample submittals.
  - b. Consult with the ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
  - c. Draft proposed Change Orders, obtaining back-up material from the Contractor and recommend to the ENGINEER Change Orders and Field Orders.
  - d. Report immediately to the ENGINEER and the OWNER upon the occurrence of any accident.

10. **Payment Requests:** Review applications for payment with the Contractor for compliance with the established procedure for their submission and forward with recommendations to the ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, work completed, and materials and equipment delivered at the site but not incorporated in the Work.
11. **Certificates, Maintenance and Operation Manuals:** During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents and have this material delivered to the ENGINEER for review and forwarding to the OWNER prior to final payment for the Work.
12. **Completion:**
  - a. Before the ENGINEER issues a Certificate of Substantial Completion, submit to the Contractor a list of observed items requiring completion or correction.
  - b. Conduct final inspection in the company of the ENGINEER, the OWNER, and the Contractor and prepare a final list of items to be completed or corrected.
  - c. Observe that all items on the final list have been completed or corrected and make recommendations to the ENGINEER concerning acceptance.

C. **LIMITATIONS OF AUTHORITY:**

The Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by the ENGINEER.
2. Shall not exceed limitations of the ENGINEER'S authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of the Contractor, sub-contractors, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

5. Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection in the Work.
6. Shall not accept Shop Drawings or sample submittals from anyone other than the Contractor.
7. Shall not authorize the OWNER to occupy the PROJECT in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the ENGINEER.

**END OF ATTACHMENT NO. 7**