

Washington County Service Authority Board of Commissioners
July 25, 2011 Annual Meeting Minutes

The annual meeting of the Washington County Service Authority Board of Commissioners was called to order by the Chairman at 7:04 PM.

ROLL CALL

Commissioners Present:

Mr. Joe Chase, Chairman
Mr. D.L. Stout, Vice Chairman
Mr. Prince Coleman
Mr. Devere Hutchinson
Mr. Dwain Miller
Mr. Frank Stephon, IV
Mr. Kenneth Taylor

WCSA Staff Present:

Robbie Cornett, General Manager
Kimberly Harold, Controller
Amanda Paukovitz, Administrative Assistant
Mark Osborne, Technical Manager
April Helbert, Staff Engineer
Karen Barger, Admin. Assistant Engineering

Consultants Present:

Bobby Lane, PE, The Lane Group, Inc.
Kevin Heath, PE, Adams-Heath Engineering
Stevie Steele, PE, Anderson & Associates
Matthew Lane, PE, The Lane Group, Inc.

Also Present:

Mr. Mark Lawson, General Counsel
WCSA Employees

3. Approval of the Agenda

Mr. Cornett provided an Amended Agenda for Board consideration. Mr. Miller made the motion to approve the Amended Agenda. Mr. Miller's motion was seconded by Mr. Hutchinson and was approved by a 7-0-0-0 Board vote.

4. Public Query & Comment

There was no Public Query & Comment.

5. Approval of the Consent Agenda

- Minutes: June 27 Public Hearing.
- Routine Reports for June 2011.
- Financial Statement for June 2011.

- Check Register and General Manager Financial Report for June 2011.

Mr. Coleman made the motion to approve the Consent Agenda. Mr. Coleman's motion was seconded by Mr. Stout and was approved by a 7-0-0-0 vote of the Board.

6. Engineer's Report and Update

Mr. Kevin Heath of Adams-Heath Engineering reported on the following project:

• **Whites Mill Road Improvements**

A Construction Progress Meeting is scheduled for [Tuesday, July 26]. All three contractors have been working actively. Contract 1 (line work): Tipton Construction has completed a good deal of "highest priority line" and has started to fill some lines for testing. Contract 2 (pump station): Sun Contractors have completed the bulk of the plumbing work; they are waiting on HAPCO for the pump. Contract 3 (water storage tank): Mid Atlantic has completed installation of the tank and is waiting on water to complete testing and put the project into service. Overall, the project is 50-60% complete.

Mr. Chase inquired when the project is to be completed. Mr. Heath explained the initial phase was targeted for substantial completion in July. There were a number of weather related days early on in the project. The final completion date is targeted for early fall.

Mr. Stevie Steele of Anderson & Associates, Inc. (A&A) reported on the following project:

• **Exit 13 Sewer Project Phases 2 & 3**

An agreement for consideration will be presented later in the meeting. A&A, along with WCSA Staff, has decided a combination of community meetings on-site (in both locations) and Preliminary

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Engineering (to evaluate areas in advance) allows the project to move ahead with an appropriate amount of information. Upon Mr. Chase's inquiry, Mr. Steele affirmed the meetings would take place actually within the community, which achieves reduced travel time and increased attendance.

Mr. Jay Lester of Draper Aden Associates (DAA) is unable to attend tonight's meeting. He provided the following update through Mr. Cornett:

- **Route 58 Water Storage Tank**

Contract 1: they have begun pressure testing lines up to the new tank. One test passed today and one did not; they plan to look into this matter shortly. Contract 2: the tank is expected to be ready for service in the second or third week of August.

Mr. Bobby Lane of The Lane Group, Inc. reported on the following projects:

- **Galvanized Line Replacement Project**

The project continues to go well with both contractors. They have had a couple restoration clean-up issues, but they have been well rectified. Mr. Lane discussed remaining monies that had been budgeted for asphalt restoration that will be unnecessary. He has discussed this with Mr. Cornett and proposed to the Board that these leftover funds be utilized for additional galvanized line replacement. The contractor is willing to proceed, however pipe prices have increased significantly. Mr. Lane has spoken with RD, who is willing to entertain increasing the pipe prices for that work. The change order amount would be zero, but Mr. Lane and Mr. Cornett felt it most appropriate to seek the Board's concurrence before proceeding.

Mr. Stout and Mr. Hutchinson had some questions; discussion erupted amongst the Board.

At Mr. Chase's inquiry, Mr. Lane clarified that the approximate amount will most likely be in excess of \$100,000 for each contract. He also affirmed Mr. Stout by noting that they would not move forward prior to RD approval. Mr. Stout made the motion to utilize leftover asphalt funds to lay additional Galvanized Line Replacement (pending RD approval). Mr. Stout's motion was seconded by Mr. Stephon, and approved by a 7-0-0-0 vote of the Board.

- **Drinking Water Treatment Plant Expansion (6.6 MGD to 12 MGD)**

Mr. Lane presented a change order (which was distributed to the Board) for consideration. Page two of the change order lists the seven items proposed for inclusion. Through approval of the change order, Mr. Lane proposed utilizing RD contingency funds to replace bricks on the old building with new bricks that match the new construction, utilize gray split faced block on the booster station and add 60 days to the project (which had been added via addendum, but missed in the actual contract). Change Order #1 is in the amount of \$41,715.30, along with the addition of 60 days. Mr. Lane requested the Board consider approving this and authorizing Mr. Cornett to execute the change order. He offered to answer any questions the Board may have.

Mr. Taylor asked if this is the only change order for the project; Mr. Lane verified that so far, this is the only one.

Mr. Cornett added that WCSA would propose to pay for this change order out of contingency funds; Mr. Lane affirmed this is already part of the RD funding.

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Discussion erupted amongst the Board. Mr. Hutchinson had some questions regarding the proposed brick, which Mr. Lane answered and Mr. Cornett clarified. Mr. Taylor made the motion to approve the Change Order (see attached), which would increase the project price by \$41,715.30 and add 60 days to the project time. Mr. Taylor's motion was seconded by Mr. Stephon and approved by a Board vote 7-0-0-0.

• **Raw Waterline Replacement**

The replacement is complete. The contractor is demobilizing and proposes WCSA Staff do a final inspection on the waterline as soon as possible.

• **WCSA Administrative Building**

Employees have been moved and the roof replacement is going well (with the exception of some rain in the building today). There is still some work to be done, but completion is close.

Mr. Stout inquired if the roofer can stop the leaks; Mr. Lane affirmed he's doing very good work.

7. Water & Wastewater Construction Projects Report and Update

Mrs. Helbert referred to the Engineering Report in the Board Books, printed on purple paper. She provided the following updates:

• **Chestnut Mountain Road**

Contract 1 (waterline) is complete. There are a few minor punch list items remaining. Contract 2 is awaiting BacT results, which should be received this week. Those who have paid should be connected by the end of this week or beginning of next.

• **Chestnut Mountain Road & Rich Valley Road/Maiden Creek**

These projects have revised substantial completion (SC) dates, due to some additional weather days at the end of

June/beginning of July. The official SC dates have not yet been received from the contractor.

8. General Manager's Report & Update

Mr. Cornett referenced his General Manager's report at the Board's stations. He reported on the following noteworthy WCSA performance & accomplishments from all departments during June:

Water Production

- Produced over 209 million gallons of drinking water.

Distribution

- Coordinated the outside purchase of more than 24 million gallons of drinking water, bringing the total drinking water distributed to about 7.57 million gallons per day.

Meter Department

- 203 customers were telephoned following unusually high usage.
- 206 customers were notified that their water was to be turned off for non-payment.
- 91 meters were lifted for non-payment.

Customer Service

- Little more than \$9,200 was abated for 67 customer leaks (22 of which were tornado victims, comprising \$3,600).
- More than \$3,700 was written off as bad debt more than three years old.
- 30 water taps and 1 wastewater tap were applied for.
- Managed 220 reconnections/transfer of service requests in the last month.
- Late charges were added to 4,623 accounts.
- 1,275 disconnect notices were processed, resulting in 91 disconnects for non-payment.

Maintenance

- Have been busy, as usual.
- Repaired 42 leaks and 4 breaks.
- Constructed 17 water taps.
- Responded to 70 after hour call-outs.

Wastewater

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- Treated little more than 9 million gallons of wastewater in the last month.

Accounting

- Continues to pursue outstanding debt through Debt Setoff Collection.

Administrative Items

- Mr. Cornett referred to a legal-sized sheet, which indicates in yellow some of the referenced WCSA stats, from January through June. He has indicated in red some of the averages that are unusually high, such as the number of leaks, maintenance call outs and disconnects for June. Mr. Cornett also noted that the Bad Debt we continue to write off is improving. Back in 2008, the average [each month] was about \$7,000; it is now down to about \$3,700. He attributes this success to the hard work of the WCSA Accounting Dept.
- For 2010, our Middle Fork of the Holston River Drinking Water Plant was ranked #1, which means they had a perfect score for meeting all clarified and filtered water goals established by the Office of Drinking Water for conventional surface water treatment plants. There were 13 treatment plants in Virginia in 2010 with a perfect score out of the 131 conventional surface water treatment plants. Mr. Cornett wanted to recognize these individuals and their fine work.
- June resulted in changes to the nonresidential connection fees that are either *pending* or *paid* in our water system for the current fiscal year. Mr. Cornett referenced an attached chart, which provided the statistics in detail. The top chart (within the green section) showed that if all prospective connections were to come to fruition, WCSA would have sold \$192 million in capacity, at a rate of \$163 million; this would leave \$95 million to be subsidized by the WCSA customer base. These sales would have consumed 81% of WCSA's total available water capacity and 421% of sewer capacity.

The bottom chart indicates in red the recent customers to which capacity/connections were actually sold. The green section noted that \$1.251 million in additional capacity was sold at a rate of \$650,000, leaving \$600,000 to be subsidized by the remaining WCSA customer base. These sales consume 21% of our available water capacity. He noted that if this trend continues for the next five years, WCSA would be out of capacity. The abovementioned statistics do not include residential connection sales, which would also make an impact. Mr. Cornett intends to keep up with these charts and report back to the Board on a fiscal year basis.

- At the June 28, 2010 Board Meeting, the Board authorized the General Manager to approve change orders that may be deemed appropriate by the General Manager and the engineer for the Drinking Water Plant Expansion Project. This approval was limited to the Phase 1 Project, with a maximum amount per change order of \$50,000, an accumulative amount limited to \$260,000, and the General Manager must provide the Board with a report on such change orders. The changes were as follows:
 - Change Order #3: \$17,096 and adds 46 days to the project time; Mr. Cornett referenced a handout detailing the Change Order. This brings the SC date to August 20, 2011 and the final completion (FC) date to September 19, 2011.
- WCSA received notice from Mt. Rogers Planning District Commission that we were unsuccessful in obtaining CDBG grant funds for the Mendota Water System Improvement Project. 30 localities requested funds and 12 were offered funding; WCSA was ranked 18th. It is possible that some of the 12 localities may decline and others will be offered funding, but unlikely that the offers will make it to 18. Reportedly, \$3

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million was funneled out of this program for tornado relief, a good cause, but part of the reason why we were unsuccessful this year. In talking with both Mt. Rogers and DHCD Staff, we are encouraged to try again next year. WCSA plans to meet with both agencies later this year before making a decision for sure.

Mr. Stout inquired if Mendota's water line would run from Scott County; Mr. Cornett affirmed this.

Mr. Miller questioned if Mendota knew they did not receive funding. Mr. Cornett explained it is probably safe to notify residents that funding was unsuccessful and also of their plans for the future, now that more details have been clarified; this is to be addressed in the next month or so.

Mr. Hutchinson inquired of an alternative course of action. Mr. Cornett noted that DHCD is the best source (especially if we would like to fund the project completely by grant funding) and WCSA would like to apply with them at least one more time to secure grant funding. If that does not work out, WCSA could apply with other agencies.

9. Election of Officers for the 2011-2012 Fiscal Year

Mr. Chase noted that each year, officers are elected at the pleasure of the Board. At Mr. Stephon's motion, Mr. Taylor's second and Mr. Coleman's motion to cease nominations, Mr. Chase was reelected as Chairman of the Board with a 6-0-0-1 vote [1: Mr. Chase abstained]. By Mr. Stephon's motion and Mr. Coleman's second, Mr. Stout was reelected as Vice Chairman of the Board with a 6-0-0-1 vote [1: Mr. Stout abstained].

At Mr. Stout's motion and Mr. Hutchinson's second, Mrs. Harold was

reelected as Treasurer of the Board with a 7-0-0-0 vote.

By Mr. Hutchinson's motion and Mr. Coleman's second, Mr. Cornett and Mrs. Paukovitz were reelected as Secretary and Assistant Secretary of the Board, respectively, with a 7-0-0-0 vote.

10. Committee Appointments for the 2011-2012 Fiscal Year

At Mr. Taylor's motion, Mr. Hutchinson's second, a 7-0-0-0 Board vote and affirmation that both were still willing to serve, Mr. Stephon and Mr. Taylor were reappointed to represent WCSA on the Washington County Joint Utilities Committee. Mr. Cornett noted their next meeting is August 1 at 9 AM. By Mr. Stephon's motion, Mr. Taylor's second, a 7-0-0-0 Board vote and affirmation that he is still willing to serve, Mr. Coleman was reappointed to represent WCSA on the Chilhowie/Washington County Service Authority Treatment Plant Steering Committee. Mr. Cornett noted that their next meeting will not take place on [July] 26 or 27, but will be rescheduled for a later date.

11. Consideration of the 2011-2012 WCSA Regular Board Meeting Schedule and the 2012-2013 Annual Meeting

Mr. Cornett noted that both the Water & Waste Authorities Act, which WCSA is chartered under, and our By-Laws require scheduled monthly meetings and an annual meeting. Meetings are typically held on the fourth Monday of each month, except as noted for December 19 [2011] and May 21, 2012, which both fall on the third Monday of their respective months. The Annual Meeting would fall on July 23, [2012]. At Mr. Miller's motion, Mr. Stout's second and a 7-0-0-0 Board vote, the

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proposed meeting schedule was approved as presented.

12. Consideration of the 2011-2012 [erroneously listed as 2010-2011] Fiscal Year Banking Resolutions

Mrs. Harold explained the Banking Resolutions up for consideration, and on behalf of WCSA Staff, suggested the Board approve the same arrangements as current for fiscal year end 2012.

Upon Mr. Chase's inquiry and discussion by Mrs. Harold, Mr. Lawson affirmed that both resolutions could be approved with one motion.

By Mr. Stephon's motion, Mr. Hutchinson's second and a 7-0-0-0 Board vote, the Banking Resolutions (both the HUB Resolution & the WCSA Resolution) were approved as presented.

13. Presentation of the WCSA Capital Improvements Projects Report

Mrs. Karen Barger presented the WCSA Capital Improvement Projects (CIP) Report and gave examples of various projects within the report. She noted that WCSA plans to update the comprehensive document for the WCSA Board of Commissioners' report, the Washington County Board of Supervisors' report, and the report on the WCSA website biannually.

Mr. Chase thanked Mrs. Barger for her impressive report and presentation. He inquired when the CIP would be made available online. Mrs. Barger affirmed this would happen as soon as the information could be posted on the website, which would be tomorrow. Mr. Cornett thanked Mrs. Barger for this report, along with the invaluable support she provides to the WCSA Engineering Staff and customers.

14. Consideration of Authorizing and

Approving the Issuance, Award and Sale not to Exceed \$4,334,000 in Water System Revenue Bonds for the Reedy Creek Road Water System Improvement Project

Mrs. Harold noted that for each project, the Board must consider and approve all Bond Resolutions for bond-funded projects. McGuireWoods, WCSA Bond Counsel, has prepared the Certificate of Secretary and Resolution for the Reedy Creek Road Project to be considered by the Board. The abovementioned project has been accounted for within WCSA's rates, fees and charges. Therefore, we anticipate no rate adjustments besides those that have already been approved. Mrs. Harold explained that WCSA needs the Board to approve the bond issuance for the Reedy Creek Road Project. Mr. Miller made the motion to approve the Bond Resolution for the Reedy Creek Road Water System Improvement Project (see attached). Mr. Miller's motion was seconded by Mr. Hutchinson and was approved by a 7-0-0-0 vote of the Board.

15. Consideration of an Engineering Agreement Between WCSA and Anderson & Associates for the Exit 13 Wastewater Collection Project Phases 2 & 3

Mr. Steele provided a quick synopsis of the proposed engineering agreement and the approach for the Exit 13 Wastewater Collection Project Phases 2 & 3. He noted that the number one goal of Anderson & Associates is to collect as much information as possible prior to beginning the project.

Mrs. Helbert affirmed the approach and that the agreement has been reviewed by Staff, commented on, responded to, and that WCSA Staff concurs with the

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agreement as presented. Upon Mr. Chase's inquiry, Mr. Cornett and Mrs. Helbert noted the project's cost for engineering services is \$19,350.

Mr. Hutchinson affirmed the project approach and made the motion to approve the engineering agreement (see attached). Mr. Hutchinson's motion was seconded by Mr. Stephon, and was approved by a 7-0-0-0 vote of the Board.

16. Consideration of an Engineering Agreement Between WCSA and Adams-Heath Engineering for the Abingdon Water Storage Tank Project

Mr. Heath provided a quick synopsis of the Abingdon Water Storage Tank Project and the proposed agreement. Mrs. Helbert affirmed the agreement has been reviewed by Staff, commented on, responded to, and that WCSA Staff concurs. She noted additional items for Mr. Heath to consider for the project; Mr. Heath affirmed the agreement as already being inclusive of these items. Mr. Chase inquired of the project's cost [for engineering services]. Mr. Lawson referred to Exhibit C of the agreement, where the project cost is listed as \$20,000; Mrs. Helbert affirmed this. She also noted that WCSA has been requesting from all engineering firms a man-hour loading estimate, cost per hour, number of hours, etc. anticipated for all projects so we can evaluate and plan accordingly.

Mr. Stout made the motion to approve the engineering agreement (see attached). Mr. Stout's motion was seconded by Mr. Coleman, and was approved by a 7-0-0-0 vote of the Board.

17. Consideration of an Engineering Agreement Between WCSA and Adams-Heath Engineering for the

Green Spring Road Water System Improvement Project

Mr. Heath provided a quick synopsis of the Green Spring Road Water System Improvement Project and the proposed agreement. Mrs. Helbert affirmed the agreement has been reviewed by Staff, commented on, responded to, and that WCSA Staff concurs. She noted that a Design PER was waived by VDH; in result, a study phase will not be required. She noted the project's cost for engineering services is \$25,000 and about \$32,400 for RPR services, along with \$4,800 estimated for easement identification, preparation and acquisition services, if necessary.

Mrs. Helbert affirmed these as their best estimates. Mr. Lawson noted that these items were laid out in Exhibit C as well. Mr. Stephon made the motion to approve the engineering agreement (see attached). Mr. Stephon's motion was seconded by Mr. Stout, and was approved by a 7-0-0-0 vote of the Board.

18. Consideration of an Engineering Agreement Between WCSA and The Lane Group for the Bristol Area Water System Restructuring Project

Mr. Lane provided a quick synopsis of the Bristol Area Water System Restructuring Project and the proposed agreement. He noted that the project cost is \$980,000. Mrs. Helbert affirmed the agreement has been reviewed by Staff and commented on. She explained that Mr. Matthew Lane has proposed responses to comments and additions to additional engineering services (such as routine GPS work and electronic digital format of record drawings to be in AutoCAD) that still need to be reflected in the revised agreement, along with the added inclusion of a man-hour

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breakdown sheet. With those few adjustments, WCSA Staff concurs. Upon inquiry, Mrs. Helbert and Mr. Cornett affirmed that engineering services for the project cost \$91,000, and if necessary, \$75,000 for RPR services and \$15,000 for additional engineering services.

Mr. Coleman made the motion to approve the engineering agreement (see attached). Mr. Coleman's motion was seconded by Mr. Stout, and was approved by a 7-0-0-0 vote of the Board.

19. Consideration of Advertising the Bristol Area Water System Restructuring Project for Construction Bids

Mr. Lane thanked the Board for approving the Bristol Area Water System Restructuring Project engineering services agreement. Due to the project's timeliness, they have proceeded with plans and specs at their own risk. This project will tie onto the Reedy Creek Water System Project. Mr. Lane noted they anticipate approval from VDH in Richmond any day. The Lane Group plans to have easements in place in the next week or so and have the Marine Resources Permit in hand. He believes that by the next Board Meeting, they will have everything needed in place. In response, Mr. Lane seeks the Board's approval to advertise the project for advertisement, pending approval of all these items by WCSA Staff and Mr. Cornett.

Mr. Lawson inquired about pipes within the project area; Mr. Miller, Mr. Hutchinson and Mr. Lane affirmed that these pipes are natural gas lines.

At Mr. Miller's motion, Mr. Stephon's second and a 7-0-0-0 Board vote, the Bristol Area Water System Restructuring Project was approved for advertisement,

pending WCSA Staff approval.

20. Consideration of Dump Truck Bids

Mrs. Harold noted that dump truck bids were opened on July 11, 2011 at 2 PM. The WCSA Maintenance Manager and a Maintenance Staff member also reviewed the bids in greater detail. The lowest bid came from Good Pasture Motors for two dump trucks at \$71,000 [each]. Mrs. Harold recommended the Board approve the low bids.

By Mr. Miller's motion, Mr. Stout's second and a 6-0-0-1 Board vote [1: Mr. Hutchinson abstained, due to conflict of interest], the purchase of two dump trucks at \$71,000 each (\$142,000 total) from Good Pasture Motors was approved.

21. Closed Meeting: Acquisition and Disposition of Property, Investment of Public Funds & Legal Advice

Mr. Stephon moved that the Board adjourn to Closed Meeting in accordance with the Virginia Freedom of Information Act, Code of Virginia § 2.2-3711 Paragraph (A) (3): Acquisition and Disposition of Property, 2. To Discuss and Consider the Acquisition of Real Property, Code of Virginia § 2.2-3711 Paragraph (A) (6): Investment of Public Funds, 3. To Discuss Various Inter-municipal and Other Agreements, Code of Virginia § 2.2-3711 Paragraph (A) (7): Legal Advice, 4. To Discuss Potential Litigation, 5. To Discuss Various Inter-municipal and Other Agreements, 6. To Discuss Potential Contract Litigation.

In addition to the Board, the presence of Mr. Mark Lawson, WCSA Counsel, and Mr. Robbie Cornett, WCSA General Manager, are requested.

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Mr. Stephon's motion was seconded by Mr. Stout and was approved by a 7-0-0-0 vote of the Board. The Board adjourned to Closed meeting at 8:35 PM.

Return to Public Session

Upon a motion by Mr. Stephon, a second by Mr. Stout, and a 6-0-0-1 vote of the Commissioners, the Board returned to Public Session at 9:55 PM.

Mr. Stephon read the following:

Certification of Closed Meeting

Whereas, the Washington County Service Authority has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; And whereas, § 2.2-3712 Paragraph D of the Code of Virginia requires a certification by this Authority that such Closed Meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved that the Authority hereby certifies that to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (2) only such public business matters, as were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Authority.

AYE: Mr. Miller, Mr. Hutchinson, Mr. Stephon, Mr. Chase, Mr. Coleman and Mr. Stout.


[Note: As noted by Mr. Lawson, Mr. Taylor had to leave at the conclusion of open session. Therefore, he was absent for Closed Meeting and is absent now.]

22. Late Items

There were no Late Items to consider.

23. Adjourn or Recess

Mr. Cornett asked the Board to consider recessing tonight's meeting until 5:30 PM on [Monday,] August 22, 2011 in the Jack Cole Conference Room for a Water and Sewer Line Extension Policy Workshop; dinner is to be served at 5:00 PM and the meeting to begin at 5:30 PM. Mr. Stephon made the motion to recess the meeting until August 22 at 5:30 PM. Mr. Stephon's motion was seconded by Mr. Miller and was approved by a 6-0-0-1 vote of the Board. The meeting was recessed at 9:57 PM.


Mr. Joe Chase, Chairman


Amanda Paukovitz, Assistant Secretary

Change Order

No. 3

Date of Issuance: July 18, 2011

Effective Date: July 18, 2011

Project: Middle Fork WTP Interim Expansion	Owner: Washington County Service Authority	Owner's Contract No.: 1
Contract:		Date of Contract: March 10, 2010
Contractor: Frizzell Construction Co Inc.		Engineer's Project No.: 08108

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

See attached sheet

Justification: See attached sheets

Attachments: (List documents): Change order requests 19, 20, 21, 22 and 23

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ 5,237,700.00

[Increase] [Decrease] from previously approved
Change Orders No. 1 to 2:

\$ 71,764.00

Contract Price prior to this Change Order:

\$ 5,309,014.00

[Increase] [Decrease] of this Change Order:

\$ 17,096.00

Contract Price incorporating this Change Order:

\$ 5,326,110.00

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☒ Calendar days

Substantial completion (days or date): 360

Ready for final payment (days or date): 390

[Increase] [Decrease] from previously approved Change Orders
No. 1 to No. 2:

Substantial completion (days): 44

Ready for final payment (days): 44

Contract Times prior to this Change Order:

Substantial completion (days or date): 404

Ready for final payment (days or date): 434

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): 46

Ready for final payment (days or date): 46

Contract Times with all approved Change Orders:

Substantial completion (days or date): 450 (8/20/11)

Ready for final payment (days or date): 480 (9/19/11)

RECOMMENDED:

By: [Signature]
Engineer: THE LANE GROUP

Date: 8/2/11

Approved by Funding Agency: USDA-RD

ACCEPTED:

By: [Signature]
Owner: Washington Co Service Authority

Date: 02 AUGUST 2011

Eddie Smith, SE

ACCEPTED:

By: [Signature]
Contractor: Frizzell Construction Company

Date: 8/2/11

Date: 8-11-2011

WCSA WTP Middle Fork Interim Expansion
Change Order #3

CO Request	Description	Amount	Time Extension	Justification		
19	add bent rod couplings at the filter clearwell walls and forms	\$2,638.00	7	Needed to coordinate with Phase II expansion		
20	Difference in \$300 Brick Allowance vs actual cost of brick.	\$2,056.00	0	Allowance Difference as in specifications		
21	add wood blocking at FWPS to support the gutters.	\$3,184.00	2	To provide additional supports		
22	to furnish and install structural steel support at the surge tank	\$9,218.00	14	To provide additional support for surge tank		
23	Additional time due to delay in color selection for roof for FWPS.		23	Selection of colors for project had to wait for all required submittals and thus delay the project		
	Total	\$17,096.00	46			
					Substantial	Complete
					original start date	5/27/2010
					original contract	360 5/22/2011
					Change Order #1	14 6/5/2011
					Change Order #2	30 7/5/2011
					Change Order #3	46 8/20/2011
					Total	450 480

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Washington County Service Authority (the "Authority"), hereby certifies that:

1. A regular meeting of the Board of the Authority (the "Board") was duly called and held on July 25, 2011 (the "Meeting"), at which the following Board members were present and absent:

PRESENT:	Mr. Joseph Chase	Mr. Frank Stephon
	Mr. Prince Coleman	Mr. Kenneth Taylor
	Mr. Dwain Miller	Mr. Donald L. Stout
	Mr. Wanson D. Hutchinson	

ABSENT: None

2. A resolution (the "Resolution") of the Authority entitled "RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, AWARD, AND SALE OF A NOT TO EXCEED \$4,334,000 WATER SYSTEM REVENUE BOND AND SETTING FORTH THE FORM, DETAILS, AND PROVISIONS FOR THE PAYMENT THEREOF" was duly adopted at the Meeting by the recorded affirmative vote of at least a majority of all of the members of the Board of the Authority, the ayes and nays being recorded in the minutes of the meeting as shown below:

<u>MEMBER</u>	<u>VOTE</u>
Mr. Joseph Chase	Aye
Mr. Prince Coleman	Aye
Mr. Dwain Miller	Aye
Mr. Wanson D. Hutchinson	Aye
Mr. Donald L. Stout	Aye
Mr. Kenneth Taylor	Aye
Mr. Frank Stephon	Aye

3. Attached is a true and correct copy of the Resolution.

WITNESS my signature and the seal of the Washington County Service Authority this 25th day of July, 2011.

[SEAL]



Robert Cornett
Secretary, Washington County Service Authority

WASHINGTON COUNTY SERVICE AUTHORITY

**RESOLUTION AUTHORIZING AND APPROVING THE
ISSUANCE, AWARD, AND SALE OF A NOT TO EXCEED \$4,334,000
WATER SYSTEM REVENUE BOND AND
SETTING FORTH THE FORM, DETAILS, AND
PROVISIONS FOR THE PAYMENT THEREOF**

A. The Washington County Service Authority (the "Authority") is a public body politic and corporate of the Commonwealth of Virginia (the "Commonwealth") created pursuant to the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended (the "Act").

B. The Authority has determined that it is necessary and desirable to issue its Water System Revenue Bond in a principal amount not to exceed \$4,334,000 (the "Bond"), and to use the proceeds thereof, along with other available funds, if any, to finance the costs of water system improvements in the Reedy Creek area of Washington County, Virginia, together with related expenses (the "Project").

C. The Bond will be sold by the Authority to the Virginia Resources Authority ("VRA"), as Administrator of the Virginia Water Supply Revolving Fund (the "Fund"), pursuant to the terms of a commitment letter from VRA (including any amendment thereto, if any, the "Commitment Letter") and a Financing Agreement (the "Reedy Creek Financing Agreement") between the Authority and VRA, to be dated as of a date specified by VRA.

D. The Bond will be secured by a pledge of the revenues (as more particularly defined in the Reedy Creek Financing Agreement, the "Revenues") derived by the Authority from the ownership and operation of its water system (as more particularly defined in the Reedy Creek Financing Agreement, the "System"). The Bond will be issued as a "Parity Bond," as defined in the Financing Agreement dated August 1, 1999 (the "1999 Financing Agreement"), the Financing Agreement dated as of September 1, 2000 (the "2000 Financing Agreement"), and the Financing Agreement dated as of August 1, 2001 (the "2001A Financing Agreement"), each between the Authority and the Fund; the Financing Agreement dated as of September 1, 2001 (the "2001B Financing Agreement") and the Financing Agreement dated as of December 1, 2002 (the "2002 Financing Agreement"), each between the Authority and VRA; the Financing Agreement dated as of April 1, 2003 (the "2003A Financing Agreement"), between the Authority and VRA, as Administrator of the Fund; the Financing Agreement dated as of July 15, 2003 (the "2003B Financing Agreement"), between the Authority and Blue Ridge Bank; the Financing Agreement dated as of October 1, 2003 (the "2003C Financing Agreement"), the Financing Agreement dated as of January 1, 2005 (the "2005 Financing Agreement"), the Financing Agreement dated as of December 1, 2005 (the "2005B Financing Agreement"), the Financing Agreement dated as of January 1, 2007 (the "2007A Financing Agreement"), the Financing Agreement dated as of March 1, 2007 (the "2007B Financing Agreement"), the Financing Agreement dated as of December 1, 2008 (the "2008A Financing Agreement"), the Financing Agreement dated as of December 1, 2008 (the "2008B Financing Agreement"), the Financing Agreement dated as of February 1, 2010 (the "2010A Financing Agreement"), the Financing

Agreement dated as of December 1, 2010 (the "2010H Financing Agreement"), the Financing Agreement dated as of December 1, 2010 (the "2010I Financing Agreement"), and the Financing Agreement dated as of December 1, 2010 (the "2010J Financing Agreement"), each between the Authority and VRA, as Administrator of the Fund. The Bond will be secured on parity with the Authority's outstanding Water System Revenue Bond, Series 1999 (the "1999 Bond"), Water System Revenue Bond, Taxable Series 2000 (the "2000 Bond"), Water System Revenue Bond, Taxable Series 2001 (the "2001A Bond"), Water System Revenue Bond, Taxable Series 2001B (the "2001B Bond"), Water System Revenue Bond, Taxable Series 2002 (the "2002 Bond"), Water System Revenue Bond, Taxable Series 2003A (the "2003A Bond"), Water System Revenue Refunding Bond, Series 2003B (the "2003B Bond"), Water System Revenue Bond, Taxable Series 2003C (the "2003C Bond"), Water System Revenue Bond, Taxable Series 2005 (the "2005 Bond"), Water System Revenue Bond, Taxable Series 2005B (the "2005B Bond"), Water System Revenue Bond, Taxable Series 2007A (the "2007A Bond"), Water System Revenue Bond, Taxable Series 2007B (the "2007B Bond"), Water System Revenue Bond, Taxable Series 2008A (the "2008A Bond"), Water System Revenue Bond, Taxable Series 2008B (the "2008B Bond"), Water System Revenue Bond, Taxable Series 2010A (the "2010A Bond"), Water System Revenue Bond, Taxable Series 2010B (the "2010B Bond"), Water System Revenue Bond, Taxable Series 2010C (the "2010C Bond"), Water System Revenue Bond, Taxable Series 2010D (the "2010D Bond"), Water System Revenue Bond, Taxable Series 2010E (the "2010E Bond"), Water System Revenue Bond, Taxable Series 2010F (the "2010F Bond"), Water System Revenue Bond, Taxable Series 2010G (the "2010G Bond"), Water System Revenue Bond, Taxable Series 2010H (the "2010H Bond"), Water System Revenue Bond, Taxable Series 2010I (the "2010I Bond"), Water System Revenue Bond, Taxable Series 2010J (the "2010J Bond"), and any other Parity Bonds that may be issued prior to the Bond, with respect to the pledge of Revenues.

E. The Bond will be issued as an "Additional Prior Bond" as defined in the Subordinate Financing Agreement dated as of June 1, 2002 (the "2002 Subordinate Financing Agreement"), between the Authority and VRA. The Bond will be secured on a senior basis to the Authority's Water System Revenue Bond, Subordinate Series 2002 (the "Subordinate 2002 Bond"), with respect to the pledge of Revenues.

F. The foregoing arrangements will be reflected in the Reedy Creek Financing Agreement, a form of which has been presented to this meeting and filed with the Authority's documents.

NOW, THEREFORE, after consideration and in furtherance of the public purposes for which the Authority was created, be it resolved that:

1. **Authorization of Bond and Use of Proceeds.** The Authority hereby finds and determines that it is advisable and in the best interest of the Authority to contract a debt and to issue the Bond in a principal amount not to exceed \$4,334,000, and to award and sell the Bond to VRA, all pursuant to the Act, the terms of this Resolution, the Commitment Letter, and the Reedy Creek Financing Agreement. Such issuance, award, and sale of the Bond are hereby authorized and approved. The Bond shall be known as the "Washington County Service Authority, Water System Revenue Bond," with an appropriate series identifier, or such other designation as may be approved by the Chairman or Vice Chairman of the Authority. The

proceeds from the issuance and sale of the Bond shall be used, together with other available funds, if any, to pay the costs of the Project.

2. **Details of Bond.** The Bond shall be issued as a single bond in fully registered form and shall be dated the date of its issuance and delivery. The final principal amount, maturity, Cost of Funds (as defined in the Financing Agreement), and payment schedule shall be set forth in the form of the Bond and approved by the Chairman or Vice Chairman; provided that (i) the final maturity of the Bond shall be no later than twenty-four (24) years from its delivery date, (ii) the Cost of Funds on the Bond shall not exceed five percent (5.00%) and (iii) the principal amount of the Bond shall not exceed \$4,334,000. The Chairman or Vice Chairman is also authorized to make appropriate amendments to the series designation of the Bond.

3. **Pledge of Revenues.** The Bond shall be a limited obligation of the Authority and, except to the extent payable from the proceeds of the sale of the Bond or the income, if any, derived from the investment thereof, is payable exclusively from the Revenues, which the Authority hereby pledges to the payment of the principal of and Cost of Funds on the Bond pursuant to the terms of the Reedy Creek Financing Agreement. The Bond shall be issued as a Parity Bond and will be secured on parity with the 1999 Bond, the 2000 Bond, the 2001A Bond, the 2001B Bond, the 2002 Bond, the 2003A Bond, the 2003B Bond, 2003C Bond, the 2005 Bond, the 2005B Bond, the 2007A Bond, the 2007B Bond, the 2008A Bond, the 2008B Bond, the 2010A Bond, the 2010B Bond, the 2010C Bond, the 2010D Bond, the 2010E Bond, the 2010F Bond, the 2010G Bond, the 2010H Bond, the 2010I Bond, the 2010J Bond, and any other Parity Bond issued prior to the Bond, with respect to the pledge of Revenues. The Bond shall be issued as an Additional Prior Bond and will be secured on a senior basis to the Subordinate 2002 Bond. Neither the Commonwealth of Virginia nor any of its political subdivisions, including the Authority, shall be obligated to pay the principal of and Cost of Funds on the Bond or other costs incident to it except from the Revenues and any other money or property pledged for such purpose, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any of its political subdivisions, including the Authority, is pledged to the payment of the principal of the Bond or other costs incident to it. The issuance of the Bond does not directly, indirectly, or contingently obligate the Commonwealth of Virginia or any of its political subdivisions, including the Authority, to levy any taxes for the payment of the Bond.

4. **Form of Bond.** The Bond shall be in substantially the form presented at this meeting, with such variations, insertions, and deletions as may be approved by the Chairman or Vice Chairman. There may be endorsed on the Bond such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

5. **Evidence of Approval.** The Chairman or Vice Chairman's approval or determination of all of the details and provisions of the Bond that he has been authorized and/or directed to approve under this Resolution shall be evidenced conclusively by his execution and delivery of the Bond on the Authority's behalf.

6. **Redemption of Bond.** The Bond shall be subject to optional redemption at the direction of the Authority, without penalty or premium, in whole or in part, at any time, upon the terms set forth in the Bond and the Reedy Creek Financing Agreement.

7. **Execution and Delivery of Bond.** The Chairman or Vice Chairman is authorized and directed to execute the Bond. The Secretary or Assistant Secretary of the Authority is authorized and directed to affix the seal of the Authority to the executed Bond, to attest it, and then to deliver the Bond to VRA upon payment of the first principal advance thereunder. An authorized representative of VRA shall enter the amount and date of each principal advance as provided in the Certificate of Advances attached to the Bond when the proceeds of such advance are delivered to the Authority.

8. **Registration, Transfer and Exchange.** The Treasurer of the Authority is appointed as the registrar and transfer agent to keep books for the registration and transfer of the Bond and to make such registrations and transfers on such books under such reasonable regulations as the Authority may prescribe.

Upon surrender for transfer or exchange of the Bond at the office of the Treasurer of the Authority, the Authority shall cause the execution and delivery in the name of the transferee or registered owner, as applicable, a new Bond for a principal amount equal to the Bond surrendered and of the same date and tenor as the Bond surrendered, subject in each case to such reasonable regulations as the Authority may prescribe. If surrendered for transfer, exchange, redemption, or payment, the Bond shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the Treasurer of the Authority, duly executed by the registered owner or by his or her duly authorized attorney-in-fact or legal representative.

A new Bond delivered upon any transfer or exchange shall be a valid limited obligation of the Authority, evidencing the same debt as the Bond surrendered and shall be entitled to all of the security and benefits of this Resolution to the same extent as the Bond surrendered.

9. **Charges for Exchange or Transfer.** No charge shall be made for any exchange or transfer of the Bond, but the Treasurer may require payment by the holder of the Bond of a sum sufficient to cover any tax or any other governmental charge that may be imposed in relation thereto.

10. **Mutilated, Lost, Stolen or Destroyed Bond.** If the Bond has been mutilated, lost, stolen, or destroyed, the Authority shall execute and deliver a new Bond of like date and tenor in exchange and substitution for, and upon delivery to the Treasurer and cancellation of, such mutilated Bond, or in lieu of and in substitution for such lost, stolen, or destroyed Bond; provided, however, that the Authority shall execute, authenticate, and deliver a new Bond only if its registered owner has paid the reasonable expenses and charges of the Authority in connection therewith and, in the case of a lost, stolen, or destroyed Bond (i) has filed with the Treasurer evidence satisfactory to him or her that such Bond was lost, stolen, or destroyed and that the holder of the Bond was its registered owner and (ii) has furnished to the Authority indemnity satisfactory to the Treasurer. If the Bond has matured, instead of issuing a new Bond, the Authority may pay the Bond without surrender upon receipt of the aforesaid evidence and indemnity.

11. **Approval of Commitment Letter and Reedy Creek Financing Agreement.** The Commitment Letter and the Reedy Creek Financing Agreement are approved in

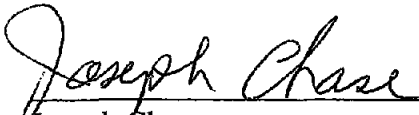
substantially the forms presented to this meeting, with such changes, insertions, or omissions as may be approved by the Chairman or Vice Chairman, whose approval shall be evidenced conclusively by the execution and delivery of the Commitment Letter and the Reedy Creek Financing Agreement on the Authority's behalf, and the Chairman or Vice Chairman is authorized to complete the Reedy Creek Financing Agreement with the final terms and details of the Bond as determined pursuant to paragraph 2. The Chairman or Vice Chairman is authorized to execute and deliver the Commitment Letter and the Reedy Creek Financing Agreement and such other documents and certificates as such officer may consider necessary in connection therewith.

12. Further Actions; Authorized Representative. The Chairman, Vice Chairman, the General Manager, and the Deputy General Manager and such officers and agents of the Authority as may be designated by any of them are authorized and directed to take such further actions as they deem necessary regarding the issuance and sale of the Bond and the execution, delivery, and performance of the Commitment Letter and the Reedy Creek Financing Agreement, including, without limitation, the execution and delivery of closing documents and certificates. All such actions previously taken by such officers and agents are ratified and confirmed. The General Manager, Deputy General Manager, and the Treasurer are designated the Authority's Authorized Representatives for purposes of the Reedy Creek Financing Agreement.

13. Filing of Resolution. Counsel to the Authority is authorized and directed to file a certified copy of this Resolution with the Circuit Court of Washington County, Virginia, pursuant to Section 15.2-5126 of the Code of Virginia of 1950, as amended.

14. Effective Date. This Resolution shall take effect immediately.

Adopted this 25th day of July, 2011.



Joseph Chase
Chairman, Washington County Service Authority



Robert Cornett
Secretary, Washington County Service Authority

RECEIVED

AUG 12 2011



Professional Design Services

July 11, 2011

Mr. Robbie Cornett
General Manager
Washington County Service Authority
25122 Regal Drive
Abingdon, VA 24211-7447

Re: Professional Services for User
Agreements – Exit 13 Sewer Phase
2 and Phase 3
Washington County
JN 29011

Dear Mr. Cornett:

We are pleased to be working with you and your staff on the Exit 13 Sewer projects. Based on our discussions at the May 12, 2011 scoping meeting, we have developed a proposal for providing professional services related to the collection of user agreements for the Exit 13 Phases 2 and 3 project areas.

The employee owners of Anderson & Associates, Inc. are pleased to submit this proposal for professional engineering services for your consideration.

A. Scope of Services

Based on our present knowledge of the project, we propose the following services:

1. **Preliminary Engineering - Lump Sum**
The following tasks (Scope A.1.) are part of "Basic Services; Preliminary Design Phase" of the EJCDC Standard Form of Agreement between Owner & Engineer for Professional Services (Agreement), but are necessary at this stage in the project. The cost for these services included herein will be credited towards the future Agreement at the time that Agreement is executed.

In order to identify the properties potentially served by the project, we will

- 1.1 Compile GIS files, including but not limited to topography and tax parcels, and set up a master project mapping file.
- 1.2 Evaluate project drainage basins to confirm the boundaries of the project as presented in the PER. This evaluation will include the use of the alignments that are provided in the January 16, 2008 PER prepared by Draper Aden Associates,
- 1.3 Review proposed project boundaries in the field to evaluate site specific conditions and document potential issues associated with existing conditions in the project areas.

- 1.4 Establish project boundaries based on mapping and field review information. Review project boundaries with WCSA for common understanding and comment. Adjust project boundaries based on WCSA comments and finalize project boundary.

2. Community Meetings - Hourly

In order to solicit participation by property and home owners within the project boundary, and to aid in their understanding of the project, and as approved by the WCSA General Manager for hourly work under this section, we will

- 2.1 Prepare a boundary exhibit for both project areas showing aerial mapping, tax parcels, and the proposed project boundary for each project area. These exhibits will be prepared at a scale appropriate for mailing by the WCSA as well as for display at the community meetings. A .pdf file will be provided to the WCSA for the mailings. Several larger format exhibits will be delivered to the community meetings.
- 2.2 Generate mailing lists based on final project boundaries and Washington County GIS parcel layer as purchased by Anderson & Associates, Inc. (A&A) in June of 2011. A Microsoft Excel file of the mailing list will be submitted to the WCSA for use in mailing user agreements.
- 2.3 Attend community meetings and be available for speaking with project land/home owners at four community meetings (two meetings per project, Phase 2 and Phase 3).

B. Client's Responsibility

The following items are specifically excluded from this contract and will be considered the responsibility of the Client or others designated by the Client. These items may or may not be required for completion of the project and are listed here solely to indicate that they are not included in this contract. Many of these items can be provided by Anderson & Associates, Inc. as additional services at our normal hourly rates or under separate lump sum contract.

1. Prepare and present and/or mail user agreements as necessary.
2. Reconcile any mailings "returned to sender" and resend as needed to make initial contact with each land/home owner.
3. Coordinate, schedule, and pay as needed for locations for community meetings.
4. Prepare and present project presentations at community meetings.
5. Coordinate speakers for community meetings.
6. Secure and present data on failed septic systems from the VDH for use at community meetings.
7. Record signed user agreements in a database and plot in AutoCAD for visual interpretation of results as necessary.
8. Make determination of project go/no go status based on results from user agreements.

9. All services not specifically indicated in the scope of services.

C. Terms

We propose to work in accordance with the enclosed "A&A/WCSA Terms and Conditions – Professional Services".

D. Schedule

We propose to work in accordance with the attached project schedule. Our schedule reflects our working time only and excludes review time by the client and reviewing authorities. The compensation amount stipulated in this agreement is conditioned on a period of service not exceeding 6 months. Should such period of service be extended, the compensation amount shall be appropriately adjusted only after approval of the WCSA Board of Commissioners.

E. Compensation

Preliminary Engineering - Lump Sum

We propose to be compensated on a lump sum basis for Item 1 of the Scope of Services. Our compensation for this work shall be \$9,410.00 with monthly billing based on an estimate of the percent of the total work completed. This amount will not be exceeded without prior authorization of the WCSA Board of Commissioners

Community Meetings - Hourly

We propose to be compensated on an hourly basis at our current billing rates for Item 2 of the Scope of Services. For budgeting purposes, and based on our current knowledge of the project, we expect our total hourly fee to be about \$9,940.00. This amount will not be exceeded without prior authorization of the WCSA Board of Commissioners. A copy of our current billing rates is attached. A copy of our anticipated time and cost is also attached. The following is a breakdown of the project cost for each scope item category. A man-hour breakdown is enclosed.

Item		Cost	Total
1	Preliminary Engineering - Lump Sum		
	1.1. Prepare Preliminary Mapping	\$730.00	
	1.2 Evaluate Drainage Basins	\$2,640.00	
	1.3 Review Project Boundaries in Field	\$3,680.00	
	1.4 Develop & Review Project Boundaries	\$2,360.00	
	Subtotal		\$9,410.00
2	Community Meetings - Hourly		
	2.1 Prepare Project Boundary Exhibits	\$1,720.00	
	2.2 Generate Mailing Lists	\$860.00	
	2.3 Attend Community Meetings	\$7,360.00	
	Subtotal		\$9,940.00
	Total		\$19,350.00

F. Attachments

The following attachments are included with and shall be deemed part of this Agreement:

1. Standard Terms and Conditions – Professional Services.
2. Current Billing Rates.
3. Anticipated Project Schedule and Projected Personnel Loading Hours.
4. Certificate of Insurance.


G. Approval

If you find this proposal acceptable, please sign the enclosed copy and return it to us for our records. We will construe the receipt of our copy as our notice to proceed.

Thank you for letting us be of assistance to you on this project.

Sincerely,


ANDERSON & ASSOCIATES, INC.


Stephen M. Steele
Vice President


Paula J. Moore
Project Manager

PJM/jaf

Enclosure

Accepted by:	Contact Information:
 Signature	<u>KIM HAROLD</u> Accounting Contact Name
<u>ROBERT C. H. CORNETT</u> Printed Name	<u>25122 REGAL DRIVE</u> Billing Address
<u>GENERAL MANAGER</u> Title	<u>ABINGDON, VA 24211</u> City, State, ZIP
<u>15 AUGUST 2011</u> Date	<u>276 628 7151 (PHONE)</u> <u>276 628 3592 (FAX)</u> Phone & Fax

Anderson & Associates, Inc.
TERMS AND CONDITIONS – PROFESSIONAL SERVICES

1. **Acceptance:** The Proposal to which these Terms and Conditions are attached shall be valid for the length of time noted in the Proposal, or thirty (30) calendar days if not indicated in the Proposal. Once executed, the Proposal, these Terms and Conditions, and all other exhibits identified in the Proposal and attached thereto shall constitute the Agreement between Anderson & Associates, Inc. (A&A) and Client. The parties shall endeavor to ensure that all changes to the scope of work, responsibilities of the parties, schedule, or compensation, shall be made in writing and signed by both parties prior to moving forward with the work on said changes; provided, however, that should the Client direct A&A to proceed with a change in services orally, it shall not thereafter seek to deny compensation based on the assertion that A&A proceeded with the work without having written directive. (See Item 4, Additional Services, below.)
2. **Information Provided by Client:** A&A will accept and may rely on information in digital or other formats supplied by Client or a third party at Client's direction for incorporation into the project documents, plans, or specifications. A&A shall have no responsibility for erroneous information so provided.
3. **Standard of Care:** Subject to the limitations inherent in the agreed scope of work and any other limitations contained in this Agreement, A&A and its agents, employees, and subconsultants shall endeavor to perform the services with that level of care and skill ordinarily exercised under similar circumstances by members of the same profession practicing in the same location at the same time. No other representation, express or implied, and no warranty or guarantee is included or intended by this Agreement. Any claim for breach of this standard may be made only after the Client has secured the opinion of a third-party professional engineer or surveyor, as applicable to the project, licensed in the state where the project is located who through experience can testify as to the applicable standard of care set forth herein.
4. **Additional Services:** Services resulting from changes in scope, extent, or character of work, shall be considered Additional Services, and A&A shall be entitled to additional compensation for such services. Unless otherwise stated, all Additional Services, including, but not limited to, special design, extra work, off-site work, legal action, Client and architectural revisions, revisions due to changes in governmental policy, and property negotiations, will be billed at current hourly rates upon Client's authorization to proceed with such Additional Services.
5. **Changed Conditions:** If, during the course of performance of this Agreement, conditions or circumstances are discovered that could not reasonably be contemplated by A&A at the commencement of this Agreement, A&A shall notify Client in writing of the newly discovered conditions or circumstances. Client and A&A shall negotiate, in good faith, the terms and conditions of any resulting changes to the services and fees presented in this Agreement. If such an amendment to the Agreement cannot be agreed upon within thirty (30) days after notice, A&A may terminate the Agreement and be compensated for all fees and expenses incurred to date.
6. **Ownership/Reuse of Deliverables:** All deliverables, including but not limited to drawings, reports, databases, programs, or other electronic files or documents prepared or furnished by A&A pursuant to this Agreement are instruments of service and shall remain the property of the OWNER. A&A will maintain an owning interest in these documents and will provide digital files and reproducible copies of requested documents developed for this project to the OWNER. Any reuse or modification of documents without written verification or adaptation by A&A, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to A&A, and Client shall indemnify and hold A&A harmless for such unauthorized use.
7. **Delays:** The compensation under this Agreement is based on the orderly and continuous progress of the project through all phases of the work. If the project is delayed for reasons beyond A&A's control, an equitable adjustment in such compensation shall be negotiated, taking into consideration the impact of such delay, including, but not limited to, changes in price indices and in hourly billing rates applicable to the period when services are in fact being rendered. A&A shall not accept liability or responsibility for delays beyond its control. The schedule referenced in the Agreement shall be adjusted as necessary to accommodate Additional Services, review time by the Client and regulatory agencies, and any other delays beyond the control of A&A.

8. **Payment:** Invoices will be rendered for work performed in accordance with the compensation terms established in the Agreement and are due and payable within thirty (30) days of transmittal. In the event of nonpayment of the account within said thirty (30) day-period, Client shall be obligated to pay a late charge of 1-1/2% per month on the unpaid balance (18% per year) until such account is paid in full, unless otherwise specified in the Agreement. In addition, A&A shall have the right to cease all further work on the project and to withhold files and work products associated with the project by giving written notice of that decision to Client. If delinquent accounts are placed in the hands of an attorney or collection agency for collection, Client agrees to pay all expenses incurred in collecting the same, including without limitation, reasonable attorney's and expert witness fees and court costs.
9. **Termination for Cause:** Should either party materially breach its obligations under this Agreement, the non-breaching party shall give written notice of intent to terminate for cause. The breaching party shall thereafter have seven (7) days to effectuate a cure of such breach. In the event that such cure is not so effectuated, the non-breaching party may give a second written notice of termination for cause and thereafter to seek recovery of direct damages resulting from such breach. Both parties agree to waive any claims for consequential damages arising out of any breach of this Agreement.
10. **Termination for Convenience:** In the event of termination by Owner for convenience Engineer shall be entitled to invoice Owner and receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. The Engineer shall also be entitled to invoice Owner and to receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs.
11. **Limits of Liability:** A&A's total cumulative liability to Client (including, but not limited to, attorney's fees and costs) caused by any negligent act or omission of A&A in connection with services performed by A&A, whether in contract, indemnity, contribution, tort, or otherwise, irrespective of the form of action in which such liability is asserted by Client or others, shall not exceed A&A's available and applicable insurance coverage. Certification of insurance coverage will be provided to Client upon request. If Client desires a higher limitation of remedy, A&A may agree to increase its assumption of risk for this project in exchange for a negotiated increase in fee.
12. **Representations of Client:** Client warrants and covenants that sufficient funds are available or will be available upon receipt of A&A's invoice to make payment in full for the services rendered by A&A. In the event that A&A should ever have any concerns about Client's financial capacity it may in writing request evidence that Client has secured available funds to make all future payments due under this Agreement. In the event that the Client does not provide such evidence within seven (7) days of A&A's written request, A&A may terminate this Agreement for cause. Client further warrants that all information provided to A&A regarding the project and project location are complete and accurate and can be relied upon by A&A in the performance of its work.
13. **Assignments and Subcontracts:** Neither party may assign this Agreement, in whole or in part, or any cause of action arising hereunder, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any such assignment in breach of this provision shall give rise to a claim for damages, including attorneys fees, incurred in defending any action brought by any third-party claiming to have acquired the right to sue based on such assignment.
14. **Law to Apply and Venue for Claims:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state where the project is located. Any claims arising out of or related to this Agreement or the services to be provided hereunder shall be brought in the court of general jurisdiction where the project is located.
15. **Mediation.** A condition precedent to the initiation of litigation regarding any claim arising out of or related to this Agreement or the services to be provided hereunder will be at least one single-day session of mediation. Either party may demand such mediation by giving the other party written notice. Upon such notice, the parties shall endeavor to agree on a mediator experienced in the construction industry with the parties sharing the mediator's fee. In the event that the parties cannot agree on a mediator, they shall petition the chief judge of the local court of general jurisdiction to make such appointment.
16. **Limitations on Actions.** Neither party may assert any claims for breach of this Agreement greater than the earlier of (a) when such claim would be barred by the statute of limitations for the jurisdiction where the project is located or (b) two (2) years after completion of the project for which the services set forth in this Agreement were provided.
17. **Entire Agreement:** The Proposal and these Terms and Conditions constitute all the terms and conditions under which all professional services will be performed.

Anderson & Associates, Inc.
Professional Design Services

Hourly Billing Rates
Effective January 1, 2011

Billing Category	Hourly Rate
Officer in Charge III	\$170.00
Officer in Charge II	\$140.00
Officer in Charge I	\$130.00
Project Manager III	\$130.00
Project Manager II	\$120.00
Project Manager I	\$110.00
Project Engineer III	\$110.00
Project Engineer II	\$90.00
Project Engineer I	\$75.00
Design/GIS Technician III	\$85.00
Design/GIS Technician II	\$70.00
Design/GIS Technician I	\$50.00
Survey Manager III	\$110.00
Survey Manager II	\$105.00
Survey Manager I	\$90.00
Project Surveyor III	\$85.00
Project Surveyor II	\$75.00
Project Surveyor I	\$65.00
Party Chief III	\$70.00
Party Chief II	\$65.00
Party Chief I	\$60.00
Survey Tech III (field or office)	\$60.00
Survey Tech II (field or office)	\$50.00
Survey Tech I (field or office)	\$45.00
Administrative III	\$95.00
Administrative II	\$75.00
Administrative I	\$55.00
Inspector II	\$75.00
Inspector I	\$60.00
Bridge Engineer	\$150.00
Environmental Scientist	\$100.00
Geographer	\$90.00
Landscape Architect	\$100.00
Programmer	\$115.00
Railroad Engineer	\$150.00

Anticipated Project Schedule
User Agreements - Ext 13 Sewer Phases 2 & 3
June 27, 2011
JN 29011

ID	Task Name		Duration	Cost	Resource Initials	1	July 2011							August 2011							September 2011							October 2011									
						29	2	5	8	11	14	17	20	23	26	29	1	4	7	10	13	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27	30
0	J.N. 29011 Exit 13 Sewer Phases 2 & 3 - User Agreements		64 days	\$19,350.00																																	
1																																					
2	1 Preliminary Engineering - Lump Sum		18 days	\$9,410.00																																	
3	1.1 Prepare Preliminary Mapping	1 hr PM@\$130=\$130 8 hr Dr@\$75=\$600	1 day	\$730.00	PM,Dr																																
4	1.2 Evaluate Drainage Basins	8 hr PM@\$130=\$1,040 16 hr PE@\$100=\$1,600	5 days	\$2,640.00	PM,PE																																
5	1.3 Review Project Boundaries in Field	16 hr PM@\$130=\$2,080 16 hr PE@\$100=\$1,600	5 days	\$3,680.00	PM,PE																																
6	1.4 Develop and Review Project Boundaries w/ WCSA	12 hr PM@\$130=\$1,560 8 hr PE@\$100=\$1,200	3 days	\$2,360.00	PM,PE																																
7																																					
8	2 Community Meetings - Hourly		46 days	\$9,940.00																																	
9	2.1 Prepare Project Boundary Exhibits	4 hr PM@\$130=\$520 16 hr Dr @ \$75=\$1,200	2 days	\$1,720.00	PM,Dr																																
10	2.2 Generate Mailing Lists	2 hr PM @ \$130=260 8 hr Dr @ \$75=\$600	2 days	\$860.00	PM,Dr																																
11	2.3 Attend Community Meetings	32 hr PM@\$130=\$4,160 32 hr PE@\$100=\$3,200	30 days	\$7,360.00	PM,PE																																



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/1/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown Insurance 100 Hubbard Street Ste A Blacksburg VA 24060-5745		CONTACT NAME: Rob Simmons PHONE (A/C No. Ext): (540) 552-5331 FAX (A/C No.): (540) 552-3321 E-MAIL: rbs@LLBrown.net ADDRESS: rbs@LLBrown.net PRODUCER CUSTOMER ID #: 00002616	
INSURED Anderson & Associates, Inc. 100 Ardmore Street Blacksburg VA 24060		INSURER(S) AFFORDING COVERAGE INSURER A: Harleysville Mutual Ins. Co. NAIC # 14168 INSURER B: Continental Casualty Company INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 2011

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR VVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> independent contractor GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			BOP00000039784C B031B3700	7/16/2010 7/16/2010	7/16/2011 7/16/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			EA00000039384C EA00000039351C EA31B3700	7/16/2010 7/16/2010 7/16/2010	7/16/2011 7/16/2011 7/16/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist combined \$ 1,000,000
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE		BEC1B3700	7/16/2010	7/16/2011	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	WC00000039362C WC00000039362C	7/16/2010 7/16/2010	7/16/2011 7/16/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability retro date 4/18/85			ASH003011595	7/16/2010	7/16/2011	per claim 2,000,000 aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

Washington County Service Authority
25122 Regal Drive
Abingdon, VA 24211-7447

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Rob Simmons/RBS

**STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

ABINGDON WATER STORAGE IMPROVEMENTS STUDY

THIS IS AN AGREEMENT effective as of August 15, 2011 ("Effective Date") between the Washington County Service Authority ("Owner") and Adams-Heath Engineering, Inc. ("Engineer").

Owner intends to evaluate improvements to its existing Town of Abingdon water storage tank(s). The Abingdon tanks include one (1) 500,000 gallon welded steel ground storage tank and one (1) 920,800 gallon welded steel ground storage tank. Possible improvements to be considered include rehabilitation of existing one or both tanks, demolition and reconstruction of the existing tank(s) at the current site, demolition of existing tank(s) and construction of a new tank at a new location, or other variations that become evident during the course of the study. The tank improvements are to be completed as part of the WCSA's Capital Improvements Plan.

Financial assistance for this Project is expected to be provided by either WCSA Capital Projects Funding, outside governmental funding agency(ies), or some combination thereof ("Agency"), a governmental entity. Nothing herein creates any contractual relationship between Agency and Engineer. Owner and Engineer agree as follows

Article 1 - Services of Engineer

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

Article 2 - Owner's Responsibilities

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

Article 3 - Schedule For Rendering Services

3.01 Commencement

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.

- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

Article 4 - Invoices and Payments

4.01 Invoices

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice and funds are available for the Project, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

Article 5 - Opinions of Cost

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost 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 generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

Article 6 - General Considerations

6.01 *Standards of Performance*

- A. 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.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. The retention of such Consultants shall not reduce the Engineer's obligations to Owner under this Agreement.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to

Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract, Funding Agency Edition" as prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit I.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- K. All Contract Documents and Applications for Payment shall be subject to Agency concurrence.

6.02 *Design without Construction Phase Services*

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that

the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of paragraph 5.04 of the "Standard General Conditions of the Construction Contract, Funding Agency Edition," (No. C-710, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension.*

- 1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.
- 2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

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

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- 2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Engineer will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Engineer. Owner's use of any such Documents or Project materials shall be subject to the terms of Paragraph 6.03.

6.06 *Controlling Law*

A. This Agreement is to be governed by the law of the state in which the Project is located, its conflict of laws provisions excepted.

6.07 *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 6.07.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.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damage caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer 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.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, 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.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

Article 7 - Definitions

7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract, Funding Agency Edition," prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition):
 - 1. *Additional Services* - The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
 - 2. *Agency* - The Federal or state agency named on page 1 of this Agreement.
 - 3. *Basic Services* - The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
 - 4. *Construction Cost* - The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 - 5. *Constituent of Concern* - Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6. *Consultants* - Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
7. *Documents* - Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
8. *Drawings* - That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
9. *Effective Date of the Agreement* - The date indicated in this Agreement on which it becomes effective. If no such date is indicated it means the date on which Agency concurs with the Agreement.
10. *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
11. *Reimbursable Expenses* - The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
12. *Resident Project Representative* - The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
13. *Specifications* - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
14. *Total Project Costs* - The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

Article 8 - Exhibits and Special Provisions

8.01 Exhibits Included

- A. Exhibit A, "Engineer's Services," consisting of 4 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 6 pages.

- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of N/A pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of N/A pages.
- F. Exhibit F, "Construction Cost Limit," consisting of N/A pages.
- G. Exhibit G, "Insurance," consisting of 2 pages.
- H. Exhibit H, "Dispute Resolution," consisting of 2 pages.
- I. Exhibit I, "Special Provisions," consisting of 1 pages.
- J. Exhibit J, "Amendment to Standard Form of Agreement," consisting of N/A pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 14, inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument based on the format of Exhibit J to this Agreement.

8.03 *Designated Representatives*

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

8.04 *Federal Requirements*

- A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements
- B. *Audit and Access to Records.* For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC

1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

- D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner:

Washington County Service Authority

By: *Robert Cornett*

Title: Robert Cornett, General Manager

Date Signed: 15 AUGUST 2011

Engineer:

Adams-Heath Engineering, Inc.

By: *Kevin Heath*

Title: Kevin Heath, P.E., President

Date Signed: 8/09/11

Engineer License or Certificate No. 025726

State of: Virginia

Address for giving notices:

Washington County Service Authority

25122 Regal Drive, P.O. Box 1447

Abingdon, Virginia 24212-1447

Designated Representative (paragraph 6.02.A.):

Robert Cornett

Title: General Manager

Phone Number: (276) 628-7151

Facsimile Number: (276) 628-3594

E-mail Address: rcornett@wesa-water.com

Address for giving notices:

Adams-Heath Engineering, Inc.

119 North Main Street

Galax, Virginia 24333

Designated Representative (see paragraph 8.03.A.):

Kevin Heath, P.E.

Title: President

Phone Number: (276) 236-4588

Facsimile Number: (276) 236-0458

E-Mail Address: kheath@adams-heathinc.com

AGENCY CONCURRENCE

Agency: N/A

By (Signature): _____

Typed Name: _____

Title: _____

Date: _____

E-Mail Address: _____

This is **EXHIBIT A**, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated August 9, 2011.

Owner's Consultant's Services

PART 1 – BASIC SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

A.1.01 Study and Report Phase

A. ENGINEER shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
2. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
3. Identify and evaluate alternate solutions as listed below available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's best judgment meet OWNER's requirements for the Project. The following alternate solutions will be evaluated:
 - i) Evaluate the physical conditions of the two existing Abingdon water storage tanks and improvements necessary, if any, to continue utilizing them for System storage. Evaluation will be based upon the Engineer's visual observation of both tanks (interior and exterior) and site improvements. The Engineer will employ a subconsultant to test the tanks' paint for lead content and to inspect the tanks' interiors using a Remote Operated Vehicle (ROV) and to visually inspect both the interior and exterior of tanks and provide written report of evaluation.
 - ii) Evaluate the measures necessary to demolish/remove the larger existing tank and replace with a new tank at the current location. Evaluation of replacement tank options shall give consideration to alternate tank types and volumes, local building restrictions and/or zoning requirements, site improvements, funding agency guidelines, life cycle costs, and other relevant considerations.
 - iii) Evaluate Water System hydraulics in the Town of Abingdon pressure zone to determine alternate tank site location(s) available, if any, to construct a new replacement water storage tank at a new site while maintaining the current zone overflow elevation.
 - iv) Other possible variations of i), ii), and iii) above which may become evident during the course of Study preparation.
4. In accordance with Agency guidance, prepare a preliminary engineering report (the "Report") which will, as appropriate, contain schematic layouts, sketches, operation and maintenance costs, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.

5. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with the Project.

6. Prepare feasibility studies and rate schedules if required for the Project.

7. Perform or provide the following additional Study and Report Phase tasks or deliverables:

N/A – Not Applicable

8. Furnish review copies of the Report to OWNER and AGENCY within 90 days of authorization to begin services and review it with OWNER and AGENCY.

9. Revise the report in response to OWNER's, AGENCY's, and other parties' comments, as appropriate, and furnish final copies of the revised Report to the OWNER and AGENCY within 30 days of completion of reviewing it with OWNER and AGENCY.

B. ENGINEER's services under the Study and Report Phase shall be considered complete and subject to payment on date when the Report is approved by OWNER, AGENCY, and other governmental authorities having jurisdiction. Unless ENGINEER is otherwise notified in writing payment for ENGINEER's services under the Study and Report Phase shall be made within 30 days of submission of final copies of the revised Report.

A.1.02 *Preliminary Design Phase*

NOT APPLICABLE

A.1.03 *Final Design Phase*

NOT APPLICABLE

A.1.04 *Bidding or Negotiating Phase*

NOT APPLICABLE

A.1.05 *Construction Phase*

NOT APPLICABLE

A.1.06 *Post-Construction Phase*

NOT APPLICABLE

PART 2 – ADDITIONAL SERVICES

A.2.01 *Additional Services Requiring Owner's Advance Written Authorization and Agency's Concurrence*

A. If authorized in writing by Owner, with Agency concurrence, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project (which are not part of Basic Services).

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control. Redesign to reduce Project costs to within the funds available as stated in Exhibit F shall not be considered Additional Services.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A.1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A.1.03.C.
10. Services (which are not part of Basic Services) during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F. Rebidding or renegotiating contracts to reduce the contract costs to funds available as stated in Exhibit F shall not be considered Additional Services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A.1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.

17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make compensation commensurate with the extent of the Additional Services rendered.
23. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
24. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
25. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
26. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

Owner's Responsibilities

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

A.3.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, if not part of Engineer's services.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Furnish as appropriate other services or authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, 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.
- P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:
 - 1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or

2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to paragraphs B.2.01.O and P.
- R. Perform or provide the following additional services:

N/A – Not Applicable

This is EXHIBIT C, consisting of 6 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated August 9, 2011.

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

A.3.02 Compensation for Basic Services (other than Resident Project Representative Services) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of Twenty Thousand and 00/100 Dollars (\$20,000) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), the Lump Sum amount of N/A Dollars (\$ N/A).
3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, above, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency, if required).
 - b. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a, equals 50 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
 - d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor’s Work during the construction period on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph will be in an amount such that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the Lump Sum amount stipulated in paragraph C.2.01.A.2.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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- f. A final payment which, together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e, equals 100 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2. shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
 4. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- B. Period of Service. The compensation amount stipulated in paragraph C.2.01.A.2 is conditioned on a period of service not exceeding 36 months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

A.3.03 [Not Used]

A.3.04 [Not Used]

A.3.04 *Compensation For Resident Project Representative Services – Standard Hourly Rates Method of Payment*

- A. Owner shall pay Engineer for Resident Project Representative Services as follows:
1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05A of Exhibit A, 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 for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ N/A based upon Contract Times as set forth herein.
- B. Compensation for Reimbursable Expenses
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01, and are directly related to the provision of Resident Project Representative Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a Factor of 0.0 N/A.
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1, 2011) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment Under this Paragraph C.2.04

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of N/A.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. Estimated Compensation Amounts
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. Engineer is responsible for monitoring charges generated under this Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

A.3.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, 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 for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ N/A and this amount shall not be exceeded without written approval of Owner and concurrence of Agency.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a Factor of 0.0 N/A.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
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4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1, 2011) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment For Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of 1.10.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

C.2.06 [Not Used]

C.2.07 [Not Used]

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –

Lump Sum Method of Payment

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition

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This is Appendix 1 to EXHIBIT C, consisting of 1 page, referred to in and part of the Agreement Between Owner and *ENGINEER* for Professional Services dated August 9, 2011

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Subconsultants	Cost + 10%
Reimbursables (Travel, lodging, supplies)	N/A – No separate charge for those items

(Appendix 1 to Exhibit C – Reimbursable Expenses Schedule)

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
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Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of January 31) to reflect equitable changes in the compensation payable to Engineer.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of Agreement are:

ADAMS-HEATH ENGINEERING, INC.
119 NORTH MAIN STREET
GALAX, VIRGINIA 24333

STANDARD BILLING RATE SCHEDULE

<u>EMPLOYEE</u>	<u>HOURLY</u>
Project Engineer/Project Manager	\$80.00
Design Engineer	45.00
CADD Draftsperson/Designer	40.00
Construction Inspector	45.00
Word Processor	25.00
Other Direct Costs	
Subconsultants	Cost + 10%
Reimbursables (Travel, lodging, and supplies)	Cost + 10%

Rates are effective January 01, 2011.

C. Man-Hour Loading

1. Attached herewith as Exhibit C1, the Engineer has prepared an estimated man-hour loading chart used in conjunction with calculating the proposed Project fees. The man-hour loading chart is for estimating purposes only and is not to be considered to be binding.

(Appendix 2 to Exhibit C – Standard Hourly Rates Schedule)

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Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

A.3.06 Insurance

A. The limits of liability for the insurance required by paragraph 6.04 and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|---|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability – | |
| 1) Each Accident: | <u>\$500,000</u> |
| 2) Disease, Policy Limit: | <u>\$500,000</u> |
| 3) Disease, Each Employee: | <u>\$500,000</u> |
| c. General Liability – | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000</u> |
| 2) General Aggregate: | <u>\$2,000,000</u> |
| d. Excess Umbrella Liability – | |
| 1) Each Occurrence: | <u>\$3,000,000</u> |
| 2) General Aggregate: | <u>\$3,000,000</u> |
| e. Automobile Liability – | |
| 1) Bodily Injury: | |
| a) Each Accident | \$ _____ |
| 2) Property Damage | |
| a) Each Accident | \$ _____ |
| [or] | |
| 1) Combined Single Limit (Bodily Injury and Property Damage): | |
| a) Each Accident | <u>\$1,000,000</u> |
| f. Professional Liability Insurance | \$ _____ |
| 1) Each Claim Made: | <u>\$2,000,000</u> |
| 2) Annual Aggregate: | <u>\$2,000,000</u> |
| g. Other (specify): | \$ _____ |

2. By Owner:

- | | |
|---------------------------|-----------|
| a. Workers' Compensation: | Statutory |
|---------------------------|-----------|

- b. Employer's Liability –
- 1) Each Accident: \$ _____
 - 2) Disease, Policy Limit: \$ _____
 - 3) Disease, Each Employee: \$ _____
- c. General Liability –
- 1) General Aggregate: \$ _____
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$ _____
- d. Excess Umbrella Liability –
- 1) Each Occurrence: \$ _____
 - 2) General Aggregate: \$ _____
- e. Automobile Liability –
- 1) Bodily Injury:
 - a) Each Accident \$ _____
 - 2) Property Damage
 - a) Each Accident \$ _____
- [or]*
- 3) Combined Single Limit (Bodily Injury and Property Damage):
 - a) Each Accident \$ _____
- f. Other (specify): \$ _____

B. Additional Insureds.

1. The following persons or entities are to be listed on Owner's general liability and property policies of insurance as additional insureds, as provided in paragraph 6.04.B:
 - a. _____
Engineer
 - b. _____
Engineer's Consultant
 - c. _____
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in paragraph 6.04.A.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

A.3.07 Dispute Resolution

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by _____ a mutually agreed upon party _____.

If such mediation is unsuccessful in resolving a Dispute, then (1) all dispute in which more than \$200,000 is in controversy may be resolved only by a court of competent jurisdiction, (2) for disputes of less than \$200,000, the parties may mutually agree to a dispute resolution method of their choice, including but not limited to arbitration pursuant to the terms of paragraph H.6.08.B or (3) in any case either party may seek to have the Dispute resolved by a court of competent jurisdiction.

- B. Arbitration. If the parties mutually agree, and the amount in controversy is less than \$200,000 the Disputes between Owner and Engineer shall be settled by arbitration in accordance with the decision of the arbitrator appointed by the Circuit Court of Washington County rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph H.6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the Circuit Court of Washington County. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
3. The award rendered by the arbitrators shall be in writing, and shall include: (a) a precise breakdown of the award; and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.

5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this paragraph H.6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated August 9, 2011.

Initial:
Owner RE
Owner's Consultant KH

Miscellaneous Provisions

Paragraph(s) 6.11 of Exhibit A- Engineering Services is amended to include the following agreement(s) of the parties:

I6.11.B Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer for the Basic Engineering Services or the sum of \$25,000, whichever is greater.
2. *Agreement Not to Claim for Cost of Certain Change Orders.* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants.

**STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

GREEN SPRINGS ROAD WATER LINE REPLACEMENT PROJECT

THIS IS AN AGREEMENT effective as of August 11, 2011 ("Effective Date") between the Washington County Service Authority ("Owner") and Adams-Heath Engineering, Inc. ("Engineer").

Owner intends to replace existing water lines serving the Green Springs Road area located in the Town of Abingdon. Proposed improvements include construction of approximately 3,800 LF of 8" water mains and related improvements. The upgrades are being completed as part of the WCSA's Capital Improvements Plan using WCSA funding. ("Project")

Financial assistance for this Project is expected to be provided by N/A - WCSA funding ("Agency"), a governmental entity. Nothing herein creates any contractual relationship between Agency and Engineer. Owner and Engineer agree as follows

Article 1 - Services of Engineer

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

Article 2 - Owner's Responsibilities

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

Article 3 - Schedule For Rendering Services

3.01 Commencement

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

Article 4 - Invoices and Payments

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice and funds are available for the Project, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

Article 5 - Opinions of Cost

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost 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 generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual

Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

Article 6 - General Considerations

6.01 *Standards of Performance*

- A. 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.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. The retention of such Consultants shall not reduce the Engineer's obligations to Owner under this Agreement.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract, Funding Agency Edition" as prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit I.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- K. All Contract Documents and Applications for Payment shall be subject to Agency concurrence.

6.02 *Design without Construction Phase Services*

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of paragraph 5.04 of the "Standard General Conditions of the Construction Contract, Funding Agency Edition," (No. C-710, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension.*

- 1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.
- 2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

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

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Engineer will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Engineer. Owner's use of any such Documents or Project materials shall be subject to the terms of Paragraph 6.03.

6.06 *Controlling Law*

A. This Agreement is to be governed by the law of the state in which the Project is located, its conflict of laws provisions excepted.

6.07 *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 6.07.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.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness,

disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damage caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer 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.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, 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.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

Article 7 - Definitions

7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract, Funding Agency Edition," prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition):
 - 1. *Additional Services* - The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
 - 2. *Agency* - The Federal or state agency named on page 1 of this Agreement.
 - 3. *Basic Services* - The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
 - 4. *Construction Cost* - The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 - 5. *Constituent of Concern* - Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6. *Consultants* - Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
7. *Documents* - Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
8. *Drawings* - That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
9. *Effective Date of the Agreement* - The date indicated in this Agreement on which it becomes effective. If no such date is indicated it means the date on which Agency concurs with the Agreement.
10. *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
11. *Reimbursable Expenses* - The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
12. *Resident Project Representative* - The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
13. *Specifications* - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
14. *Total Project Costs* - The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

Article 8 - Exhibits and Special Provisions

8.01 Exhibits Included

- A. Exhibit A, "Engineer's Services," consisting of 8 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 6 pages.

- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.
- F. Exhibit F, "Construction Cost Limit," consisting of N/A pages.
- G. Exhibit G, "Insurance," consisting of 2 pages.
- H. Exhibit H, "Dispute Resolution," consisting of 2 pages.
- I. Exhibit I, "Special Provisions," consisting of 1 pages.
- J. Exhibit J, "Amendment to Standard Form of Agreement," consisting of N/A pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 14, inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument based on the format of Exhibit J to this Agreement.

8.03 *Designated Representatives*

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

8.04 *Federal Requirements*

- A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements
- B. *Audit and Access to Records.* For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or

employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

- D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner:

Engineer:

Washington County Service Authority

Adams-Heath Engineering, Inc.

By: *Robert Cornett*

By: *Kevin Heath*

Title: Robert Cornett, General Manager

Title: Kevin Heath, P.E., President

Date Signed: 11 AUGUST 2011

Date Signed: 8/09/11

Engineer License or Certificate No. 025726

State of: Virginia

Address for giving notices:

Address for giving notices:

Washington County Service Authority

Adams-Heath Engineering, Inc.

25122 Regal Drive, P.O. Box 1447

119 North Main Street

Abingdon, Virginia 24212-1447

Galax, Virginia 24333

Designated Representative (paragraph 6.02.A.):

Designated Representative (see paragraph 8.03.A):

Robert Cornett

Kevin Heath, P.E.

Title: General Manager

Title: President

Phone Number: (276) 628-7151

Phone Number: (276) 236-4588

Facsimile Number: (276) 628-3594

Facsimile Number: (276) 236-0458

E-mail Address: rcornett@wcsa-water.com

E-Mail Address: kheath@adams-heathinc.com

AGENCY CONCURRENCE

Agency: N/A

By (Signature): _____

Typed Name: _____

Title: _____

Date: _____

E-Mail Address: _____

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated August 9, 2011.

Owner's Consultant's Services

PART 1 – BASIC SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

A.1.01 Study and Report Phase

NOT APPLICABLE-Preliminary Engineering Report requirement waived by the Virginia Department of Health by letter dated March 18, 2009.

A.1.02 Preliminary Design Phase

A. After acceptance by Owner and Agency of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Provide to Owner three copies of maps showing the general location of required construction easements and permanent easements and the land to be acquired.
4. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
5. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
6. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:

N/A – Not Applicable

7. Furnish 3 review copies of the Preliminary Design Phase documents and any other deliverables to Owner (and Agency, if required) within 90 calendar days of authorization to proceed with this phase, and review them with Owner.
8. Revise the Preliminary Design Phase documents and any other deliverables in response to comments from Owner (and Agency), as appropriate, and furnish to Owner (and Agency) 3 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of all such comments.

- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner (and Agency, if required).

A.1.03 Final Design Phase

- A. After acceptance by Owner (and by Agency, if required) of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
3. Advise Owner of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:

N/A – Not Applicable

5. Prepare and furnish Bidding Documents for review by the Owner, its legal counsel, its other advisors, regulatory agencies, and Agency, within 30 calendar days of authorization to proceed with this phase, and assist Owner in the preparation of other related documents. Bidding documents will comply with Agency's requirements in effect as of the date of Owner authorizing work in this phase.
 6. Revise the Bidding Documents in accordance with comments and instructions from the Owner and Agency, as appropriate, and submit 3 final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner and Agency within 30 calendar days after receipt of all such comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A.1.03.A.6 have been delivered to and accepted by Owner and Agency.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A.1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner and Agency of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 5. Determine the acceptability of substitute materials and equipment proposed when substitution is necessary because the specified item is incompatible with the Project or fails to comply with applicable codes.
 6. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

N/A – Not Applicable
 7. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A.1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
 2. *Resident Project Representative (RPR).* Unless otherwise notified in writing by Owner, Engineer shall provide the services of Resident Project Representative (RPR) at the Site to assist Engineer and to provide more continuous observations of such work on a full-time basis unless part-time services are expressly approved by Agency and this Agreement is amended accordingly. Engineer will, prior to the pre-construction conference, submit a resume of the RPR's qualifications for approval by Owner and Agency. The duties, responsibilities, and limitations of authority of the RPR are as set forth in Exhibit D. The furnishing of such Resident Project Representative service will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, paragraph B.2.01.O.
4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site. If RPR services are provided by Engineer, ensure RPR attends Pre-Construction Conference.
5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.

10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A.2.01.A.23 of this Exhibit A.
13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys

paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A.1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in paragraph A.1.05.A.11.
17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner, the Agency's representative, and Contractor, conduct a pre-final inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner, Agency, and Contractor.
18. *Record Drawings.* Prepare and furnish to Owner a set of reproducible Project Record Drawings showing appropriate record information based on Record Drawing information from Contractor and Project documentation received from RPR.
19. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:

N/A – Not Applicable

20. *Final Notice of Acceptability of the Work.* In company with Owner's and Agency's representative, conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A.1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A.1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:
1. Provide assistance in connection with the adjusting of Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.

3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
 4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:

N/A – Not Applicable
 6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period for Contractor's Work to ascertain whether any portion of the Work is subject to correction.
- B. The Engineer shall provide a total of 8 hours of assistance and necessary reimbursable expenses in providing services during the Post-Construction Phase.
- C. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction 1-Year Warranty Period.

PART 2 – ADDITIONAL SERVICES

A.2.01 Additional Services Requiring Owner's Advance Written Authorization and Agency's Concurrence

- A. If authorized in writing by Owner, with Agency concurrence, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project (which are not part of Basic Services).
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control. Redesign to reduce Project costs to within the funds available as stated in Exhibit F shall not be considered Additional Services.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A.1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating

processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A.1.03.C.
10. Services (which are not part of Basic Services) during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F. Rebidding or renegotiating contracts to reduce the contract costs to funds available as stated in Exhibit F shall not be considered Additional Services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A.1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property – including easement acquisition assistance; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make compensation commensurate with the extent of the Additional Services rendered.
23. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

24. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
25. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
26. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

Owner's Responsibilities

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

A.3.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, if not part of Engineer's services.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Furnish as appropriate other services or authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, 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.
- P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:
 - 1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or

2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to paragraphs B.2.01.O and P.
- R. Perform or provide the following additional services:
1. Obtain all permanent and/or temporary construction right-of way easements required to construct the project that are not secured by the Engineer in accordance with Part 2 A.2.01.A.15
 2. Pay all applicable fees/charges assessed by regulatory agencies and/or permitting authorities in order to issue those permit(s) necessary to construct the project.
 3. Field mark the location of all known existing water lines and appurtenances (valves, hydrants, meters, etc.) prior to the Engineer's scheduled field surveying.
 4. Owner reserves the right to provide resident construction services in accordance with funding agency guidelines using a firm or individual(s) other than the Engineer.

This is **EXHIBIT C**, consisting of 6 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated August 9, 2011.

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

A.3.02 Compensation for Basic Services (other than Resident Project Representative Services) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of N/A Dollars (\$N/A) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), the Lump Sum amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00).
 3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, above, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency, if required).
 - b. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a, equals 50 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
 - d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor’s Work during the construction period on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph will be in an amount such that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the Lump Sum amount stipulated in paragraph C.2.01.A.2.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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- f. A final payment which, together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e, equals 100 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2. shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
 4. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- B. Period of Service. The compensation amount stipulated in paragraph C.2.01.A.2 is conditioned on a period of service not exceeding 36 months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

A.3.03 [Not Used]

A.3.04 [Not Used]

A.3.04 *Compensation For Resident Project Representative Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Services as follows:

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05A of Exhibit A, 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 for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ 32,400.00 based upon Contract Times as set forth herein.
2. The aforementioned Resident Project Representative Services fee is estimated based upon an 18 week construction period with 40 hours per week at \$45.00 per hour.

$$\text{Estimated Fee} = (18 \text{ weeks}) (40 \text{ hrs/week}) (\$45.00/\text{hr}) = \$32,400.00$$

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01, and are directly related to the provision of Resident Project Representative Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a Factor of 0.0 N/A.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1, 2011) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment Under this Paragraph C.2.04

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of N/A.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. Estimated Compensation Amounts
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. Engineer is responsible for monitoring charges generated under this Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

A.3.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, 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 for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$4,800.00 and this amount shall not be exceeded without written approval of Owner and concurrence of Agency.

The indicated Additional Services Fee is anticipated to consist of the following item(s):

Right-of-Way Easement Identification and Preparation.....	\$1,500.00
Right-of-Way Easement Acquisition Assistance	\$1,800.00
Railroad Permit Preparation.....	<u>\$1,500.00</u>
Estimated Budget	\$4,800.00

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a Factor of 0.0 N/A.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1, 2011) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment For Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of 1.10.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

C.2.06 [Not Used]

C.2.07 [Not Used]

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –

Lump Sum Method of Payment

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This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement Between Owner and ENGINEER for Professional Services** dated August 9, 2011

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Subconsultants	Cost + 10%
Reimbursables (Travel, lodging, supplies)	N/A – No separate charge for those items

This is Appendix 2 to EXHIBIT C, consisting of 1 page, referred to in and part of the Agreement Between Owner and Engineer for Professional Services dated August 9, 2011.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of January 31) to reflect equitable changes in the compensation payable to Engineer.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of Agreement are:

ADAMS-HEATH ENGINEERING, INC.
119 NORTH MAIN STREET
GALAX, VIRGINIA 24333

STANDARD BILLING RATE SCHEDULE

<u>EMPLOYEE</u>	<u>HOURLY</u>
Project Engineer/Project Manager	\$80.00
Design Engineer	45.00
CADD Draftsperson/Designer	40.00
Construction Inspector	45.00
Word Processor	25.00
Other Direct Costs	
Subconsultants	Cost + 10%
Reimbursables (Travel, lodging, and supplies)	Cost + 10%

Rates are effective January 01, 2011.

C. Man-Hour Loading

1. Attached herewith as Exhibit C1, the Engineer has prepared an estimated man-hour loading chart used in conjunction with calculating the proposed Project fees. The man-hour loading chart is for estimating purposes only and is not to be considered to be binding.

(Appendix 2 to Exhibit C – Standard Hourly Rates Schedule)

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Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

A.3.06 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D shall provide full time representation unless representation to a lesser degree is approved by Agency.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. *Shop Drawings and Samples:*

- a. Record date of receipt of Samples and approved Shop Drawings.
- b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
- c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. *Review of Work and Rejection of Defective Work:*

- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in 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 Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

- a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems 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 Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, 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 Engineer.

- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to 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.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- d. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the
Agreement between Owner and Engineer for Professional Services
dated August 9, 2011

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: _____

OWNER: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT: _____

CONSTRUCTION CONTRACT DATE: _____

ENGINEER: _____

To: _____
OWNER

And To: _____
AGENCY

And To: _____
CONTRACTOR

The Engineer hereby gives notice to the above Owner, Agency, and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

A.3.07 Insurance

A. The limits of liability for the insurance required by paragraph 6.04 and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|---|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | <u>\$500,000</u> |
| 2) Disease, Policy Limit: | <u>\$500,000</u> |
| 3) Disease, Each Employee: | <u>\$500,000</u> |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000</u> |
| 2) General Aggregate: | <u>\$2,000,000</u> |
| d. Excess Umbrella Liability -- | |
| 1) Each Occurrence: | <u>\$3,000,000</u> |
| 2) General Aggregate: | <u>\$3,000,000</u> |
| e. Automobile Liability -- | |
| 1) Bodily Injury: | |
| a) Each Accident | \$ _____ |
| 2) Property Damage | |
| a) Each Accident | \$ _____ |
| [or] | |
| 1) Combined Single Limit (Bodily Injury and Property Damage): | |
| a) Each Accident | <u>\$1,000,000</u> |
| f. Professional Liability Insurance | \$ _____ |
| 1) Each Claim Made: | <u>\$2,000,000</u> |
| 2) Annual Aggregate: | <u>\$2,000,000</u> |
| g. Other (specify): | \$ _____ |

2. By Owner:

- | | |
|---------------------------|-----------|
| a. Workers' Compensation: | Statutory |
|---------------------------|-----------|

- b. Employer's Liability –
1) Each Accident: \$ _____
2) Disease, Policy Limit: \$ _____
3) Disease, Each Employee: \$ _____
- c. General Liability –
1) General Aggregate: \$ _____
2) Each Occurrence (Bodily Injury and Property Damage): \$ _____
- d. Excess Umbrella Liability –
1) Each Occurrence: \$ _____
2) General Aggregate: \$ _____
- e. Automobile Liability –
1) Bodily Injury:
a) Each Accident \$ _____
2) Property Damage
a) Each Accident \$ _____
- [or]
- 3) Combined Single Limit
(Bodily Injury and Property Damage):
a) Each Accident \$ _____
- f. Other (specify): \$ _____

B. Additional Insureds.

1. The following persons or entities are to be listed on Owner's general liability and property policies of insurance as additional insureds, as provided in paragraph 6.04.B:
 - a. _____
Engineer
 - b. _____
Engineer's Consultant
 - c. _____
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in paragraph 6.04.A.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

A.3.08 Dispute Resolution

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by _____ a mutually agreed upon party _____.

If such mediation is unsuccessful in resolving a Dispute, then (1) all dispute in which more than \$200,000 is in controversy may be resolved only by a court of competent jurisdiction, (2) for disputes of less than \$200,000, the parties may mutually agree to a dispute resolution method of their choice, including but not limited to arbitration pursuant to the terms of paragraph H.6.08.B or (3) in any case either party may seek to have the Dispute resolved by a court of competent jurisdiction.

- B. Arbitration. If the parties mutually agree, and the amount in controversy is less than \$200,000 the Disputes between Owner and Engineer shall be settled by arbitration in accordance with the decision of the arbitrator appointed by the Circuit Court of Washington County rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph H.6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the Circuit Court of Washington County. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
3. The award rendered by the arbitrators shall be in writing, and shall include: (a) a precise breakdown of the award; and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.

5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this paragraph H.6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated August 9, 2011.

Owner KH Initial:
Owner's Consultant KH

Miscellaneous Provisions

Paragraph(s) 6.11 of Exhibit A- Engineering Services is amended to include the following agreement(s) of the parties:

16.11.B Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer for the Basic Engineering Services or the sum of \$25,000, whichever is greater.
2. *Agreement Not to Claim for Cost of Certain Change Orders.* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America



and the

Construction Specification Institute



This document has been accepted by the
United States Department of Agriculture
Rural Utilities Services, Water and Waste Programs

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, Funding Agency Edition (No. C-710, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of July 25, 2011 ("Effective Date") between

Washington County Service Authority ("Owner) and

The Lane Group, Inc. ("Engineer").

Owner intends to construct the Bristol Area Water Service Restructuring project. The estimated project cost is

\$980,670.00. The project is described in detail in the Preliminary Engineering Report titled "Bristol Area

Water Service Restructuring from BVUA to WCSA" prepared by The Lane Group, Inc. and dated

June 8, 2011

Bristol Area Water Service Restructuring from BVUA to WCSA ("Project")

Financial assistance for this Project is expected to be provided by N/A ("Agency),
a governmental entity. Nothing herein creates any contractual relationship between Agency and Engineer.

Owner and Engineer agree as follows

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month. Invoices are due and payable within 60 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice and funds are available for the Project, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost 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 generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. 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.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. The retention of such Consultants shall not reduce the Engineer's obligations to Owner under this Agreement.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these

requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract, Funding Agency Edition" as prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit I.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- K. All Contract Documents and Applications for Payment shall be subject to Agency concurrence.

6.02 *Design without Construction Phase Services*

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of paragraph 5.04 of the "Standard General Conditions of the Construction Contract, Funding Agency Edition," (No. C-710, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in

Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension.*

1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.
2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

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

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Engineer will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Engineer. Owner's use of any such Documents or Project materials shall be subject to the terms of Paragraph 6.03.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state in which the Project is located, its conflict of laws provisions excepted.

6.07 *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 6.07.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.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

- C. *Environmental Indemnification.* In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damage caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer 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.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, 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.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract, Funding Agency Edition," prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition):

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
2. *Agency* – The Federal or state agency named on page 1 of this Agreement.
3. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
4. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
6. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
7. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
8. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
9. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective. If no such date is indicated it means the date on which Agency concurs with the Agreement.
10. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
11. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
12. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

13. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
14. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

- A. Exhibit A, "Engineer's Services," consisting of 9 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 6 pages. Also includes VA RUS Bulletin – Attachment I consisting of 4 pages.
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.
- F. Exhibit F, "Construction Cost Limit," consisting of N/A pages.
- G. Exhibit G, "Insurance," consisting of 2 pages.
- H. Exhibit H, "Dispute Resolution," consisting of 1 pages.
- I. Exhibit I, "Special Provisions," consisting of 1 page.
- J. Exhibit J, "Amendment to Standard Form of Agreement," consisting of N/A pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 12, inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument based on the format of Exhibit J to this Agreement.

8.03 *Designated Representatives*

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

8.04 Federal Requirements

- A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements
- B. *Audit and Access to Records.* For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner:

Engineer:

Washington County Service Authority

THE LANE GROUP INC.

By: Robert Cornett

By: Matthew R. Lane

Title: Robert Cornett, General Manager

Title: Matthew R. Lane, PE, Vice President

Date Signed: 03 AUGUST 2011

Date Signed: 8/3/11

Engineer License or Certificate No. 034173

State of: Virginia

Address for giving notices:

Address for giving notices:

25122 Regal Drive

Post Office Box 1340

Abingdon, VA 24211

Chilhowie, VA 24211

Designated Representative (see paragraph 8.03.A):

Designated Representative (see paragraph 8.03.A):

Matthew R. Lane, PE

Title:

Title: Vice President

Phone Number:

Phone Number: 276-646-2520

Facsimile Number:

Facsimile Number: 276-646-2380

E-Mail Address:

E-Mail Address: mlane@thelanegroupinc.com

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated July 25, 2011.

Owner's Consultant's Services

PART 1 – BASIC SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

A.1.01 Study and Report Phase (Previously Completed)

A.1.02 Preliminary Design Phase

- A. After acceptance by Owner and of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Provide to Owner three copies of maps showing the general location of required construction easements and permanent easements and the land to be acquired.
 4. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 5. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 6. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [None]
 7. Furnish 4 review copies of the Preliminary Design Phase documents and any other deliverables to Owner (and Agency, if required) within 30 calendar days of authorization to proceed with this phase, and review them with Owner.
 8. Revise the Preliminary Design Phase documents and any other deliverables in response to comments from Owner (and Agency), as appropriate, and furnish to Owner (and Agency) 4 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of all such comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner (and Agency, if required).

A.1.03 Final Design Phase

- A. After acceptance by Owner (and by Agency, if required) of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: [None]
 5. Prepare and furnish Bidding Documents for review by the Owner, its legal counsel, its other advisors, regulatory agencies, and Agency, within 60 calendar days of authorization to proceed with this phase, and assist Owner in the preparation of other related documents. Bidding documents will comply with Agency's requirements in effect as of the date of Owner authorizing work in this phase.
 6. Revise the Bidding Documents in accordance with comments and instructions from the Owner and Agency, as appropriate, and submit 4 final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner and Agency within 30 calendar days after receipt of all such comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A.1.03.A.6 have been delivered to and accepted by Owner and Agency.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is 3. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A.1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner and Agency of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 5. Determine the acceptability of substitute materials and equipment proposed when substitution is necessary because the specified item is incompatible with the Project or fails to comply with applicable codes.
 6. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [None]
 7. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A.1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
 2. *Resident Project Representative (RPR).* Unless otherwise notified in writing by Owner, Engineer shall provide the services of Resident Project Representative (RPR) at the Site to assist Engineer and to provide more continuous observations of such work on a full-time basis unless part-time services are expressly approved by Agency and this Agreement is amended accordingly. Engineer will, prior to the pre-construction conference, submit a resume of the RPR's qualifications for approval by Owner and Agency. The duties, responsibilities, and limitations of authority of the RPR are as set forth in Exhibit D. The furnishing of such Resident Project Representative service will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, paragraph B.2.01.O.

4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site. If RPR services are provided by Engineer, ensure RPR attends Pre-Construction Conference.
5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A.2.01.A.23 of this Exhibit A.
13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or

encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A.1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in paragraph A.1.05.A.11.
 17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner, the Agency's representative, and Contractor, conduct a pre-final inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner, Agency, and Contractor.
 18. *Record Drawings.* Prepare and furnish to Owner a set of reproducible Project Record Drawings showing appropriate record information based on Record Drawing information from Contractor and Project documentation received from RPR.
 19. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables: [None].
 20. *Final Notice of Acceptability of the Work.* In company with Owner's and Agency's representative, conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A.1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A.1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:
1. Provide assistance in connection with the adjusting of Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.
 3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.

4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables: [None]
 6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period for Contractor's Work to ascertain whether any portion of the Work is subject to correction.
- B. The Engineer shall provide a total of 40 hours of assistance and necessary reimbursable expenses in providing services during the Post-Construction Phase.
- C. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's Correction Period.

PART 2 – ADDITIONAL SERVICES

A.2.01 Additional Services Requiring Owner's Advance Written Authorization and Agency's Concurrence

- A. If authorized in writing by Owner, with Agency concurrence, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project (which are not part of Basic Services).
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control. Redesign to reduce Project costs to within the funds available as stated in Exhibit F shall not be considered Additional Services.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A.1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
 8. Furnishing services of Engineer's Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in paragraph A.1.03.C.
10. Services (which are not part of Basic Services) during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F. Rebidding or renegotiating contracts to reduce the contract costs to funds available as stated in Exhibit F shall not be considered Additional Services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A.1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make compensation commensurate with the extent of the Additional Services rendered.
23. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
24. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

25. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
26. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

Owner's Responsibilities

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

B.2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, if not part of Engineer's services.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Furnish as appropriate other services or authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, 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.
- P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:
 - 1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or
 - 2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to paragraphs B.2.01.O and P.

R. Perform or provide the following additional services:

NONE

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative Services) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of N/A Dollars (\$N/A) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), the Lump Sum amount of Ninety One Thousand Dollars (\$91,000.00).
 3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, above, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency, if required).
 - b. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a, equals 50 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
 - d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor’s Work during the construction period on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph will be in an amount such that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the Lump Sum amount stipulated in paragraph C.2.01.A.2.
 - f. A final payment which, together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e, equals 100 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services under

paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.

4. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

- B. Period of Service. The compensation amount stipulated in paragraph C.2.01.A.2 is conditioned on a period of service not exceeding 24 months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C.2.02 [Not Used]

C.2.03 [Not Used]

C.2.04 [Not Used]

C.2.05 *Compensation for Additional Services – Standard Hourly Rates Method of Payment*

- A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, 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 for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$15,000.00 and this amount shall not be exceeded without written approval of Owner and concurrence of Agency.

- B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a Factor of 1.15.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of April) to reflect equitable changes in the compensation payable to Engineer.

- C. Other Provisions Concerning Payment For Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of 1.15.

2. Factors. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement Between Owner and ENGINEER for Professional Services** dated May 12, 2011

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

FAX	\$ 0.20/page
8½"x11" Copies/Impression	\$ 0.10/page
Blue Print Copies	\$ /sq. ft.
Reproducible Copies (Mylar)	\$ 0.50/sq. ft.
Reproducible Copies (Paper)	\$ 0.35/sq. ft.
Mileage (auto)	\$ 0.50/mile
Field Truck Daily Charge	\$ /day
Mileage (Field Truck)	\$ /mile
Field Survey Equipment	\$ /day
Confined Space Equipment	\$ /day plus expenses
Resident Project Representative Equipment	\$ /month
Computer CPU Charge	\$ /hour
Specialized Software	\$ /hour
Personal Computer Charge	\$ /hour
CAD Charge	\$ /hour
CAE Terminal Charge	\$ /hour
VCR and Monitor Charge	\$ /week, or \$ /month
Video Camcorder	\$ /day, plus \$ /tape
Electrical Meters Charge	\$ /week, or \$ /month
Flow Meter Charge	\$ /week, or \$ /month
Rain Gauge	\$ /week, or \$ /month
Sampler Charge	\$ /week, or \$ /month
Dissolved Oxygen Tester Charge	\$ /week
Fluorometer	\$ /week
Laboratory Pilot Testing Charge	\$ /week, or \$ /month
Soil Gas Kit	\$ /day
Submersible Pump	\$ /day
Water Level Meter	\$ /day, or \$ /month
Soil Sampling	\$ /sample
Groundwater Sampling	\$ /sample
Health and Safety Level D	\$ /day
Health and Safety Level C	\$ /day
Electronic Media Charge	\$ /hour
Long Distance Phone Calls	at cost
Mobile Phone	\$ /day
Meals and Lodging	at cost

Bristol Area Water Service Restructuring
(Appendix 1 to Exhibit C – Reimbursable Expenses Schedule)

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
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This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated May 12, 2011.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of April) to reflect equitable changes in the compensation payable to Engineer.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of Agreement are:

Billing Class 9	Senior Project Manager / Engineer	\$ <u>100.00</u> /hour
Billing Class 8	Project Engineer II	\$ <u>90.00</u> /hour
Billing Class 7	Project Engineer I	\$ <u>80.00</u> /hour
Billing Class 6	Environmental Specialist	\$ <u>80.00</u> /hour
Billing Class 5	Engineering Technician (EIT)	\$ <u>60.00</u> /hour
Billing Class 4	CADD Technician	\$ <u>55.00</u> /hour
Billing Class 3	Resident Project Representative	\$ <u>60.00</u> /hour
Billing Class 2	Administrative Support	\$ <u>35.00</u> /hour
Billing Class 1	Technician I	\$ <u>30.00</u> /hour
Principal		\$ <u>120.00</u> /hour

This is Virginia Attachment 1 consisting of four pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition dated July 25, 2011.

Initial:
OWNER *RG*
ENGINEER *HL*

This Virginia Attachment 1 amends and supplements Exhibit C of the Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition for utilization with Rural Development funded projects in Virginia.

Below is a fee percentage table which may be used to determine Basic Engineering fees considered reasonable for Rural Development projects. The Study and Report phase as outlined in paragraph A.1.01 is not included in the fees as outlined below. The fees as outlined below are for those performed or furnished under paragraphs A.1.02 through A.1.06. For water and sewer treatment facilities, add one percent to the Table I fee.

FEES CONSIDERED REASONABLE FOR BASIC ENGINEERING

CONSTRUCTION COST * \$	TABLE I % BASIC ENG. FEE	TABLE II % BASIC ENG. FEE
less than 100,000	----- TO BE NEGOTIATED -----	
100,000	15.0	14.0
200,000	14.8	13.0
300,000	14.6	12.0
400,000	14.4	11.0
500,000	14.2	10.0
600,000	14.0	9.8
700,000	13.0	9.6
800,000	12.0	9.4
900,000	11.0	9.2
1,000,000	10.0	9.0
2,000,000	9.8	8.8
3,000,000	9.6	8.6
4,000,000	9.4	8.4
5,000,000	9.2	8.2
10,000,000	8.2	7.2
20,000,000	8.0	7.0

CONSTRUCTION ITEMS

TABLE I

Water and sewer treatment facilities
(add one percent)
Booster Stations
Water distribution lines, under 16" in
diameter and appurtenances
Sanitary sewer lines under 24" in
diameter and appurtenances
Renovation and rehabilitation
Lift Stations

TABLE II

Water distribution lines 16" and larger in
diameter and appurtenances
Sanitary sewerlines greater than 24" in
diameter and appurtenances
Water storage facilities (including rehabilitation)
Storm sewers and drains
Roads and streets
Industrial buildings, warehouses, etc.
Grading except when incidental to the
project

*Estimated construction cost

If a project is divided such that a portion is eligible for TABLE I compensation and the remainder for TABLE II compensation, fee percentages for Basic Engineering services will be determined based on the total estimated construction cost with each corresponding percentage figure applied to the appropriate portion of construction. The appropriate fee percentage should be computed based on an interpolated value and rounded to the nearest tenth of a percent.

	<u>Cost</u>	<u>Basic Fee %</u>
For example:		
Treatment Plant	\$400,000	15.2
Distribution System	\$50,000	14.2
Water Tank	<u>\$50,000</u>	10.0
Construction Cost	\$500,000	

Projects bid simultaneously shall be considered as one project for the purpose of computing Basic Engineering fees and project representation fees.

For the purpose of calculating fees, construction cost estimates do not include construction contingencies.

Add a new paragraph C.2.04 with the following text:

(Check the applicable paragraph)

 X A. Full-time project representation will be billed monthly on a hourly basis for the time the inspector spends at the project site. It is estimated that the project representation services will be necessary for 1,250 hours and the hourly fee for the resident project representative will be **\$60.00** per hour. This hourly fee includes any cost associated with Reimbursable Expenses. The total estimated not to exceed fee for this resident project representative is **\$75,000.00..**

Billing for additional resident project representatives will also be based on the amount of time the resident project representative(s) spend at the project site. It is estimated additional resident project representative(s) will be provided for an estimated hours each. The hourly fee for the additional resident project representative(s) will be **\$60.00** per hour. This hourly fee includes any cost associated with Reimbursable Expenses. The total estimated not to exceed fee for the additional resident project representative(s) is **\$0**.

The total estimated not to exceed figure for full-time project representation is **\$60,000.00.**

 N/A B. Part-time project representation will be billed monthly on an hourly basis for the time the resident project representative spends at the project site. It is estimated that the resident project representative's services will be required for a total of hours. The hourly fee for this resident project representative will be \$ per hour. This hourly fee includes any cost associated with Reimbursable Expenses. The total estimated not to exceed fee for part-time project representation is \$.

Full-time resident project representation is to be interpreted as project representation services provided from the date the contractor begins work to the date of substantial completion. Resident project representation services shall be provided whenever the contractor is on the site of the project performing work as outlined in the construction contract and any modification to the contract. In estimating the length of full-time project representation services, some allowance for part-time project representation services during the period from the date substantial completion to the date of final completion should be made. Full-time project representation is preferred on most Rural Development projects.

Part-time resident project representation is to be used only when the complexity and scope of the construction does not require full-time project representation. Part-time resident project representation will be fully explained and detailed in Exhibit I.

Any costs for resident project representation due to projects not being completed on schedule will be one factor included in determining the amount of liquidated damages. Liquidated damages collected may be used to pay additional resident project representation costs.

Revise paragraph A.1.02.A.2 to state the following:

Provide necessary field surveys to provide necessary plan and profiles for utility type projects and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners. Any topographic surveying is not included.

Append paragraph A.1.03.A.2 with the following:

The permits included in this paragraph are limited to the VPDES permits issued by the Virginia Department of Environmental Quality; construction permits issued by the Virginia Department of Health, the Virginia Department of Environmental Quality and the Virginia Department of Transportation; and erosion and sediment control permits. Modeling of air quality, water quality, waste assimilation and ground water modeling (RASA and others) is not included.

Append paragraph A.2.01.A.1 with the following:

Prepare and provide technical criteria, written descriptions, design data and forms for Owner's use in filing applications for environmental type permits such as those associated with stream crossings or wetlands disturbance. Additionally, work associated with pilot studies and modeling of air quality, water quality, waste assimilation and ground water modeling (RASA and others) is not included.

Add a new paragraph A.2.01.A.27 to state the following:

Services to provide topographic surveys for treatment facilities, storage tanks, and pump station sites.

Add a new paragraph C.2.05.D (Sheet C-4 as follows:

Attach in detail a list of the Additional Engineering Services to be performed by the engineer along with a cost estimate for each of these services. Approval of this agreement by the Owner will act as the authorization to proceed with these services. The billings for additional services shall not exceed the budgeted amount without prior concurrence by the Owner. Should the need for Additional Services which were not previously identified be required during the development of the project, prior concurrence from the Owner is needed.

Add a new paragraph C.2.05.E (Sheet C-4) as follows:

Reimbursable Expenses reasonably and necessarily incurred in connection with services provided under Paragraph C.2.05 will be paid at the rates set forth in Appendices 1 and 2 provided, however, services necessary to provide a property plat for an easement, including surveying and any reimbursable expenses, will be reimbursed in an amount not to exceed \$ 1000.00 per easement.

Revise paragraph A.3 (Appendix 2 to Exhibit C, Standard Hourly Rates Schedule, Sheet C-6) as follows:

The Standard Hourly Rates apply only as specified in Article C.2.05 (Sheet C-4).

Below is a detailed list of the Additional Engineering Services to be performed by the engineer along with a cost estimate for each of these services. Approval of this agreement by the Owner will act as the authorization to proceed with these services. The billings for additional services shall not exceed the budgeted amount without prior concurrence by the Owner and Rural Development. Should the need for Additional Services which were not previously identified be required during the development of the project, prior concurrence from the Owner is needed.

PROJECTED ADDITIONAL ENGINEERING SERVICES COST ESTIMATES

Permitting	=	\$2,500.00
Easement Assistance and Property Plats	=	\$10,000.00
Backfill Compaction Testing and Equipment	=	\$2,500.00
Total	=	\$15,000.00

Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D.1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D shall provide full time representation unless representation to a lesser degree is approved by Agency.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in 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 Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections, Tests, and System Startups:*
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems 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 Engineer.
10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, 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 Engineer.

- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to 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.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- d. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated July 25, 2011.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Bristol Area Water Service Restructuring

OWNER: Washington County Service Authority

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER: The Lane Group, Inc.

To: Washington County Service Authority
OWNER

And To: AGENCY(N/A)

And To: CONTRACTOR

The Engineer hereby gives notice to the above Owner, Agency, and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated April 13, 2010, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: _____

Dated: _____

Bristol Area Water Service Restructuring

Page 1 of 2 Pages

(Exhibit E - Notice of Acceptability of Work)

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
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(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the agreement between Owner and Engineer for Professional Services dated July 25, 2011.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

G.6.04 Insurance

A. The limits of liability for the insurance required by paragraph 6.04 and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|---|-----------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability – | |
| 1) Each Accident: | <u>\$500,000.00</u> |
| 2) Disease, Policy Limit: | <u>\$500,000.00</u> |
| 3) Disease, Each Employee: | <u>\$500,000.00</u> |
| c. General Liability – | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000.00</u> |
| 2) General Aggregate: | <u>\$2,000,000.00</u> |
| d. Excess Umbrella Liability – | |
| 1) Each Occurrence: | <u>\$5,000,000.00</u> |
| 2) General Aggregate: | <u>\$5,000,000.00</u> |
| e. Automobile Liability – | |
| 1) Bodily Injury: | |
| a) Each Accident | \$ _____ |
| 2) Property Damage | |
| a) Each Accident | \$ _____ |
| [or] | |
| 1) Combined Single Limit (Bodily Injury and Property Damage): | |
| a) Each Accident | <u>\$1,000,000.00</u> |
| f. Professional Liability Insurance | \$ _____ |
| 1) Each Claim Made: | <u>\$2,000,000.00</u> |
| 2) Annual Aggregate: | <u>\$2,000,000.00</u> |
| g. Other (specify): | \$ _____ |

2. By Owner:

- | | |
|---------------------------|-----------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability – | |

- 1) Each Accident: \$ _____
- 2) Disease, Policy Limit: \$ _____
- 3) Disease, Each Employee: \$ _____
- c. General Liability –
 - 1) General Aggregate: \$ _____
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$ _____
- d. Excess Umbrella Liability –
 - 1) Each Occurrence: \$ _____
 - 2) General Aggregate: \$ _____
- e. Automobile Liability –
 - 1) Bodily Injury:
 - a) Each Accident \$ _____
 - 2) Property Damage
 - a) Each Accident \$ _____
- [or]
- 3) Combined Single Limit (Bodily Injury and Property Damage):
 - a) Each Accident \$ _____
- f. Other (specify): \$ _____

B. Additional Insureds.

1. The following persons or entities are to be listed on Owner's general liability and property policies of insurance as additional insureds, as provided in paragraph 6.04.B:
 - a. The Lane Group, Inc.
Engineer
 - b. _____
Engineer's Consultant
 - c. _____
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in paragraph 6.04.A.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H.6.08 Dispute Resolution

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by TBD. If such mediation is unsuccessful in resolving a Dispute, then (1) all dispute in which more than \$200,000 is in controversy may be resolved only by a court of competent jurisdiction, (2) for disputes of less than \$200,000, the parties may mutually agree to a dispute resolution method of their choice, including but not limited to arbitration pursuant to the terms of paragraph H.6.08.B or (3) in any case either party may seek to have the Dispute resolved by a court of competent jurisdiction.
- B. Arbitration. If the parties mutually agree, and the amount in controversy is less than \$200,000 the Disputes between Owner and Engineer shall be settled by arbitration in accordance with the American Arbitration Association rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph H.6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
 3. The award rendered by the arbitrators shall be in writing, and shall include: (a) a precise breakdown of the award; and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
 4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
 5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this paragraph H.6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 25, 2011.

Initial:

Owner _____
Owner's Consultant _____

Special Provisions

Paragraph(s) _____ of the (is) (are) amended to include the following agreement(s) of the parties:

None