

Date: February 12, 2014

## Highway Department Agenda Items

Request approval for the following items:

**(A) ITEM: Fence repair from off-rd. drainage job**

VENDOR: Atlas Fence (county bid)

AMOUNT: \$1,290.00

ACCOUNT CODE: SD85404 0400

**(B) ITEM: Hydraulic Hose & fittings-elbows, swivels, couplers**

VENDOR: Frank Murken Products

AMOUNT: \$1,843.50

ACCOUNT CODE: DB513043

**(C) ITEM: 8 Tires for truck #41**

VENDOR: Commercial Truck Tire

AMOUNT: \$4,200.00

ACCOUNT CODE: DB513042

**(D) ITEM: Oil Pan replacement for truck #29**

VENDOR: Beam Mack

AMOUNT: \$1,422.84

ACCOUNT CODE: DB513046

**(E) ITEM: Repair to the swing gear box and hydraulic pump #45**

( Excavator)

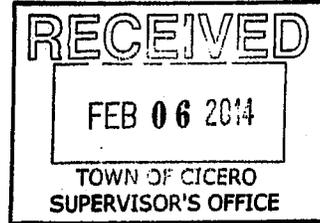
VENDOR: Vantage Equipment

AMOUNT: \$4,914.29

ACCOUNT CODE: DB513055

**AGENDA**  
**February 12, 2014**

TO: Town Board  
FROM: Jody L. Rogers  
DATE: February 4, 2014  
RE: Agenda Items



**Appointment Parks & Recreation Commission Clerk**

I would like to recommend Lori Lake-Toms to the position of Parks and Recreation Commission Clerk at a per diem rate of \$80/meeting.

**Purchase Approvals:**

ITEM: Tree removal, stump grinding or tree trimming  
Gateway Park \$2,800  
Central Park \$930  
Senior Center \$150

VENDOR: Lumberjack Tree Service  
AMOUNT: \$3,880 (County Contract Pricing)  
Budget Code: A6772.42 \$150  
A7110.44 \$3,730

ITEM: 75 cubic yards Infield Mix delivered – Central, Skyway and Gateway Parks

VENDOR: Vitale Ready Mix Concrete Inc.  
AMOUNT: \$1575 (County Contract Pricing)  
Budget Code: A7110.45CL \$630  
A7110.45NL \$630  
A7110.45 \$315

ITEM: 90 cubic yards topsoil delivered  
VENDOR: Vitale Ready Mix Concrete Inc.  
AMOUNT: \$1777.50 (County Contract Pricing)  
Budget Code: A6772.40 \$100  
A7110.45CF \$592.50  
A7110.45CL \$296.25  
A7110.45CS \$296.25  
A7110.45NL \$296.25  
A7150.42 \$196.25

ITEM: Mowing Contract (year 3 of 3 year contract) Mowing Cemeteries: Cicero, Cicero Center (Stone Arabia), Taft Settlement (April –October)

VENDOR: AAA Quick Plows

AMOUNT: \$8,105

Budget Code: A8810.44

ITEM: Herbicide Contract – certified applicator for parks, buildings, cemeteries (year 3 of 3 year contract)

VENDOR: Commercial Lawn and Landscaping

AMOUNT: \$1,467

Budget Code: A6772.45 \$58  
A7110.44 \$925  
A7150.45 \$147  
A8810.4 \$279  
B7310.42 \$58

**Staff Appointments:**

Kaci Toms

Hire Title: Recreation Attendant – Fall Winter Spring Programs

Hire Date: January 27, 2014

Hire Rate: \$8.00/hour

Jessica

**CICERO TOWN  
CLERK'S OFFICE**

# Memo

**To:** Town Board  
**From:** Tracy  
**Date:** Wednesday, February 5, 2014  
**Re:** Town Clerk Office Annual Software Support/Maintenance Agreement  
**TBM:** Wednesday, February 12, 2014

I respectfully ask the board for approval for the annual Software Support/Maintenance Agreement with Business Automation Services, Inc. for the Town Clerk's Office. This is the software system that the Town Clerk's Office uses for all daily business. The annual amount is \$1,230.00. There has been no increase in this amount. Please find attached a review of what the support/maintenance includes.

If you have any questions, please feel free to contact me before the town board meeting on Wednesday, February 12, 2014.

Thank you,

*Tracy*

Tracy

cc: Enclosures  
file





***"Transforming the way government works"***

661 Plank Road • Clifton Park • New York • 12065 • Phone 518-371-6869 • Fax 518-371-8207

Clerk Licensing System Notes:

1. The Licensing System will be initialized with data available from the NYS Department of Agriculture and Markets for dogs registered in your municipality at no additional cost.
2. The Annual Software Maintenance fee covers any State mandated changes and other software enhancements as well as unlimited telephone and remote assistance support.
3. System configuration and training hours are invoiced at our standard rate of \$960/day. Training will be conducted at your location, unless otherwise instructed. Travel expenses includes, but is not limited to, personal vehicle transportation at the Federal/State Mileage Rate of .565 cents/mile; train/air fare; lodging; parking; tolls and per diem meal expenses.
4. The BAS professional rate for consulting, systems analysis, custom software development or technical support is \$140 per hour; estimates will be provided in advance for client approval before this type of work would be initiated
5. The software will run on supported Windows operating systems; prospective purchasers should carefully review the BAS Software Hardware/Network Guidelines for more details.
6. To upgrade from single-user to a network version or to add additional network workstations, please call for pricing and additional information.
7. Internet Access is required for downloading software updates, email support and web-based technical support. BAS utilizes remote connection technology for off-site support; no 3rd party communications software is needed.
8. Installation support and training is normally completed within approximately 30-60 days after receipt of a confirmed order; however, the actual schedule is dependent on receiving confirmation that the client's computer system meets the BAS Windows Software Hardware/Network Guidelines.
9. To order the software, a 50% down payment is needed along with a signed purchase order or letter of commitment.

**RESOLUTION TO APPROVE AND AUTHORIZE THE SUPERVISOR TO EXECUTE SAID  
DOCUMENT WITH GENERAL CODE TO SCAN ZONING AND PLANNING DOCUMENTS  
(SAID MONIES WILL BE PAID FOR VIA THE NYS ARCHIVAL GRANT – Not to exceed  
\$36,778)**

**Resolution:**

Councilor \_\_\_\_\_ moved the adoption of a resolution to approve and authorize the supervisor to execute the contract with General Code to scan Zoning and Planning Department documents (said monies will be paid for via the NYS Archival Grant – not to exceed \$36,778. Motion was seconded by Councilor

\_\_\_\_\_.

Ayes - \_\_\_\_\_ and Noes - \_\_\_\_\_. Motion carried.

\*Please contact me before the Town Board Meeting (1/22/2014), if you have any questions.

#9 → 2/12/14 TBM

Zoning & Planning

# Memo

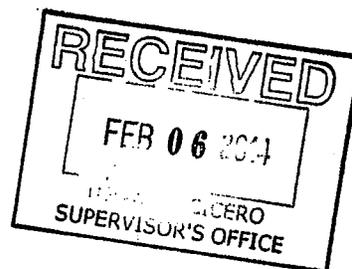


**To:** Jessica Zambrano, Supervisor  
**From:** Richard Hooper, Director, Code Enforcement  
**CC:** Town Board Members, Comptroller's Office, JoLee Olszewski  
**Date:** February 6, 2014  
**Re:** Software Maintenance Fee For 2014

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The Office requests Town Board approval to pay the annual maintenance fee for Muncity, our computer program. The \$9,257 fee is a budgeted item.

Thank you



**ADVERTISEMENT  
NOTICE TO CONTRACTORS  
CONTRACT FOR MAINTENANCE OF DRAINAGE FACILITIES  
TOWN OF CICERO**

Sealed bids for the Contract for Maintenance of Drainage Facilities, will be received by the Town Board, Town of Cicero, Onondaga County, New York, at the office of the Town Board, 8236 South Main Street, Cicero, New York, until 11:00 A.M. Local Time, March 5, 2014, and there at said office, at said time, publicly opened and read aloud.

The project includes the maintenance of drainage facilities as may be required by the Town of Cicero during the term of the contract.

The Contract Documents consisting of the Advertisement, Information for Bidders, Bid, Agreement, General Provisions, General Specifications, Technical Specifications, and Payment Items may be obtained from C&S Engineers, Inc., 499 Col. Eileen Collins Boulevard, North Syracuse, New York, 13212 upon deposit of \$50.00 per set (**Check Payable to C&S Engineers, Inc.**). Any bidder, submitting a sealed bid, upon returning the documents in good condition within thirty (30) days of the bid date will be refunded the full amount of their deposit. Any non-bidder will not be refunded his deposit.

Copies of the above-described Contract Documents may be examined at no expense at the office of the Town Clerk, Town Hall, 8236 South Main Street, Cicero, New York.

This project is a Materials, Labor and Equipment project and the contractors should not include in their Bid the Sales and Compensating Use Taxes on the cost of materials which are to be incorporated into the project and which are to be separately sold by the Contractor to the municipality prior to incorporation into the project.

**EACH BID MUST BE ACCOMPANIED BY CASH, CERTIFIED CHECK OR BID BOND IN AN AMOUNT NOT LESS THAN FIVE PERCENT (5%) OF THE AMOUNT OF THE BID IN THE FORM AND SUBJECT TO THE CONDITIONS PROVIDED IN THE INFORMATION FOR BIDDERS.**

The right is reserved to waive any informalities in the Bid and to reject any or all bids.

TOWN BOARD, TOWN OF CICERO

By: \_\_\_\_\_  
Jessica Zambrano, Supervisor

Dated: February 13, 2014



**C&S Companies**  
499 Col. Eileen Collins Blvd.  
Syracuse, NY 13212  
p: (315) 455-2000  
f: (315) 455-9667  
www.cscos.com

February 10, 2014

Cicero Town Board  
Town of Cicero, Town Hall  
8236 South Main Street  
Cicero, New York 13039

Re: Engineering Services – Study and Construction Phase  
Contract for Sanitary Sewer Maintenance, Improvement, and Emergency Repair

File: 110.138.014

Dear Board Members:

We are pleased to submit this proposal to render engineering services in connection with Sanitary Sewer Maintenance, Improvement and Emergency Repair in the Town of Cicero (hereinafter called the "Project"). The specific scope of which is set forth in the attached Exhibit "A" entitled, "Scope of Professional Services," consisting of Page A-1. We ask you to furnish us with any additional information relating to your requirements not currently identified, including any special or extraordinary considerations for the Project or special services you may require. Additionally, we ask you to make available all pertinent reports, data, or other information necessary for our performance and upon which we may rely in performing services hereunder.

In exchange for performance of our services, you agree to pay us a fee based on our hourly rates. A part of our work will be dealing with emergency repairs. Consistent with our efforts in 2013, the total fee will be \$8,000, assuming six typical repairs. In addition, we will be measuring flows in portions of the Town sewer system to locate infiltration and inflow. This is needed to begin to develop a sanitary sewer capital improvement plan required in your agreement with the Onondaga County Department of Water Environment Protection (OCWEP). The cost for this engineering effort will not exceed \$10,000.00.

In addition to the Basic Services as set forth in Exhibit "A," we also propose at this time to perform any Additional Services as may be requested by you in writing during the life of this Project. In exchange for any Additional Services we may perform, you agree to pay us on the basis of our hourly billing rates. Reimbursable Expenses incurred by us in connection with all Basic and any Additional Services, which may be requested, will be charged on the basis of actual cost.

The Terms and Conditions governing the performance and payment of our services proposed herein, including respective responsibilities and other pertinent matters, are set forth in Exhibit "B" Terms and Conditions (Study and Report Phase), and Exhibit "C," "Terms and Conditions (Construction Phase)," attached hereto.

This proposal, together with attached Exhibits "A", "B", and "C" constitutes the entire agreement between us with respect to its subject matter and supersedes all prior and contemporaneous written or oral understandings with respect to that subject matter. This proposal may be amended, supplemented, modified, or canceled only by a written instrument signed by both parties.

If this proposal, together with its governing Terms and Conditions, description of services to be rendered and fee schedule set forth herein meet with your approval, kindly acknowledge the same on the line indicated below and return to the undersigned. This proposal will become an agreement upon your acceptance, as acknowledged below. Your acceptance will constitute authorization to proceed on this Project.

Very truly yours,

C&S ENGINEERS, INC.



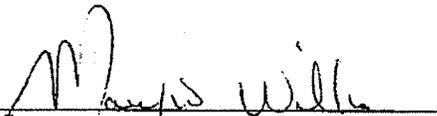
Douglas R. Wickman, P.E.  
Principal

DRW/gmm

Accepted this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
Authorized Representative

Subscribed and sworn to before me  
this 10<sup>th</sup> day of February, 2014.

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

MARILYN WILKS  
Notary Public, State of New York  
Qual. in Onon. Co. No. 01W16040214  
My Comm. Exp. April 17, 2014

## EXHIBIT A

### SCOPE OF PROFESSIONAL SERVICES

#### CONTRACT FOR SANITARY SEWER MAINTENANCE, IMPROVEMENT AND REPAIR

**OWNER:** Town of Cicero

**ENGINEER:** C&S Engineers, Inc.

ENGINEER shall perform the following services after acceptance of ENGINEER's proposal by OWNER, but only when requested on a case by case basis:

1. Coordinate work with the Town's contractor and obtain available background information from the Onondaga County Department of Water Environment Protection (OCWEP).
2. Review the nature of the problem with OCWEP and the property owner and plan a course of action.
3. During the repair we will be present in the field to determine the likely cause of the problem and confirm the extent of the repair advisable. If a utility company has caused the damage, we will contact the company involved so that they can observe the conditions.
4. Thereafter, we will provide spot checks of the work progress, assist with any changing conditions, review invoices submitted, and certify to the Town that the charges are appropriate.
5. Provide assistance to the Town associated with on-going maintenance issues and infiltration and inflow removal as agreed with OCDWEP.
6. Measure sewer flows during the winter and then again during the spring at between ten and twenty manholes.
7. If these measurements indicate significant infiltration or inflow, work with OCWEP to find sources and coordinate repairs.
8. Estimate the amount of infiltration and/or inflow removed from the sewer system.
9. Use this experience to begin to develop a six year plan as required.

A-1

**EXHIBIT "B"**  
**TERMS & CONDITIONS**  
**(Study and Report Phase)**

These Terms and Conditions govern the performance by or through Engineer of the Scope of Services set forth in the letter part of this Agreement. Capitalized terms used herein, unless otherwise defined, shall have the meanings ascribed thereto in the letter and/or scope of services. Owner and Engineer agree as follows:

**1.01 Basic Agreement**

A. Engineer shall provide, or cause to be provided, the services set forth in the letter part of this Agreement, and Owner shall pay Engineer for such Services as set forth in the letter part of this Agreement.

**2.01 Payment Procedures**

A. *Terms of Payment.* Refer to the letter part of this Agreement between Owner and Engineer for the method of payment to Engineer.

B. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

C. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, 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, without liability, after giving seven days written notice to Owner, 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. In addition, Owner agrees to pay all expenses incurred by Engineer as a result of Owner's failure to fulfill its obligations under this Agreement, including but not limited to, costs, disbursements, and attorney's fees.

D. *Payment upon Termination.* In the event of termination of Engineer's services by Owner, Engineer will be paid for Basic Services rendered to date of termination in accordance with the method of payment defined in the letter part of this Agreement except that under the lump sum method, the adjusted fee shall be determined by proportioning the stipulated amount to reflect the percentage of completion of the Project, as mutually agreed to by Owner and Engineer. Engineer will also be paid for additional services rendered to date of termination in accordance with the method of payment defined in the letter part of this Agreement.

**3.01 Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth in the letter part of this Agreement.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

**4.01 Owner's Responsibilities**

Owner shall perform the following in a timely manner so as not to delay the services of Engineer under this Agreement. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all reports, data and other information furnished

pursuant to this paragraph. Engineer may use such reports, data and information in performing or furnishing services under this Agreement.

A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Owner's policies and decisions with respect to Engineer's services for the Project. Engineer shall not rely on directions from anyone outside the scope of that person's authority as set forth in written delegations. Directions and decisions made by the Owner's representatives shall be binding on the Owner.

B. Provide all criteria and full information as to Owner's requirements, including study objectives and constraints, space, capacity, and performance requirements; flexibility and expendability; and any budgetary limitations.

C. Assist Engineer by placing at Engineer's disposal all available information pertinent to the Project including previous reports and any other existing data relative to the Project.

D. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

E. Furnish to Engineer, as Engineer requires for performance of Engineer's Basic Services (except to the extent provided otherwise in Section 1.01), the following:

1. data prepared by or services of others, including without limitation borings, probings, subsurface explorations and hydrographic surveys at or contiguous to the site, laboratory tests and inspections of samples, materials and equipment;
2. appropriate professional interpretations of all of the foregoing;
3. environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
4. property, boundary, easement, right-of-way, topographic and utility surveys;
5. property descriptions;
6. zoning, deed and other land use restriction; and
7. other special data or consultations not covered in Section 1.01; all of which Engineer may use and rely upon in performing services under this Agreement.

F. Owner shall arrange for safe access to and make all provisions for Engineer and its consultants to enter upon public and private property as required for Engineer to perform services under this agreement.

**5.01 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

**EXHIBIT "B"**  
**TERMS & CONDITIONS**  
**(Study and Report Phase)**

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 Agreement's terms 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 Owner 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 Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 5.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 5.01.A.1 or 5.01.A.2 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 Project 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.

**6.01 Controlling Law**

This Agreement is to be governed by the law of the state of New York without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions. It is further agreed that any legal action between the Owner and Engineer arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Onondaga County, New York.

**7.01 Successors, Assigns, and Beneficiaries**

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 7.01.B the assigns of Owner 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 Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

**8.01 General Considerations**

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 the subject 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. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers. Engineer may also rely upon publically available information that is ordinarily used by members of the subject profession.

B. Owner agrees that if Engineer is not employed to provide professional services during the Design, Bidding (if the work is put out for bids) or the Construction Phases of the Project. Engineer will not be responsible for, and Owner shall indemnify, hold Engineer (and Engineer's professional associates and consultants) harmless, and defend Engineer from all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by Owner or others. Nothing contained in this paragraph shall be construed to release Engineer (or Engineer's professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which Engineer has undertaken or assumed under this Agreement.

C. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Such documents are not intended or represented to be suitable for reuse by Owner or others in extensions of the facility beyond that now contemplated or on any other facility. Any reuse by Owner or others without specific written verification or adaptation by Engineer for the specific purpose intended will be at user's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Owner shall indemnify and hold harmless Engineer and Engineer's independent professional associates and consultants from all claims, losses, damages of any kind or nature, judgments, and expenses (including, but not limited to, reasonable attorney's fees and any costs), arising out of or resulting therefrom. Any such verification and adaptation will entitle Engineer to further compensation at rate to be agreed upon by Engineer and Owner.

D. The specific schedule of services is more specifically described in the letter part of this Agreement or an Exhibit thereto. The term of this agreement commences upon the acceptance of this Agreement (including all exhibits) by owner and terminates upon completion of the services described in the letter part of this Agreement. Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and

Portions of this document have been taken from EJCDC E-520 Short Form Agreement Between Owner and Engineer for Professional Services  
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**EXHIBIT "B"**  
**TERMS & CONDITIONS**  
**(Study and Report Phase)**

to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; strikes; flood blizzard, labor unrest, riot; or any cause the affected party is unable to prevent or foresee with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the anticipated extent of any delay and its efforts to minimize the extent of delay and resume performance under this Agreement.

E. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's (including Engineer's employees, officers, directors, agents and insurers, partners, and consultants) total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater. The Owner may negotiate with the Engineer in the event the Owner wishes to change the total liability described herein but acknowledges that any change may result in an additional fee. This additional fee is in consideration of the greater risk involved in performing work for which there is an increase or no limitation of liability.

F. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If 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 Owner: (i) retains appropriate specialist consultants or contractors 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.

#### 9.01 Opinions of Probable Cost

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's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Engineer cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Engineer. If prior to the Bidding or Negotiating Phase Owner wishes greater assurance as to Total Project or Construction Costs, Owner shall employ an independent cost estimator.

#### 10.01 Dispute Resolution

A. Owner and Engineer agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them as to the execution, meaning of, or performance under the terms of this Agreement prior to exercising their right under Section 10.01(B) below. The thirty-day period may be extended upon mutual agreement of the parties.

B. If any dispute cannot be resolved pursuant to paragraph 10.01(A) and only if mutually agreed by Owner and Engineer, said dispute and all unsettled claims, counterclaims and other matters in question between them arising out of or relating to the execution, meaning of, or performance under the terms of this Agreement or the breach thereof ("disputes") shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding upon them. The cost of mediation shall be shared equally between the parties.

C. This Section 10.01 shall survive any termination or cancellation of this Agreement.

#### 11.01 Total Agreement/ Severability

This Agreement (consisting of the letter part of this Agreement, this Exhibit "A" and any additional exhibits referenced in the letter part of this Agreement), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Any provision or part of this Agreement held by a court of law to be invalid or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part therefore with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**EXHIBIT "C"**  
**TERMS & CONDITIONS**  
**(Construction Phase)**

These Terms and Conditions govern the performance by or through Engineer of the Scope of Services set forth in the letter part of this Agreement. Capitalized terms used herein, unless otherwise defined, shall have the meanings ascribed thereto in the letter and/or scope of services. Owner and Engineer agree as follows:

**1.01 Basic Agreement**

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D. *Payment upon Termination.* In the event of termination of Engineer's services by Owner, Engineer will be paid for Basic Services rendered to date of termination in accordance with the method of payment defined in the letter part of this Agreement except that under the lump sum method, the adjusted fee shall be determined by proportioning the stipulated amount to reflect the percentage of completion of the Project, as mutually agreed to by Owner and Engineer. Engineer will also be paid for additional services rendered to date of termination in accordance with the method of payment defined in the letter part of this Agreement.

**3.01 Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth in the letter part of this Agreement.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

**4.01 Owner's Responsibilities**

Owner shall perform the following in a timely manner so as not to delay the services of Engineer under this Agreement. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. Engineer may use such reports, data and information in performing or furnishing services under this Agreement.

A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to Engineer's services for the Project. Engineer shall not rely on directions from anyone outside the scope of that person's authority as set forth in written delegations. Directions and decisions made by the Owner's representatives shall be binding on the Owner.

B. Assist Engineer by placing at Engineer's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

C. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review.

D. Furnish to Engineer, as required for performance of Engineer's Basic Services (except to the extent provided otherwise in Section 1.01) the following:

1. Data prepared by or services of others including, without limitation, borings, probings, subsurface explorations and hydrographic surveys at or contiguous to the site, laboratory tests and inspections of samples, materials, and equipment.

2. Appropriate professional interpretations of all of the foregoing.

3. Other special data or consultations; all of which Engineer may use and rely upon in performing services under this Agreement.

E. Provide engineering surveys to establish reference points for construction (except to the extent provided in Section 1.01.)

F. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project; such legal services as Owner may require or Engineer may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s); such auditing service as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

G. If Owner designates a person to represent Owner at the site who is not Engineer or Engineer's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of Engineer and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to, and made a part of this Agreement before such services begin.

H. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

I. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings; and substantial completion inspections and final payment inspections.

J. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of any constituent of concern or any development that affects the scope or timing of Engineer's services, or any

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defect or non-conformance in the work of any Contractor.

K. Furnish, or direct Engineer to provide, Additional Services as stipulated in Section 3.01.

L. Require Contractor(s) to name Engineer as an additional insured on all Contractor's Liability Insurance Policies.

M. Provide services of an independent testing laboratory to perform all inspections, test and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner prior to their incorporation into the Work with appropriate professional interpretation thereof.

N. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

O. Except as provided in paragraph K, bear all costs incident to compliance with the requirements of this Section 4.01.

**5.01 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 Agreement's terms 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 Owner 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 Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 5.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 5.01.A.1 or 5.01.A.2 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 Project 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.

**6.01 Controlling Law**

This Agreement is to be governed by the law of the state of New York without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions. It is further agreed that any legal action between the Owner and Engineer arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Onondaga County, New York.

**7.01 Successors, Assigns, and Beneficiaries**

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 7.01.B the assigns of Owner 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 Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

**8.01 General Considerations**

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 the subject 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. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

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D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Such documents are not intended or represented to be suitable for reuse by Owner or others in extensions of the facility beyond that now contemplated or on any other facility. Any reuse by Owner or others without specific written verification or adaptation by Engineer for the specific purpose intended will be at user's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Owner shall indemnify and hold harmless Engineer and Engineer's independent professional associates and consultants from all claims, losses, damages of any kind or nature, judgments, and expenses (including, but not limited to, reasonable attorney's fees and any costs), arising out of or resulting therefrom. Any such verification and adaptation will entitle Engineer to further compensation at rate to be agreed upon by Engineer and Owner.

F. Owner agrees that if Engineer was not employed to provide professional services during the Design Phase of the Project, Engineer will not be responsible for, and Owner shall indemnify, hold Engineer (and Engineer's professional associates and consultants) harmless, and defend Engineer from all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from the services performed during such phases. Nothing contained in this paragraph shall be construed to release Engineer (or Engineer's professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which Engineer has undertaken or assumed under this Agreement.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's (including Engineer's employees, officers, directors, agents and insurers, partners, and consultants) total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater. The Owner may negotiate with the Engineer in the event the Owner wishes to change the total liability described herein but acknowledges that any change may result in an additional fee. This additional fee is in consideration of the greater risk involved in performing work for which there is an increase or no limitation of liability.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If 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 Owner: (i) retains appropriate specialist consultants or contractors 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.

**9.01 Period of Service**

A. The specific schedule of services is more specifically described in the letter part of this Agreement or an exhibit thereto. The term of this agreement commences upon the acceptance of this Agreement (including all exhibits) by owner and terminates upon completion of the services described in the letter part of this Agreement.

B. The provisions of this Section 9.01 and the various rates of compensation for Engineer's services provided for elsewhere in this Agreement, have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. If execution of this Agreement and authorization to proceed with the Bidding or Negotiating Phase is delayed beyond the date and time frame established in the letter part of the agreement, or if Engineer's services are delayed or suspended for more than three (3) months by Owner or for reasons beyond Engineer's control, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.

C. If Owner has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of Engineer's services shall be adjusted equitably.

D. Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; strikes; flood blizzard, labor unrest, riot; or any cause the affected party is unable to prevent or foresee with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the non-performance and the anticipated extent of any delay and its efforts to minimize the extent of delay and resume performance under this Agreement.

**10.01 Opinions of Probable Cost**

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's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Engineer cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Engineer. If prior to the Bidding or Negotiating Phase Owner wishes greater assurance as to Total Project or Construction Costs, Owner shall employ an independent cost estimator.

**11.01 Dispute Resolution**

A. Owner and Engineer agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them as to the execution, meaning of, or performance under the terms of this Agreement prior to exercising their right under paragraph 11.01(B) below. The thirty-day period may be extended upon mutual agreement of the parties.

B. If any dispute cannot be resolved pursuant to paragraph 11.01(A)

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and only if mutually agreed by Owner and Engineer, said dispute and all unsettled claims, counterclaims and other matters in question between them arising out of or relating to the execution, meaning of, or performance under the terms of this Agreement or the breach thereof ("disputes") shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding upon them. The cost of mediation shall be shared equally between the parties.

C. This Section 11.01 shall survive any termination or cancellation of this Agreement.

**12.01 Total Agreement/ Severability**

This Agreement (consisting of the letter part of this Agreement, this Exhibit "A" and any additional exhibits referred to in the letter part of this Agreement), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Any provision or part of this Agreement held by a court of law to be invalid or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner 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.