



37 CENTRAL AVENUE, LANCASTER, NY 14086-2143
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PROPOSAL AND AGREEMENT FORM

Only signature by both parties constitutes an AGREEMENT between the addressee, herein called the OWNER, and Wm. Schutt & Associates herein called SURVEYOR.

PROPOSAL SUBMITTED TO (OWNER): Dwight Kanyuck Attorney at Law 1400 Crossroads Building 2 State Street Rochester, New York 14614	Owner's Phone: Tel: (585) 546-8430 Fax: (585) 546-4324 Owner's Email: dkanyuck@nyenvlaw.com Date: September 9, 2019

Property Address: Miscellaneous sites along NYSEG Easement running northerly along Townline Road, Elma NY.

PROPOSED SCOPE OF SURVEYOR'S SERVICES

Establish the easterly limit of a NYSEG Easement and the proposed NEETNY right-of-way at specific addresses West of Townline Road and East of Said easement.

DELIVERABLES

-Monument the easterly extents of the easement along selected property adjacent to the easement at 100' intervals or sufficient to clearly demark property line.

PROPOSED COMPENSATION

Surveyor proposes to provide the above-named services to Owner for the lump sum fee of **\$4700**

Fee breakdown: (based on email pdf's from 09/06/2019)

- Parcel 1-2 sheet 18 = \$900
- Parcel 3-7 sheet 18= \$900
- Parcel 13-24 sheet 17 = \$1800
- Parcel 26 sheet 14 = \$1100

GENERAL PROVISIONS

1. OWNER — the individual or entity named as such in this Agreement and for which Surveyor's services are to be performed.
2. SURVEYOR — the individual or entity named as such in this Agreement (Wm Schutt Associates).
3. AGREEMENT — this written contract for professional services between Owner and Surveyor, together with the terms, conditions, attachments and exhibits included constitutes the entire agreement between Owner and Surveyor and

supersedes all prior written or oral understandings. This AGREEMENT may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

4. Surveyor shall not have any other duties or responsibilities for any other portion or part of this project then specifically stated herein.

With the execution of this Agreement, Owner and Surveyor shall designate specific individuals to act as representatives with respect to the Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of the respective party that the individual represents.

Designated Owner's
Representative: Dwight Kanyuck
Title: Attorney at Law
Phone Number: (585) 546-8430
E-Mail Address: dkanyuck@nyenvlaw.com

Designated Surveyor's Representative:
Daniel J Regan, P.L.S.
Title: Director of Survey
Phone Number: 716-683-5961
E-Mail Address: dregan@wmschutt.com

Surveyor may withdraw this PROPOSAL unless one copy is signed and returned to Surveyor together with a PROJECT INITIATION FEE of \$0.00 within thirty (30) days of the below-stated submission date. The engagement fee will be held by Surveyor until services are completed and then either deducted from Surveyor's final invoice or if an outstanding balance remains that amount will be returned to Owner.

Upon execution and receipt by both parties, this document together with all attachments shall form the Agreement between Owner and Surveyor.

The following Exhibits are attached and part of this Proposal/Agreement:

1. Standard Terms and Conditions
2. Hourly Billing Rates and Reimbursable Expense Schedule (to be used for additional services, if authorized)

SUBMISSION OF PROPOSAL

SURVEYOR

PROPOSAL SUBMISSION DATE

(Signature)

September 9, 2019

Daniel J Regan, P.L.S.
(Printed name and title)

ACCEPTANCE OF PROPOSAL

By signing this document Owner accepts the Surveyor's proposal including all attachments that together henceforth shall form the Agreement between Owner and Surveyor.

OWNER

ACCEPTANCE DATE

(Signature)

(Month, day and year)

(Printed name and title)

**TERMS & CONDITIONS
FOR PROVIDING PROFESSIONAL SERVICES**

These Terms & Conditions govern the execution of services by Wm Schutt Associates (Engineer) set forth in the attached Agreement between Owner and Engineer. Owner understands and agrees that Engineer's services, including work product and reports is subject to the following:

ARTICLE 1 – SERVICES OF ENGINEER

- 1.01 *Scope*
- A. Basic Services: Engineer shall perform, or cause to be provided, only the specific services or scope of work and deliverables set forth in Agreement.
 - B. Additional Services: Engineer shall perform, or cause to be provided, services and deliverables not specifically included as Basic Services or as further defined in Paragraph 4.04.D.
- 1.02 Other Consultants - If other consultants are separately engaged by Owner to provide any services, Engineer has no responsibility or liability with respect to their actions, services or work product.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

- 2.01 *General*
- A. Owner shall have the responsibilities set forth herein and in Agreement.
 - B. Owner shall pay Engineer as set forth in Article 4 and in Agreement.
 - C. Owner shall pay any and all regulatory agency or utility company application, review, permit, and inspection fees.
 - D. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all information furnished by Owner or Owner's other consultants to Engineer pursuant to this Agreement. Engineer may use and rely upon such Owner furnished information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
 - E. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. Any development that affects the scope or time of performance of Engineer's services;
 - 2. The presence at the Site of any Constituent of Concern; or
 - 3. Any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Consultant or Contractor, or (d) Owner's performance of its responsibilities under this Agreement.
 - F. Prior to Engineer initiating its services Owner shall provide to Engineer, in writing, all policies, procedures, criteria and information as to Owner's requirements for Engineer's services as well as for the Project, including design objectives, construction objectives, construction practices and constraints, space, capacity and performance requirements, flexibility, and expandability, any budgetary limitations and any MW/DBE requirements. As well as furnish Engineer with all available information pertinent to the Project including checklists, maps, surveys, deeds, reports, plans and data relative to previous and preliminary surveys, designs, construction, or investigation at or adjacent to the Site.
 - G. Following Engineer's assessment of initially-provided Project information and upon Engineer's request, Owner to obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or other consultants) such additional Project-related information and data as is reasonably required to enable Engineer to efficiently complete its Basic Services.
 - H. Owner shall arrange for explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports, investigations and analysis; including drawings of physical conditions relating to existing surface and subsurface conditions at the Site; and provide to Engineer.
 - I. Owner shall arrange for Engineer's safe and unimpeded access into and throughout the Project Site (including removal of any obstructions) as well as make all provisions for Engineer to enter upon surrounding public and private property as required for Engineer to efficiently and effectively perform its services.
 - J. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project.
 - K. Engineer's efforts preparing to or serving as a consultant, witness or representative for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding will be performed and invoiced as an Additional Service including such actions that take place after the Project has been closed or terminated.
 - L. Owner shall examine all alternative solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, accountant, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
 - M. If Owner authorizes any changes in scope, extent, or character of the Project, or Engineer's services, or the schedule of Engineer's services, said changes will be performed and invoiced by Engineer as an Additional Service.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

- 3.01 *Commencement*
- A. Engineer is authorized to begin rendering services as of the Effective or Acceptance Date of Agreement.
- 3.02 *Time for Completion*
- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Agreement, and are hereby agreed to be reasonable.
 - B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
 - C. Owner shall make decisions and carry out its other responsibilities and those of its other Consultants in a timely manner so as not to delay Engineer's performance of its services.

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, format and the terms stated herein. Engineer shall submit its progress invoices to Owner on a monthly basis.
 - B. Time for Owner's Payment of Invoices: Each invoice is due and payable within thirty calendar days of date of issue.

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- C. Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses 30 days after Engineer's issuance of invoice, then:
 - 1. Amounts due Engineer will be increased using a compounded rate of 1.5% per month from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- D. Owner agrees to pay for any and all costs incurred by Engineer for collection of unpaid or past due balances including, but not limited to, lien costs, court costs and attorney fees.
- E. Any purchase orders issued by Owner are only for Owner's internal purposes. All terms and conditions agreed to between Owner and Engineer are contained herein, and are not subject to any "standard terms" as printed on most purchase orders. The conditions agreed to between Owner and Engineer are only as contained within this Agreement. The terms and conditions contained herein shall prevail unless and until a further written document supersedes it.

4.02 *General Compensation Provisions*

- A. **Lump Sum Method + Reimbursable Expenses:** For those categories of services for which compensation will be by the Lump Sum method, Owner shall pay Engineer the agreed-upon Lump Sum. The Lump Sum constitutes compensation for Engineer's services, including Engineer's labor costs, overhead, and profit. Engineer shall also be entitled to reimbursement from Owner for Reimbursable Expenses. The amount billed for Engineer's services rendered on a Lump Sum basis will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period, plus Reimbursable Expenses incurred during the billing period.
- B. **Standard Hourly Rates Method + Reimbursable Expenses:** For those categories of services for which compensation will be by the Standard Hourly Rates method, Owner shall pay Engineer the rate specified in Engineer's Standard Hourly Rates Schedule, for each hour of professional services rendered by Engineer's employees engaged directly on the Project. The Standard Hourly Rates charged by Engineer constitute compensation for Engineer's services, including labor costs, overhead, and profit. Under this method, Engineer shall also be entitled to reimbursement from Owner for Reimbursable Expenses. The amount billed for Engineer's services rendered on a Standard Hourly Rates basis will be an amount equal to the cumulative hours devoted to the Project during the billing period by each billing class of Engineer's employees times the hourly rates for each applicable billing class, plus Reimbursable Expenses incurred during the billing period.
- C. **Additional Services:** Unless otherwise provided, compensation for Additional Services shall be in accordance with Paragraph 4.02.B.
- D. **Period of Service:** The compensation amounts stipulated are based on the duration of service not exceeding the periods designated. Should any period of service be extended, or the Work extends beyond the limits set forth, then the compensation amount for Engineer's services shall be equitably adjusted.
- E. **Distribution of Compensation:** Engineer may alter the distribution of compensation between individual phases of the work noted to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
- F. **Estimated Compensation Amounts:**
 - 1. For compensation under Standard Hourly Rates method, Engineer has provided an initial estimate of the amounts that will become payable for performance of specified services. These estimates are for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - 2. If it becomes apparent to Owner or Engineer that the total estimated compensation amount will be exceeded, Engineer shall allow Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated total compensation amount when all services are completed. If Owner decides not to suspend Engineer's services during the negotiation period and 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, then Owner shall pay Engineer for all services rendered.
- G. **Verification of Charges:** To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

4.03 *Reimbursable Expenses*

- A. Reimbursable Expenses reasonably and necessarily incurred in connection with services provided shall be paid at the rates set forth in Engineer's Reimbursable Expenses Schedule, subject to the factors set forth below:
- B. The amounts payable to Engineer for Reimbursable Expenses will be the internal expenses actually incurred or allocated on the Project by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.1.
- C. Whenever Engineer is entitled to compensation for the charges of its Subconsultants, those charges shall be the amount billed by such Subconsultants to Engineer times a factor of 1.1.
- D. The external Reimbursable Expenses and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

4.04 *Payments*

- A. *Application to Interest and Principal:* Owner's Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing within ten days of receipt of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

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- C. *Payments upon Termination:* In the event of any termination under Paragraph 6.06, 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.
 - 1. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services.
- D. *Additional Services:* Services not included as part of Engineer's Basic Services or are Services resulting from significant changes in the scope, schedule, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, schedule, character of construction, or method of financing; and revising previously accepted studies, reports, drawings, specifications, or documents when such revisions are enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control. Or Services required as a result of Owner's providing incomplete or incorrect information to Engineer. Or Engineer preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or any other legal or administrative proceeding involving the Project. Additional services will be performed by Engineer and paid for by Owner using the Standard Hourly Rates Method of Payment plus applicable reimbursable expenses and Engineer's consultants' charges.
- E. *Reimbursable Expenses* include the following: Project-related transportation (including mileage and tolls), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll and mobile phone charges; courier delivery charges; reproduction (copying, printing and biding) of reports, Drawings, Specifications, or other documents; Consultants' charges; and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of specific Project-related specialized equipment.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

Engineer's opinions (if any) of probable construction cost are made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry.

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 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 any services performed or furnished by Engineer.
- 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 may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. Engineer shall not at any time supervise, direct, control, or have authority over any constructor's 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 constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a constructor to comply with laws and regulations applicable to that constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any constructor.
- H. Engineer neither guarantees the performance of any constructor nor assumes responsibility for any constructor's, failure to furnish and perform the work in accordance with the construction contract documents.
- I. Engineer shall not be responsible for any decision made regarding the construction contract documents, or any application, interpretation, clarification, or modification of the construction contract documents, other than those specifically made by Engineer.
- J. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

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- 6.02 *Design Without Construction Phase Services*
- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer. With the exception of such expressly required services, Engineer shall have no other obligations during construction, and Owner assumes all responsibility during construction. Owner waives any and all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer.
- 6.03 *Use of Documents*
- A. All Engineer prepared Documents are instruments of service, and Engineer shall retain ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for Project related uses of the Owner, subject to receipt by Engineer of full payment due and owing 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 Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the 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 to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and 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.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the 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 *Electronic Transmittals*
- A. All Engineer prepared electronic files are instruments of service, and Engineer shall retain ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Electronic information will be provided by Engineer only for the convenience of Owner. Owner is not authorized to transmit Engineer's electronic or digital files to third parties unless an electronic file protocol setting forth any special limitations, indemnification, licenses and compensation is established.
- C. If this Agreement does not specifically establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols prior to transmitting any electronic files including setting adequate compensation for the service provided and value added.
- D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- E. Owner understands Engineer, as a professional, is engaged to provide a service, not a product. Likewise Engineer is not engaged to provide a service for the benefit of any contractor. It is understood Engineer's electronic files were not prepared for or intended for use by a contractor.
- F. If requested to transfer electronic files by Owner, Engineer will require a written request detailing which documents are requested, a respective "Release Waiver" executed and adequate compensation paid to Engineer to prepare, assemble and transfer electronic files.
- 6.05 *Insurance*
- A. Engineer shall procure and maintain insurance as set forth in Agreement. If requested, Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require any Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, 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 insurance purchased and maintained by Contractor for the Project.
- D. If requested, Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages.
- 6.06 *Suspension and Termination*
- A. *Suspension:*
1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.01, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.
 - 3) Engineer shall have no liability to Owner on account of such termination.

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- c. Notwithstanding the foregoing, this Agreement will not terminate 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, by Owner effective upon Engineer's receipt of notice from Owner.
 - C. *Effective Date of Termination:* The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- 6.07 *Controlling Law*
- A. This Agreement is to be governed by the Laws and Regulations of a Court of competent jurisdiction within the County of Erie, State of New York.
- 6.08 *Successors, Assigns, and Beneficiaries*
- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.
- 6.09 *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 exercising their rights at law.
 - B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then the parties may exercise their rights at law.
- 6.10 *Environmental Condition of Site*
- A. Owner represents to Engineer that no constituents of concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
 - B. If Engineer encounters or learns of an undisclosed constituent of concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials.
 - C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed constituents of concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed constituent of concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
 - D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed constituents of concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known constituent of concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- 6.11 *Indemnification and Mutual Waiver*
- A. ***Engineer's Liability Limited to Stated Amount or Amount of Engineer's Compensation:*** To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, 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 injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services or this Agreement, from any cause or causes whatsoever, 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, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$50,000 or the total compensation received by Engineer under this Agreement, whichever is greater.
 - 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.
 - C. ***Environmental Indemnification:*** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a constituent of concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment 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 (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
 - D. ***No Defense Obligation:*** The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
 - E. ***Percentage Share of Negligence:*** To the fullest extent permitted by Laws and Regulations, 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.
 - F. ***Mutual Waiver:*** To the fullest extent permitted by Laws and Regulations, 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 this Agreement or the Project, from any cause or causes.

**TERMS & CONDITIONS
FOR PROVIDING PROFESSIONAL SERVICES**

- 6.12 *Records Retention*
- A. Engineer shall maintain on file in legible form, for a period of no more than five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost, if available.
- 6.13 *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 registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, 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 Laws and Regulations, 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.
- F. *Unmarked Utilities:* Engineer will rely on information from Owner as well as Dig Safely New York or other entity responsible for locating and marking underground utilities. Owner will hold Engineer and Engineer's consultants harmless from any and all claims, losses, damages of any kind or nature, judgements, and expenses, including but not limited to cost of defense, arising out of or in any way connected with underground utilities.
- 6.14 *Designated Representatives*
- A. Engineer and Owner shall each designate one specific individual 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 an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

ARTICLE 7 - DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits and Appendix) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Agreement*—Written contract for professional services between Owner and Engineer, including all terms, conditions, exhibits and attachments identified and any duly executed amendments.
 2. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with this Agreement.
 3. *Additional Services*—The services to be performed for or furnished to Owner by Engineer that are not included as part of Engineer's Basic Services under this Agreement or are Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements.
 4. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver
 5. *Engineer*—The individual or entity named as such in this Agreement.
 6. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed.
 7. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
 8. *Site*—One or more lands or areas that Engineer studies as the location or possible location of Owner's Project.
 9. *Documents*—Data, reports, maps, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
 10. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.



2019 Hourly Billing Rates & Reimbursable Expenses Schedule

ENGINEERING

Table with 2 columns: Job Title, Rate. Includes Principal/Officer (\$160.00), Engr'g Director (\$125.00), Sr. Project Manager (\$116.00), Project Manager (\$107.00), Sr. Project Engineer (\$99.00), Project Engineer II (\$94.00), Project Engineer (\$88.00), Jr. Engineer (\$69.00), Sr. Engineering Technician (\$99.00), Engineering Technician (\$58.00), CAD Technician (\$69.00).

LAND SURVEYING

Table with 2 columns: Job Title, Rate. Includes Survey Director (\$125.00), Survey Manager (\$85.00), Survey Technician (\$68.00), 1-Man Field Crew (Straight time) (\$85.00), 2-Man Field Crew (Straight time) (\$132.00), 2-Man Field Crew (Overtime) (\$157.00), 2-Man Field Crew (NYS Prevailing Rate) (\$198.00), Survey GPS Technician (\$85.00).

CONSTRUCTION

Table with 2 columns: Job Title, Rate. Includes Construction Inspector I (\$55.00), Construction Inspector II (\$74.00), Construction Inspector III (\$76.00), Construction Administrator (\$99.00).

TECHNICAL SUPPORT STAFF

Table with 2 columns: Job Title, Rate. Includes Technical Aide (\$58.00), M/WBE Coordinator (\$95.00).

REIMBURSABLE EXPENSES

Table with 2 columns: Expense Type, Rate. Includes Photocopies B & W (8 1/2" x 11") (\$0.10/pg), Photocopies B & W (11" x 17") (\$0.20/pg), Color Prints (8 1/2" x 11") (\$0.59/pg), Color Prints (11" x 17") (\$1.78/pg), Large Format CAD Paper Plots (24" x 36") (\$2.00/pg), Large Format CAD Paper Plots (30" x 42") (\$3.00/pg), Large Format CAD Mylar Plots (24" x 36") (\$6.00/pg), Large Format CAD Mylar Plots (30" x 42") (\$10.00/pg), Large Format Color Plots (24" x 36") (\$6.00/pg), Large Format Color Plots (30" x 42") (\$10.00/pg), Mileage (\$0.58 + 10% (\$0.64)/mi), Tolls (Cost +10%), Lodging (Cost +10%), Special Equipment Rentals/Purchases (Cost +10%), Delivery (Courier, Overnight, Mail) (Cost +10%), Job Site Trailer/Field Office (Cost +10%), Fees/Permits (Cost +10%).

SUBCONSULTANT SERVICES

Table with 2 columns: Service Type, Rate. Includes Subconsultant (Cost +10%).