AGENDA
SHAWNEE MUNICIPAL AUTHORITY
March 2, 2020 AT 6:00 P.M.
COMMISSION CHAMBERS AT CITY HALL
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

1. Consider approval of Consent Agenda:

   a. Minutes from the February 18, 2020 regular meeting.

   b. Approval of a Professional Services Agreement with Wall Engineering, LLC for engineering services.

   c. Approval of Work Order No. 1 with Wall Engineering, LLC for engineering services.

2. New Business

   (Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda)

3. Adjournment

Respectfully submitted

Lisa Lasyone, CMC, City Clerk

Shawnee Municipal Authority **1. a.**

Meeting Date: 03/02/2020

Minutes

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the February 18, 2020 regular meeting.

Fiscal Impact

Attachments

Minutes

THE TRUSTEES OF THE SHAWNEE MUNICIPAL AUTHORITY OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN REGULAR SCHEDULED SESSION IN THE COMMISSION CHAMBERS AT CITY HALL, 9TH AND BROADWAY, SHAWNEE, OKLAHOMA, TUESDAY, FEBRUARY 18, 2020, DURING THE BOARD OF CITY COMMISSIONERS MEETING AT 6:00 P.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW AT 3:30 P.M. ON FEBRUARY 14, 2020. UPON ROLL CALL, A QUORUM WAS DECLARED WITH THE FOLLOWING MEMBERS IN ATTENDANCE:

PRESENT: Bolt, Gillham, Harrod, Finley, Rutherford, Sehorn, Salter
ABSENT: None

Call to Order

Declaration of a Quorum

AGENDA ITEM NO. 1: Consider approval of Consent Agenda:

a. Minutes from the February 3, 2020 regular meeting.

A motion was made by Trustee Harrod, seconded by Trustee Bolt, to approve Consent Agenda Item No. 1(a). Motion carried 7-0.

AYE: Harrod, Bolt, Gillham, Finley, Rutherford, Sehorn, Salter
NAY: None

AGENDA ITEM NO. 2: New Business (Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no New Business.

AGENDA ITEM NO. 3: Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (8:13 p.m.)

DRAFT

RICHARD FINLEY, CHAIRMAN

ATTEST:

LISA LASYONE, SECRETARY

DRAFT

Shawnee Municipal Authority **1. b.**

Meeting Date: 03/02/2020

Engineering Services Agreement

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Approval of a Professional Services Agreement with Wall Engineering, LLC for engineering services.

Fiscal Impact

Attachments

Engineering Services Agreement

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

WORK ORDER EDITION

Prepared by

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and
Issued and Published Jointly by

ACEC
American Council of Engineering Companies

AGC of America
The Associated General Contractors of America
Quality People. Quality Projects.

ASCE American Society of Civil Engineers

National Society of Professional Engineers
Professional Engineers in Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

CITY OF SHAWNEE / SHAWNEE MUNICIPAL AUTHORITY
GENERAL WORK ORDER AGREEMENT

MARCH 6, 2020

EJCDC E-505 Standard Form of Agreement Between Owner and Engineer for Professional Services
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EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

WORK ORDER EDITION

THIS IS AN AGREEMENT effective as of March 6, 2020 ("Effective Date") between City of Shawnee / Shawnee Municipal Authority ("Owner") and Wall Engineering, LLC ("Engineer").

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Work Order. This Agreement sets forth the general terms and conditions which shall apply to all Work Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer's services will be detailed in a duly executed Work Order for each Specific Project. Each Work Order will indicate the specific services to be performed and deliverables to be provided.

B. This Agreement is not a commitment by Owner to Engineer to issue any Work Orders.

C. Engineer shall not be obligated to perform any prospective Work Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Work Order Procedure*

A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Work Order. Each duly executed Work Order shall be subject to the terms and conditions of this Agreement.

B. Engineer will commence performance as set forth in the Work Order.

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ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Work Order.

B. Owner shall compensate Engineer as set forth in each Work Order, pursuant to the applicable terms of 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 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

A. This Agreement shall be effective and applicable to Work Orders issued hereunder to five years from the Effective Date of the Agreement.

B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

C. If a Work Order is approved by the Owner after date outlined in 3.01A and the Effective Date is referenced, the Agreement shall be deemed automatically extended by the approval action.

3.02 *Times for Rendering Services*

A. The times for performing services or providing deliverables will be stated in each Work Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.

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 Specific 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 a Work Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

F. With respect to each Work Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be

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identified in the Work Order. If no specific number of Construction Contracts is identified it shall be assumed that one prime Contract is anticipated. If the Work designed or specified by Engineer under a Work Order 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), then Owner and Engineer shall, prior to commencement of final design services, develop a schedule for performance of Engineer's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Work Order whether or not the work under such contracts is to proceed concurrently.

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, the terms of Exhibit C, and the specific Work Order. Engineer shall submit its invoices to Owner on a monthly basis. 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 60 days after receipt of Engineer's invoice, then:

1. the compounded amount due Engineer will be increased at the rate of 8.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under any Work Order issued 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 a Work Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Work Order, 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 reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Work Order.

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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 estimate as an experienced and qualified professional generally familiar with the construction industry. However, because 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 requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Work Order, Engineer's rights and responsibilities with respect thereto will be governed by 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 for a Specific Project 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. *Standard of Care:* 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. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer shall serve as Owner's prime professional under each Work Order. Engineer may employ 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.

D. *Reliance on Others:* 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.

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E. *Compliance with Laws and Regulations, and Policies and Procedures:* Engineer and Owner shall comply with applicable Laws and Regulations.

1. Prior to the Effective Date of each Work Order, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under such Work Order. Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

2. Each Work Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Work Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree in a Work Order to use other General Conditions.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its 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 provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements. It shall be the responsibility of the Owner to verify, review and approve prior to execution of Contracts.

K. 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 a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.

L. While at a Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

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6.02 *Design Without Construction Phase Services*

A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been itemized and expressly required of Engineer in the authorizing Work Order. With the exception of such expressly required services, Engineer shall have no design, shop drawing review, or other obligations during construction and 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. Owner waives all claims against the Engineer that may be in any way connected to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Work Order.

6.03 *Use of Documents*

A. All Documents are instruments of service in respect to a Specific 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 Specific 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. Either party to this Agreement 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 such 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 Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, 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 its

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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 of the Documents 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 Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

A. At all times when any Work Order is under performance, 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 which is applicable to a Specific Project.

B. At all times when any Work Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G.

C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), builder's risk, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.

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 under any Work Order.

E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and 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, additional insureds, or loss payees thereunder.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

G. Under the terms of any Work Order, or after commencement of performance of a Work Order, 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.

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6.05 *Suspension and Termination*

A. *Suspension*

1. *By Owner:* Owner may suspend a Work Order upon seven days written notice to Engineer.

2. *By Engineer:* If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Work Order.

B. *Termination:* The obligation to provide further services under this Agreement, or under a Work Order, 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 of this Agreement or any Work Order 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 under a Work Order 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, neither this Agreement nor the Work Order will 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 works whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted works, and to assemble Work Order materials in orderly files.

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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 full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

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.

6.06 *Controlling Law:*

A. This Agreement is to be governed by the law of the state or jurisdiction in which the Specific Project is located.

6.07 *Successors, Assigns, and Beneficiaries:*

A. Owner and Engineer each is hereby bound and the 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 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, 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. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

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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. With respect to each Work Order, Specific Project, and Site:

1. 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.

2. 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.

3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

4. 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 Specific 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.

5. 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 (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "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.

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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, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to this Agreement, any Work Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury 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, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**

B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.

C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, 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 any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) 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 damages 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, members, 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 a Specific 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.

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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, which 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 of each particular Specific Project.

F. *Applicability to Work Orders:* The terms and conditions set forth in this Agreement apply to each Work Order as if set forth in the Work Order, unless specifically modified. In the event of conflicts between this Agreement and a Work Order, the conflicting provisions of the Work Order shall take precedence for that Work Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Work Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto and any Work Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Work Order, or in the following provisions:

1. *Addenda:* Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services:* Services to be performed for or furnished to Owner by Engineer in accordance with a Work Order which are not included in Basic Services for that Work Order.

3. *Agreement:* This "Agreement between Owner and Engineer for Professional Services – Work Order Edition" including those Exhibits listed in Article 8 and any duly executed Work Order.

4. *Application for Payment:* The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos:* Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

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6. *Basic Services:* Specified services to be performed for or furnished to Owner by Engineer in accordance with a Work Order.

7. *Bid:* The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents:* The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order:* A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.

10. *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.

11. *Construction Agreement:* The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.

12. *Construction Contract:* The entire and integrated written agreement between Owner and Contractor concerning the Work.

13. *Construction Cost:* The cost to Owner of those portions of an entire Specific 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 or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with a Specific 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.

14. *Consultants:* Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.

15. *Contract Documents:* Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

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16. *Contract Price:* The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

17. *Contract Times:* The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

18. *Contractor:* The entity or individual with which Owner has entered into the Construction Contract.

19. *Correction Period:* The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

20. *Defective:* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

21. *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.

22. *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 a Contractor. Shop Drawings are not Drawings as so defined.

23. *Effective Date of the Construction Agreement:* The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

24. *Effective Date of the Agreement*: The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

25. *Effective Date of the Work Order*: The date indicated in the Work Order on which it becomes effective, but if no such date is indicated, it means the date on which the Work Order is signed and delivered by the last of the two parties to sign and deliver.

26. *Engineer:* The individual or entity named as such in this Agreement.

27. *Field Order:* A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

28. *General Conditions*: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.

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29. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

30. *Laws and Regulations; Laws or Regulations:* Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

31. *Owner:* The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.

32. *PCBs:* Polychlorinated biphenyls.

33. *Petroleum:* Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project:* The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

35. *Radioactive Materials:* Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Record Drawings:* The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.

37. *Reimbursable Expenses:* The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.

38. *Resident Project Representative:* The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Work Order.

39. *Samples:* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

40. *Shop Drawings:* All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.

41. *Site:* Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements

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for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.

42. *Specifications:* That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.

43. *Specific Project:* An undertaking of Owner as set forth in a Work Order.

44. *Subcontractor*: An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.

45. *Substantial Completion:* The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended.

46. *Supplementary Conditions:* That part of the Contract Documents which amends or supplements the General Conditions.

47. *Supplier:* A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Work Order:* A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.

49. *Total Project Costs:* The sum of the Construction Cost, allowances for contingencies, the total 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 a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

50. *Work:* The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.

51. *Work Change Directive:* A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

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ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits*

Exhibit A, Engineer's Services *[NOTE: Services, works, and terms in Exhibit A are for reference in preparing specific Work Orders, and are contractually binding only to the extent expressly incorporated in a specific Work Order]*.

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit E, Notice of Acceptability of Work

Exhibit F, Construction Cost Limit

Exhibit G, Insurance

Exhibit H, Dispute Resolution

Exhibit I, Limitations on Liability

Exhibit J, Special Provisions

Exhibit K, Amendment to Work Order

8.02 *Total Agreement*

A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Work Order."

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 Agreement on behalf of each respective party. Each Work Order shall likewise designate representatives of the two parties.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

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1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

(Remainder of this page has been intentionally left blank)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:	ENGINEER
CITY OF SHAWNEE SHAWNEE MUNICIPAL AUTHORITY	WALL ENGINEERING, LLC
By:	By:
Name: Richard Finley	Name: Brandon Wall, P.E.
Title: Mayor / Chair	Title: President
	Engineer License or Firm's Certificate No. 5413
	State of : Oklahoma
Date Signed: 03/06/20	Date Signed: 03/06/20
Address for giving notices:	Address for giving notices:
16 W 9th Street	223 N Washington Avenue
Shawnee, OK 74801	Durant, OK 74701
DESIGNATED REPRESENTATIVE (Paragraph 8.03.A):	DESIGNATED REPRESENTATIVE (Paragraph 8.03.A):
Chance Allison or Current City Manager	Brandon Wall, P.E.
Title: City Manager	Title: President
Phone Number: (405) 878-1601	Phone Number: 580-924-1800
Facsimile Number: (405) 878-1743	Facsimile Number: 580-924-1801
E-Mail Address: chance.Allison@shawneeok.org	E-Mail Address: brandon@wallengineering.com

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This is **EXHIBIT A**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020

Engineer's Services

Introduction:

PART 1 – STUDY AND REPORT PHASE SERVICES

A1.01 *Study and Report Phase*

For each Work Order that includes study or report services, select from or supplement the following possible services:

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.

2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.

3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.

4. Identify and evaluate outlined alternate solutions available to Owner for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.

5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches 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. The Report will be accompanied by:

Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:

a. opinion of probable Construction Cost,

b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and,

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c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.

6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Work Order and review it with Owner.

7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Work Order.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

PART 2: DESIGN ACTIVITIES

A1.02 *Preliminary Design Phase*

For each Work Order that includes preliminary design services, select from or supplement the following possible services:

A. Engineer shall on the basis of the above acceptance, selection, and authorization*:*

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific 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. 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.

4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in the Study and Report Phase Services section above.

5. Furnish the Preliminary Design Phase documents to and review them with Owner.

6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Work Order.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

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A1.03 *Final Design Phase*

For each Work Order that includes final design services, select from or supplement the following possible services:

A. Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the 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 a Specific Project and assist Owner in consultations with appropriate authorities.

3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in the Study and Report Phase Services section above.

4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.

5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Work Order.

6. Prepare for, coordinate with, participate in, and respond 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 perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

PART 3: BIDDING AND NEGOTIATION

A1.04 *Bidding or Negotiating Phase*

For each Work Order that includes bidding or negotiation services, select from or supplement the following possible services:

A. The Engineer shall:

1. Assist Owner in advertising for and obtaining bids or negotiating 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.

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2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.

6. 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.

7. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.

8. Perform or provide the following additional Bidding or Negotiating Phase works or deliverables as specified.

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 the Work Order).

PART 4: CONSTRUCTION AND COMMISSIONING

A1.05 *Construction Phase*

For each Work Order that includes Construction Phase services, select from or supplement the following possible services:

A. Engineer shall provide the following services:

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 said 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, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Work Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit,

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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 Paragraph B2.01.0.

4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.

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 Work in progress :

    a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress 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 the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Work Order 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 of the Specific Project, 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 the 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 Contractor's Work, or 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

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Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents or (c) will imperil 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 the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue Field Orders authorizing minor variations 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 in 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 any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.

13. *Inspections and Tests:* Require such special inspections or tests of the 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 the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the 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

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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, the Work has progressed to the point indicated, the 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 the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.

    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 the Work as it is performed and furnished have been exhaustive, extended to every aspect of the 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 the 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 the 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 not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, and transmit 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 above.

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17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site 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 and Contractor.

18. *Final Notice of Acceptability of the Work:* Conduct a final payment inspection to determine if the completed Specific Project 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 ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.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.

19. *Defective Work:* Together with Owner, visit the Site 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 any.

20. *Correction Period:* Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. *Duration of Construction Phase*: The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Work Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

A1.06 *Commissioning Phase*

For each Work Order that includes facilities commissioning services, select from or supplement the following possible services:

A. Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.

2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.

3. Prepare operation and maintenance manuals.

4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.

5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

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PART 5– OTHER SERVICES

A2.01 *For each Work Order, consider the inclusion of the following possible services:*

A. Engineer shall:

1. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.

2. Provide 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.

3. Provide renderings or models for Owner's use.

4. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assist in obtaining financing for a Specific Project; evaluate processes available for licensing, and assist 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.

5. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.

6. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.

7. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.

PART 6: ADDITIONAL SERVICES REQUIRING AMENDMENT TO WORK ORDER

A2.02 *Additional Services Requiring an Amendment to Work Order*

A. *Advance Written Authorization Required:* During performance under a Work Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. The Work Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific 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

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Laws and Regulations enacted subsequent to the Effective Date of the Work Order or are due to any other causes beyond Engineer's control.

1. 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.

2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

3. Providing Construction Phase services beyond the Contract Times set forth in the Work Order.

4. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.

5. Overtime work requiring higher than regular rates.

6. Other services proposed to be performed or furnished by Engineer not otherwise provided for in this Agreement.

B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The Work Order shall be amended to reflect the inclusion of such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; evaluation and determination of an excessive number of proposed "or equals" or substitutions whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the site of any Constituent of Concern or items of historical or cultural significance, (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.

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5. Services in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.

6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

7. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Engineer subsequent to the Effect Date of the Work Order that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.

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This is **EXHIBIT B**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Work Order.

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific 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 Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.

C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific 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 relating to existing surface or subsurface structures at 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 a Specific Project, the Site and adjacent areas.

   6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Work Order.

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.

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E. Authorize Engineer to provide Additional Services as set forth in the Work Order 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 Work Order.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (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 Specific 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 Specific Project.

I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Specific Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.

J. Place and pay for advertisement for Bids in appropriate publications.

K. 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 Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

L. 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 the Owner in collating the various cost categories which comprise Total Project Costs.

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 in the Work Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Work Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Work Order the duties, responsibilities, and limitations of authority of such

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individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.

O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Site.

P. 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 for the Specific Project with appropriate professional interpretation thereof.

Q. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.

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

S. Perform or provide the following additional services as outlined in the Work Order.

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This is **EXHIBIT C** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

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

C2.01 *Method of Payment*

B. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Work Order:

1. Method A: Lump Sum
2. Method B: Standard Hourly Rates
3. Method C: Percentage of Construction
4. Method D: [Identify any other method to be used to compensate Engineer for some or all of its services]

C2.02 *Explanation of Methods*

A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates 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.

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3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.

4. The total estimated compensation for the specified category of services shall be stated in the Work Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.

5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

C. Method C – Percentage of Construction

1. For this specified, the Owner shall pay Engineer as amount equal to the percent of Construction Cost stated in the Work Order. This amount includes compensation for Engineer's services and services of Engineer's Consultant not specifically listed in the Work Order. Specific services for Engineer's Consultant as listed will be paid additionally to percentage specified. No services no specifically listed in the Work Order will be eligible for payment / reimbursement and are considered to be included in the percentage. The percentage of Construction Costs also accounts for labor, overhead, profit, and Reimbursable Expenses unless specifically stated/excluded in the Work Order.

2. The basis for payment to Engineer will be based on one or more the following determinations with precedence in the order listed for Work designed or specified by the engineer.

   a. For Work designed or specified and incorporated into the Project, the actual final price of the Construction Contract(s), as duly adjusted by Change Orders.

   b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work, or, if the Work is not bid, the lowest bona fide negotiated proposal for such Work.

   c. For Work designed or specified but not constructed upon which no such Bid or proposal was received, Engineer's most recent opinion of probable Construction Cost.

   d. Labor or Materials furnished by the Owner for the Project will be included in the Construction Cost at market rates.

   e. For purposes of determining Construction Cost under this provision, no deduction is to be made from Construction Contract pricing on account of any penalty, liquidated damages, or other amounts withheld from payment(s) to the Contractor(s.)

3. Progress Payments

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a. The portion of the amounts billed for Engineer's services which is on account of the Percentage of Construction Cost will be based on the Engineer's estimate of the percentage of the total services actually completed during the billing period.

b. Upon conclusion of each phase of Basic Services, Owner shall pay such additional amount, if any, as may be necessary to bring the total compensation paid during each phase on account of the percentage of Construction Cost to the following estimated percentages of the total compensation payable on account of the percentage of Construction Cost for all phases of Basic Services:

Study and Report Phase	5%
Preliminary Design Phase	25%
Final Design Phase	40%
Bidding & Negotiating Phase	10%
Construction Phase	20%

c. Engineer may alter the distribution of compensation between individual phases as noted based on the actual work performed in each phase but shall not exceed the total estimated compensation amount unless approved by the Owner.

C2.03 *Reimbursable Expenses*

No reimbursable expenses will be charged unless specifically outlined in the Work Order.

C2.04 *Serving as a Witness*

A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.50 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 *Other Provisions Concerning Payment*

A. *Extended Contract Times*. Should the Contract Times to complete the Work be extended beyond the period stated in the Work Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.

B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for 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.

2. When estimated compensation amounts have been stated in a Work Order 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

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exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

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This is **Appendix 1 to EXHIBIT C** referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services – Work Order Edition**, dated March 6, 2020.

Reimbursable Expenses Schedule

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

~~Mileage (auto)~~	_____~~/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~~
~~Specialized Software~~	_____~~/hour~~
~~CAD Charge~~	_____~~/hour~~
~~CAE Terminal Charge~~	_____~~/hour~~
~~Equipment Charge~~	_____~~/day, $ /week, or $ /month~~
~~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~~

Any reimbursable expenses to be charged will be individually outlined in the proposed Work Order or by separate Amendment upon occurrence. No reimbursable expenses will automatically be charged.

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This is **Appendix 2 to EXHIBIT C** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services effective on the date of this Agreement are:

Professional Engineer / Project Engineer / Project Manager	$150.00/hour
Construction Manager	$135.00/hour
Assistant Construction Manager	$120.00/hour
Engineering Intern	$120.00/hour
Senior Engineering Technician	$105.00/hour
Senior Construction Inspector	$ 90.00/hour
Engineering Technician	$ 90.00/hour
Construction Inspector	$ 81.00/hour
CAD Technician	$ 75.00/hour
Administrative / Clerical	$ 60.00/hour

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This is **EXHIBIT D** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Work Order for a Specific Project:

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.

B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, by the RPR, supervise, direct, or have control over Contractor's work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Work Order are applicable.

C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:

1. *General:* RPR is Engineer's representative 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 a Contractor's work in progress shall in general be with Engineer and Contractor.

   - RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.

   - RPR shall generally communicate with Owner only 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 a Contractor and consult with Engineer concerning acceptability.

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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 authorized representative or designee, and 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 Specific Project 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 Specific 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.

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9. *Inspections, Tests, and System Start-ups:*

    a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

    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 a Specific 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 Construction 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 Specific 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 Specific 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 startup reports.

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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:*

a. 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:*

a. 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 a 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 visits to the Project to assist in determining Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

c. 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. (See Exhibit E).

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 this Agreement.

3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a 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 the Contractor’s work.

5. Advise on, issue directions regarding, or assume control over security safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.

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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 a Specific Project in whole or in part.

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This is **EXHIBIT E** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner 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 and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

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CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

1. Said 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. Said Notice reflects and is an expression of the professional judgment of Engineer.

3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.

4. Said 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 Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced in 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 Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.

5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced in 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.

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This is **EXHIBIT F**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Work Order for a Specific Project:

F5.02 *Designing to Construction Cost Limit*

A. A Construction Cost limit may be set forth in the Work Order.

B. If a Construction Cost limit is set forth in a Work Order, then the Work Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.

C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.

D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.

E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.

F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

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This is **EXHIBIT G** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Insurance

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

G6.04 *Insurance*

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

1. *By Engineer:*

a.	Workers' Compensation:		Statutory
b.	Employer's Liability –		
	1)	Each Accident:	$1,000,000
	2)	Disease, Policy Limit:	$1,000,000
	3)	Disease, Each Employee:	$1,000,000
c.	General Liability –		
	1)	Each Occurrence (Bodily Injury and Property Damage):	$1,000,000
	2)	General Aggregate:	$2,000,000
d.	Excess or Umbrella Liability –		
	1)	Each Occurrence:	$1,000,000
	2)	General Aggregate:	$1,000,000
e.	Automobile Liability –		
	1)	Combined Single Limit (Bodily Injury and Property Damage): Each Accident	$1,000,000
f.	Professional Liability –		
	1)	Each Claim Made:	$1,000,000
	2)	Annual Aggregate:	$1,000,000

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2. *By Owner:*

a.	Workers' Compensation:		Statutory
b.	Employer's Liability –		
	1)	Each Accident	$1,000,000
	2)	Disease, Policy Limit	$1,000,000
	3)	Disease, Each Employee	$1,000,000
c.	General Liability –		
	1)	General Aggregate:	$1,000,000
	2)	Each Occurrence (Bodily Injury and Property Damage):	$1,000,000
d.	Excess Umbrella Liability --		
	1)	Each Occurrence:	$1,000,000
	2)	General Aggregate:	$1,000,000
e.	Automobile Liability –		
	1)	Combined Single Limit (Bodily Injury and Property Damage): Each Accident	$1,000,000

B. *Additional Insureds:*

1. Engineer and the Consultants identified in the Work Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B.

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This is **EXHIBIT H** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Dispute Resolution

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

H6.08 *Dispute Resolution*

A. 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, including any Work Order, or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process should be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved in the District Court of Pottawatomie County, State of Oklahoma, with said Court having exclusive jurisdiction over Disputes.

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This is **EXHIBIT I** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Limitations of Liability

I6.10.A *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds*: Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, 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 or Work Order, or this Agreement, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, agents, employees, or Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, or Consultants, to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed the aggregate amount of engineering fee paid.

2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages*. To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of paragraph 6.10 the Engineer and Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Work Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

3. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, 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 injury 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, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

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This is **EXHIBIT J** referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 6, 2020.

Special Provisions

Paragraph(s) ___ of the Agreement is/are amended to include the following agreement(s) of the parties:

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This is **EXHIBIT K** referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated March 6, 2020.

Amendment To Work Order No. _____

1. Background Data:

   a. Effective Date of Work Order Agreement:

   b. Owner:

   c. Engineer:

   d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

a. Engineer shall perform the following Additional Services:

b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Work Order and previous amendments, if any, is modified as follows:

c. The responsibilities of Owner with respect to the Work Order are modified as follows:

d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

e. The schedule for rendering services under this Work Order is modified as follows:

f. Other portions of the Work Order (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

3. Work Order Summary (Reference only)
   a. Original Work Order amount: $_____
   b. Net change for prior amendments: $_____

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c. This amendment amount: $_____
d. Adjusted Work Order amount: $_____

The foregoing Work Order Summary is for reference only and does not alter the terms of the Work Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Work Order as set forth in this Amendment. All provisions of the Agreement and Work Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:		ENGINEER:	
By:	_____	By:	_____
Title:	_____	Title:	_____
Date Signed:	_____	Date Signed:	_____

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Shawnee Municipal Authority **1. c.**

Meeting Date: 03/02/2020
Work Order No. 1
Submitted By: Kacie Eck, City Clerk
Department: City Clerk

Information

Title of Item for Agenda

Approval of Work Order No. 1 with Wall Engineering, LLC for engineering services.

Fiscal Impact

Attachments

Work Order No. 1

WORK ORDER FOR PROFESSIONAL SERVICES

SHAWNEE MUNICIPAL AUTHORITY

WORK ORDER NO 1

PROJECT SHN-20-01

WASTEWATER SYSTEM IMPROVEMENTS

This will constitute authorization by the SHAWNEE MUNICIPAL AUTHORITY (Owner) for WALL ENGINEERING, LLC (Engineer) to proceed with the outlined scope of services as described and in accordance with the "Work Order Agreement for Engineering Services" (Agreement) dated March 6, 2020

PROJECT: WASTEWATER SYSTEM IMPROVEMENTS

1. Services of Engineer as defined in the Agreement:
    a. Study and Report Services
    b. Design Services
    c. Bidding Services
    d. Construction and Commissioning Services
    e. Resident Construction Inspection Services

2. Compensation Method as defined in the Agreement:
    a. Percentage of Construction Costs
        i. Design Phase Services
        ii. Construction Phase Services

    b. Lump Sum
        i. Preliminary Engineering & Report
        ii. Survey, ROW Planning & Data Collection
        iii. Sludge Management / Disposal Plans
        iv. Forcemain Route & ROW Study
        v. Geotechnical Engineering

    c. Standard Hourly Rates
        i. Resident Construction Inspection

3. Payments to the Engineer for Percentage of Construction Cost Items
    a. To insure equitable compensation for both the Owner & Engineer the compensation shall be based on the Total Installed Cost (TIC) defined as the competitive bid cost plus all change orders, adjustments, or additions during the construction of the project including any alternates not accepted for construction as defined by the Agreement. Percentages are more specifically defined as follows:

        i. Design Phase Services 6.00% of Total Installed Cost
        ii. Construction Phase Services 1.85% of Total Installed Cost

    b. Fees will be adjusted based on TIC, but by way of illustration and based on the most recent estimate of Probable Construction Cost of $36,880,260 (see attachment A), the Percentage of Construction based fees are currently estimated as follows:

        i. Design Phase Services $ 2,212,820
        ii. Construction Phase Services $ 682,280

4. Payments to the Engineer for Lump Sum Items
    a. Payment will be made to Engineer upon completion of Lump Sum items in the amounts as follows:

        i. Preliminary Engineering & Report $ 73,760
        ii. Sludge Management Plan, Northside $ 9,670
        iii. Sludge Management Plan, Southside $ 2,140
        iv. Survey, ROW Planning & Data Collctn $ 141,590***
        v. Geotechnical Engineering $ 49,650***
        vi. Forcemain Route & ROW Study $ 7,500

        ***The subconsultant services are pass-through and some may have been completed in a previous project. If prior project information can be provided in a usable format amounts paid for these services will be adjusted accordingly.

5. Payment to Engineer for Standard Hourly Rate Items
    a. Resident Construction Inspection will be provided during construction and payments shall be made based on the Standard Hourly Rate method of payment. Based on an anticipated construction duration of 21 months and an estimated hourly compensation of $17,400 per month, the estimated fee is as follows:

        i. Resident Construction Inspection $ 365,400

6. Total Estimated Compensation
    a. The total estimated compensation based on the current Estimate of Probable Cost, Lump Sum Services, and Standard Hourly Rate services based is as follows:

        i. Total Estimate Compensation $ 3,544,810

7. Timing for Rendering Service
    a. Services will be rendered based on the schedule in Attachment B.
    b. Should anything occurs that alters the time for rendering services, a revised schedule shall be submitted to the Owner

8. Scope of Improvements
    a. Northside Wastewater Treatment Plant
        i. Site Work
        ii. Concrete Paving
        iii. Treatment Plant Yard Piping
        iv. Effluent Pumps with Forcemain to Creek
        v. Fencing
        vi. Concrete Lined Stormwater Basin
        vii. Headworks & Influent Lift Station
        viii. Headworks Cover & Hoist
        ix. Stormwater Lift Station
        x. 4.5 MGD SBR Treatment Unit, Complete
        xi. Ultraviolet Disinfection
        xii. Sludge/UV Building with Sheds
        xiii. Sludge Dewatering System & Handling
        xiv. Effluent Parshall Flume & Flow Measurement
        xv. Misc Flow Measurement
        xvi. Treatment Plant Electrical
        xvii. SCADA System
        xviii. Painting & Coatings
        xix. Convert Aeration Basins to Digesters
        xx. Replace Existing Blowers
        xxi. Convert Clarifiers to Post Equalization
        xxii. Convert RAS PS to Transfer PS

    b. Southside Wastewater Treatment Plant & Collection System
        i. Headworks & Influent Lift Station
        ii. Stormwater Pond Modifications
        iii. Site work
        iv. Concrete Paving
        v. Treatment Plant Yard Piping
        vi. Influent Piping to Headworks
        vii. Stormwater Flow Control
        viii. Standby Power System

ix. Treatment Plant Electrical
x. SCADA System
xi. 48,000 L.F 18in DR-18 South Plnt to North Plant
xii. Collection System Lift Station SCADA Upgrade

9. Alternate Scope of Services
    a. If approved, the following list of treatment plant upgrades have been discussed as potential additive alternates. The fee schedule would be adjusted by corresponding amounts should these be chosen for addition to the project:
        i. Turbo Blowers (replace current blower system)
        ii. Gravity Main to River (replace proposed pressure main)
        iii. Lab/Office Expansion
        iv. Northside/Southside Demolition w/ Sludge Disposal
        v. Concrete Line Southside Stormwater Basin

10. Additional Services
    a. None. Any additional service required would be authorized by future Work Order in accordance with the Agreement.

11. Attachments
    a. Current Opinion of Probable Cost, Base Bid
    b. Current Opinion of Probable Cost, Alternate Bid
    c. Current Schedule

12. Authorization by Owner / Acceptance by Engineer

APPROVED:

SHAWNEE MUNICIPAL AUTHORITY

By: _____
Chair

ATTEST:

_____

Date: 03/06/20

ACCEPTED:

WALL ENGINEERING, LLC

By: _____
Brandon Wall, P.E.
President

Date: 03/06/20

ATTACHMENT A

CURRENT ESTIMATE OF PROBABLE COST (BASE BID ITEMS)

CURRENT ESTIMATE OF PROBABLE COST (ADDITIVE ALTERNATE BID ITEMS)

SHAWNEE MUNICIPAL AUTHORITY
NORTH SIDE SBR WITH SOUTHSIDE PRETREATMENT & STORMWATER
OPINION OF PROBABLE COST - 02/20/20

BASE BID ITEMS

Northside SBR Option

Item	Estimated Cost
Bonding, Insurance and Incidentials	$ 475,000.00
Survey, Testing & Disinfection	$ 65,000.00
Site Work	$ 141,560.00
Concrete Paving	$ 391,560.00
Treatment Plant Yard Piping	$ 1,645,780.00
Effluent Pumps with Forcemain to Creek	$ 1,020,750.00
Fencing (Chain link)	$ 45,000.00
Concrete Lined Stormwater Basin	$ 1,250,560.00
Headworks & Influent Lift Station	$ 2,100,900.00
Headworks Cover & Hoist	$ 222,890.00
Stormwater Lift Station	$ 195,050.00
4.5 MGD SBR Treatment Unit, Complete	$ 10,552,980.00
Ultraviolet Disinfection	$ 1,050,780.00
Sludge/UV Building with Sheds	$ 875,000.00
Sludge Dewatering System & Handling	$ 1,719,380.00
Effluent Parshall Flume & Flow Measurement	$ 115,000.00
Misc Flow Measurement	$ 131,000.00
Treatment Plant Electrical	$ 1,947,060.00
SCADA System	$ 615,670.00
Painting & Coatings	$ 90,180.00
Materials Testing Allowance	$ 76,000.00
Laboratory Equipment Allowance	$ 75,000.00
Convert Aeration Basins to Digesters	$ 376,890.00
Replace Existing Blowers	$ 330,610.00
Convert Clarifiers to Post Equilization	$ 85,230.00
Convert RAS PS to Transfer PS	$ 94,120.00
Construction Cost - Northside SBR	$ 25,688,950.00

Southside Pretreatment, WWTP Lift Station & Stormwater Holding

Headworks & Influent Lift Station	$ 2,117,800.00
Stormwater Pond Modifications	$ 325,000.00
Site work	$ 51,560.00
Concrete Paving	$ 25,930.00
Treatment Plant Yard Piping	$ 131,460.00
Influent Piping to Headworks	$ 32,680.00
Stormwater Flow Control	$ 66,730.00
Standby Power System	$ 172,340.00
Treatment Plant Electrical	$ 102,580.00
SCADA System	$ 85,270.00
Materials Testing Allowance	$ 19,840.00
48,000 L.F 18in DR-18 South Plnt to North Plnt	$ 7,648,440.00
Collection System Lift Station SCADA Upgrade	$ 411,680.00
Construction Cost - Southside WWTP	$ 11,191,310.00

Summary of Construction Costs & Fees

Total Construction Cost - Northside & Southside	$ 36,880,260.00
Construction Contingency	$ 370,440.00
Design Phase Services (6.0%)	$ 2,212,820.00
Preliminary Engineering & Report	$ 73,760.00
Sludge Management Plan - Northside	$ 9,670.00
Sludge Disposal / Disposition Plan - Southside	$ 2,140.00
Construction Phase Engineering Services (1.85%)	$ 682,280.00
Survey, ROW Planning & Data Collection	$ 141,590.00
Forcemain Route & ROW Study	$ 7,500.00
Geotechnical Engineering	$ 49,650.00
Resident Construction Inspection (Hourly, Estimated)	$ 365,400.00
ODEQ Permit Fee	$ 19,700.00
Total Project Cost	$ 40,815,210.00

BASE BID ITEMS W/ ADDITIVE ALTERNATES

Northside SBR Option

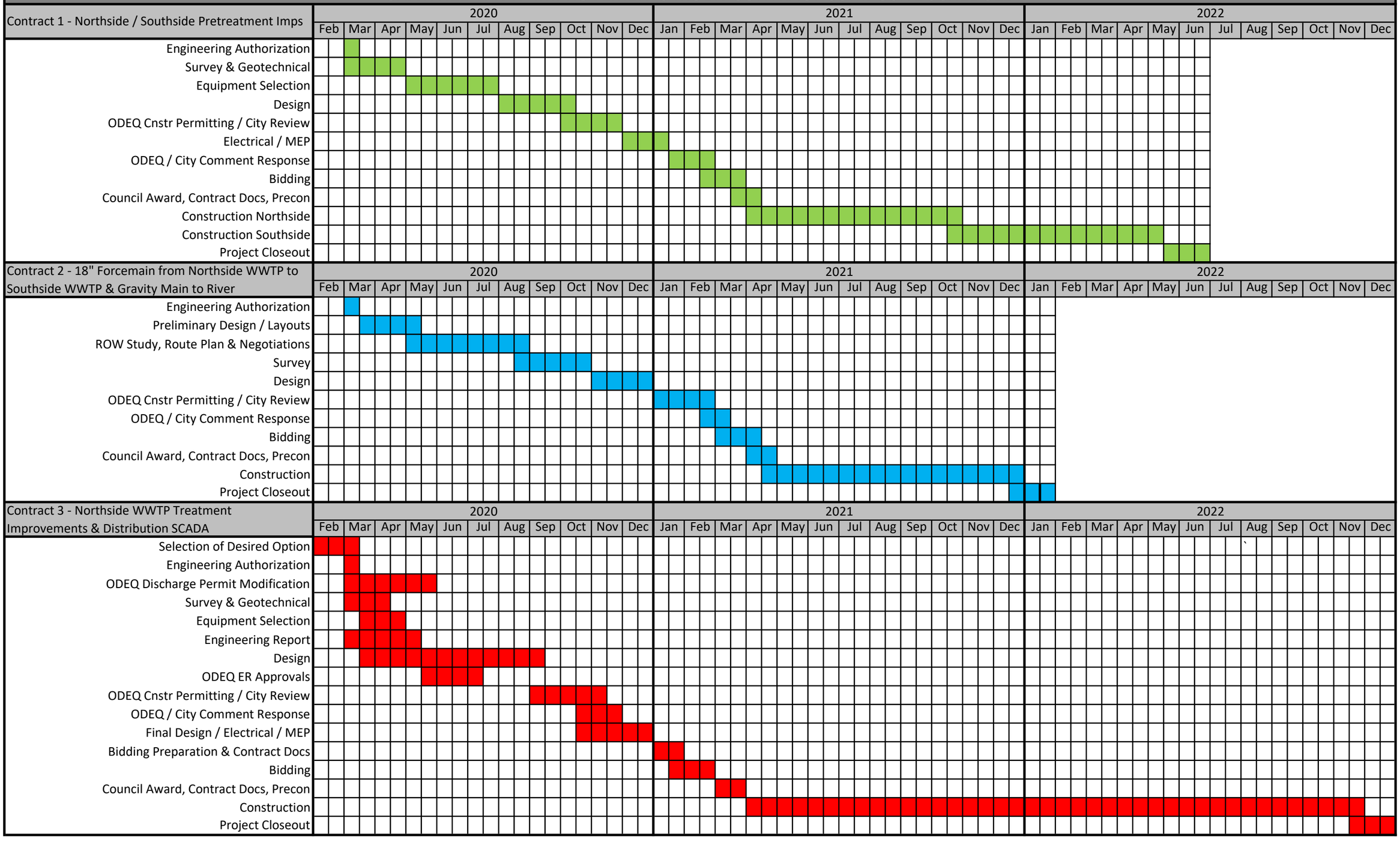
Item	Estimated Cost
Bonding, Insurance and Incidentials	$ 475,000.00
Survey, Testing & Disinfection	$ 65,000.00
Site Work	$ 141,560.00
Concrete Paving	$ 391,560.00
Treatment Plant Yard Piping	$ 1,645,780.00
Effluent Pumps with Forcemain to Creek	$ 1,020,750.00
Fencing (Chain link)	$ 45,000.00
Concrete Lined Stormwater Basin	$ 1,250,560.00
Headworks & Influent Lift Station	$ 2,100,900.00
Headworks Cover & Hoist	$ 222,890.00
Stormwater Lift Station	$ 195,050.00
4.5 MGD SBR Treatment Unit, Complete	$ 10,552,980.00
Ultraviolet Disinfection	$ 1,050,780.00
Sludge/UV Building with Sheds	$ 875,000.00
Sludge Dewatering System & Handling	$ 1,719,380.00
Effluent Parshall Flume & Flow Measurement	$ 115,000.00
Misc Flow Measurement	$ 131,000.00
Treatment Plant Electrical	$ 1,947,060.00
SCADA System	$ 615,670.00
Painting & Coatings	$ 90,180.00
Materials Testing Allowance	$ 76,000.00
Laboratory Equipment Allowance	$ 75,000.00
Convert Aeration Basins to Digesters	$ 376,890.00
Replace Existing Blowers	$ 330,610.00
Convert Clarifiers to Post Equilization	$ 85,230.00
Convert RAS PS to Transfer PS	$ 94,120.00
Add Alt 1 - Turbo Blowers	$ 1,314,580.00
Add Alt 2 - Gravity Main to Creek	$ 1,154,670.00
Add Alt 3 - Lab / Office Expansion	$ 294,670.00
Add Alt 4 - Demolition	$ 154,610.00
Construction Cost - Northside SBR	$ 28,607,480.00

Southside Pretreatment, WWTP Lift Station & Stormwater Holding

Headworks & Influent Lift Station	$ 2,117,800.00
Stormwater Pond Modifications	$ 325,000.00
Site work	$ 51,560.00
Concrete Paving	$ 25,930.00
Treatment Plant Yard Piping	$ 131,460.00
Influent Piping to Headworks	$ 32,680.00
Stormwater Flow Control	$ 66,730.00
Standby Power System	$ 172,340.00
Treatment Plant Electrical	$ 102,580.00
SCADA System	$ 85,270.00
Materials Testing Allowance	$ 19,840.00
48,000 L.F 18in DR-18 South Plnt to North Plnt	$ 7,648,440.00
Collection System Lift Station SCADA Upgrade	$ 411,680.00
Add Alt 1 - Concrete Line & Divide SW Basin	$ 1,154,380.00
Add Alt 2- Demolition w/ Sludge Diposal	$ 854,130.00
Construction Cost - Southside WWTP	$ 13,199,820.00

Summary of Construction Costs & Fees

Total Construction Cost - Northside & Southside	$ 41,807,300.00
Construction Contingency	$ 627,110.00
Design Phase Services (6.0%)	$ 2,508,440.00
Preliminary Engineering & Report	$ 73,760.00
Sludge Management Plan - Northside	$ 6,670.00
Sludge Disposal / Disposition Plan - Southside	$ 2,140.00
Construction Phase Engineering Services (1.85%)	$ 773,440.00
Survey, ROW Planning & Data Collection	$ 141,590.00
Forcemain Route & ROW Study	$ 7,500.00
Geotechnical Engineering	$ 49,650.00
Resident Construction Inspection (Hourly, Estimated)	$ 452,400.00
ODEQ Permit Fee	$ 21,000.00
Total Project Cost	$ 46,471,000.00

ATTACHMENT B
CURRENT PROJECT SCHEDULE

SHAWNEE WWTP IMPROVEMENTS MULTI-CONTRACT COMPOSITE SCHEDULE