

Request For Local Agency Account Funding

Instructions: Provide all applicable information by filling in the text boxes as indicated. If necessary, attach additional information in a separate document.

This request shall be submitted by first class mail to the address below or electronically via e-mail to: general@ores.ny.gov.

**Office of Renewable Energy Siting (ORES)
c/o: OGS Mailroom
Empire State Plaza
240 State Street
P-1 South, J Dock
Albany, NY 12242**

Copies must also be submitted to the assigned Administrative Law Judge and other parties to the proceeding.

I hereby provide a request for intervenor funds in the following Executive Law Section 94-c application before the Office of Renewable Energy Siting (ORES):

DMM Matter Number:	
Title of Application:	
Name of Party:	
Contact Person:	
Firm Name:	
Contact Address:	
Contact Telephone Number:	
Contact E-mail Address:	
Amount of Funds Requested:	

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

The basis of eligibility for intervenor funds is as follows: (select one)

Eligible **Local Agency**

Eligible **Potential Community Intervenor**

1(a). For a **Local Agency**, provide a statement that the facility falls within the local agency's jurisdiction or that a permit or approval from the local agency would have been required in the absence of Section 94-c of the Executive Law:

1(b). For an **Individual Potential Community Intervenor**, provide a statement of the number of persons the requesting party represents, the nature of the interests the requesting person represents, and proof of residency:

1(c). For a **Non-Profit Organization Potential Community Intervenor**, provide a statement of concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to its mission:

2(a). For a **Local Agency** or **Non-Profit Organization Potential Community Intervenor**, provide a statement of the availability of funds from the resources of the requesting party:

2(b). For a **Local Agency** or **Non-Profit Organization Potential Community Intervenor**, provide a statement of the efforts that have been made to obtain funds from other sources:

3. State the amount of funds being requested:

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

4(a). If any experts are to be employed, provide to the extent possible, the name and qualifications of each person to be employed:

4(b). If it is not possible to provide the name of each expert to be employed, provide for each expert a statement of the necessary professional qualifications for the expert(s):

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

5. Provide, if known, the name of any other local agency, potential community intervenor or entity who may, or is intending to, employ any such expert(s):

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

6(a). For all experts to be employed, provide a detailed statement of the services to be provided:

6(b). For all experts to be employed, provide a detailed basis for the fees requested, including hourly fee, wage rate, and expenses:

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

6(c). For all experts to be employed, provide a detailed statement specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility:

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

7(a). For any study to be performed, a description of the purpose of the study:

7(b). For any study to be performed, a description of the methodology and a statement of the rationale supporting the methodology:

7(c). For any study to be performed pursuant to any proposed methodology that is new or original, an explanation of why pre-existing methodologies are insufficient or inappropriate:

7(d). For any study to be performed, provide a description of the timing for completion of the study and a statement of the rationale supporting the timing proposed:

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

8. For all experts to be employed, provide a copy of any contract or agreement or proposed contract or agreement with any such expert(s):

9. Provide a statement of any additional justification for the funding request not already addressed above:

ATTACHMENT A



CHARLES W. MALCOMB

Partner; Public Authority Practice Co-Leader

cmalcomb@hodgsonruss.com 716.848.1261

Chuck concentrates his practice on environmental law, energy law, land-use law, municipal law, and real estate development. He has experience working with both private and public clients on issues involving both state and federal environmental statutes, and he assists municipalities with a wide range of legal issues, including environmental review and zoning.

A primary part of Chuck's work focuses on the State Environmental Quality Review Act (SEQRA) where he has extensive experience guiding municipalities and developers through its requirements. Successful projects include environmental assessments for large-scale telecommunications projects, power generation projects (including some of the largest wind farms in the eastern United States and both utility and small-scale solar projects), infrastructure improvements, and public and private developments, from project inception through successful litigation. He has assisted in drafting scoping documents, environmental impact statements, findings statements, decisions, and guiding public review. Chuck also counsels clients on local, state, and federal permitting processes, including compliance with historic preservation laws, the Clean Water Act, the Clean Air Act, and other federal environmental statutes and regulations.

Chuck frequently gives presentations and provides training programs for local government officials across the State on SEQRA, zoning, environmental law, land-use law, and ethics. He regularly presents at the Summer School and Annual Meetings of the Association of Towns and provides training for the New York Planning Federation. He has trained code enforcement officers and town and village justices on zoning and building code enforcement, and has published articles on investigating and prosecuting violations. In addition, Chuck has provided training to planners and local government officials on NYS Agriculture and Markets law, and the protections applicable to farm operations, including the limitations on municipal regulations.

The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202

Practices & Industries

Brownfield Redevelopment
Business Litigation
Cleantech
COVID-19 Litigation & Employment Action Team
Environmental
Green Building
Land Use & Economic Development
Municipal
Oil & Gas
Public Authority
Renewable Energy
Wine, Beer & Spirits

Admissions

New York

Education

University at Buffalo, B.A., *Summa Cum Laude*

University at Buffalo School of Law, J.D., *Magna Cum Laude*

CHARLES W. MALCOMB

As part of his municipal practice, Chuck serves as the attorney for an upstate New York municipality addressing the full-range of general municipal issues. He regularly counsels municipal clients on leasing, ethics, environmental matters, zoning, assessment, eminent domain, and procurement. Chuck represents clients engaged in farm operations in County-adopted, State-certified Agricultural Districts and have assisted in securing municipal approvals for operations, including renewable energy projects. He has also defended lawsuits challenging municipal approvals to farm operations. His further litigation experience includes tax assessment matters, land use issues, environmental enforcement, and other issues before administrative and judicial forums. He has drafted laws for municipalities on a variety of subjects.

Chuck also counsels clients in the oil and gas industry on a variety of matters, including environmental compliance and administrative enforcement defense. Chuck and his colleagues represent several oil and gas companies in defending lawsuits alleging pollution resulting from drilling activities.

Chuck has represented clients with matters pending before the State Liquor Authority, including applications for licenses. Specifically, he has provided guidance to wineries and distilleries with respect to licensing issues and compliance with Federal and State laws regulating the sale and consumption of alcohol.

In addition, Chuck is conversant in Russian.

Honors

- Listed, *Upstate New York Super Lawyers* (Environmental) 2021
- Listed, *Upstate New York Super Lawyers Rising Stars*, (Environmental) 2014 - 2020

Experience

Hodgson Russ represented an intervenor supporting a ZBA's interpretation, in a matter requiring an understanding of the interplay of amendments to a municipal zoning ordinance over the last 50 years. The ZBA rendered an interpretation that certain height limitations (imposed as conditions to a prior rezoning) were no longer applicable, but did not issue formal written findings. Hodgson Russ argued, successfully, that the ZBA's decision was a matter of "pure legal interpretation" and that no written findings were required. Supreme Court, Erie County conducted a de novo review and upheld the ZBA's determination. The Fourth Department affirmed.

The Ghent Planning Board issued a Negative Declaration, the Ghent ZBA granted area variances, and the Claverack Planning Board granted site plan approval. Although Hodgson Russ represented the applicant, it took the lead in defending the actions of the municipal boards and prevailed in all three proceedings. Each matter involved the preparation of a certified record, drafting pleadings, and preparing memoranda of law. One required approval, a special use permit from the Ghent Planning Board, was denied. Hodgson Russ successfully challenged this denial as arbitrary and capricious and not supported by the evidence in the record. Supreme Court, Columbia County ordered the approvals be granted. These matters involved the construction of a proposed refrigerated warehouse facility across the border of two towns in Columbia County.

CHARLES W. MALCOMB

A Developer commenced an Article 78 proceeding challenging, among other things, members of a village board of trustees' right to deliberate and vote on a project about which the members expressed personal opinions. The project was a controversial development project and prior to their election, board members had expressed their views on the project, both before and during their campaigns for office. Hodgson Russ represented the board of trustees and its members when the developer argued that the expression of opinions and signing a petition against a project were examples of bias requiring the board members to recuse themselves. Supreme Court, Monroe County agreed and annulled the determination, finding that the board members had a prohibited conflict of interest, and enjoined them from any deliberations or voting with respect to the project. The Fourth Department reversed, holding that mere expressions of opinion, absent more, are not enough to demonstrate bias. Elected, public officials should be free to express their views to their constituents, especially during their run for election. This is a seminal case that clarifies that the mere expression of opinion does not require disqualification of board members.

A petitioner obtained a special use permit and site plan approval for a wind project. Due to delays, the Petitioner applied for the first extension, which was granted. They then changed the project and applied for a second extension, which was denied. The applicable standard is whether there was a change in circumstances that would justify denial of an extension request. The project changes proposed by Petitioner warranted denial. Petitioner then argued that no extension was necessary because the approvals were challenged and the doctrine of equitable tolling extended the durational limits. Hodgson Russ argued successfully that the doctrine of equitable tolling is inapplicable in the State of New York. This decision made new law in the State of New York, specifically, whether the doctrine of "equitable tolling" extended durational limits of permits while litigation challenging those approvals is pending.

Hodgson Russ successfully defended the ZBA before the Supreme Court, Erie County and the Fourth Department. The applicant sought a use variance to permit commercial parking in a residential area, across the street from his commercial operation. The ZBA applied the factors for granting a use variance and issued a written decision. After nearby residents challenged the ZBA's determination granting the use variance on several grounds.

Hodgson Russ represented a citizens group opposed to the development of a casino resort. The town board issued a negative declaration without setting forth its determination, in a written form, providing a reasoned elaboration. Instead, the board's special counsel prepared rationale after-the-fact. Supreme Court, Seneca County approved of this approach, but the Fourth Department reversed. The Fourth Department determined that SEQRA requires the lead agency to set forth its determination in writing to allow intelligent judicial review. After-the-fact rationale should not be considered by the reviewing court. This matter set significant precedent in the Fourth Department.

Hodgson Russ advised the developer on all legal aspects of the permitting and IDA financing of multiple wind energy projects in Western New York providing power for more than 50,000 homes. The projects include over a hundred turbines, over 20 miles of access roads, electric collection systems, an operations and maintenance building, and a substation. Our work included guiding the environmental impact review processes, representing the company at public hearings, obtaining land use permits, defending the company in lawsuits from opposing neighbors, and negotiating road use and host community agreements. We served as local finance counsel in obtaining benefits from the IDA, and all real estate matters related to the project, including survey due diligence and acting as the title examiner for the projects.

CHARLES W. MALCOMB

Since 2012, a Hodgson Russ team led by Mr. Gilbride has represented the Buffalo Sabres and its affiliate, HARBORCENTER, in conjunction with the development of HARBORCENTER, an approximately \$200 million, 600,000-square-foot sports, retail, entertainment, parking, and hospitality complex. This first-of-its-kind mixed-used facility includes two ice rinks; a 19-story, full-service Marriott hotel; a sports-themed nightclub and restaurant; retail space; and an 800-car parking facility, all of which are connected to the existing Key Bank Center via skywalk. Hodgson Russ has worked with the Sabres on all aspects of this project from its inception, including environmental review, contract negotiations, permitting, construction, economic development incentives, financing, and tax planning.

Hodgson Russ has represented many local businesses and developers across New York State, including an 18-hole golf course, a winery, a family-owned meat market, and a developer of a large mixed-use business/residential park. This representation has included state and local code interpretation, analysis of permitting requirements, the preparation and presentation of environmental and zoning applications, and defending approvals and permits in litigation.

After a 13 year battle, the petitioners ultimately failed in their efforts to challenge a law and negative declaration issued by a local town board which prevented them from any mining and excavating to create a stone quarry in a zoning district designated as agricultural/residential. New York's appellate court for the 4th Department determined that the petitioners did not prove a clear conflict between a 2017 town law and the town's comprehensive plan. Charles Malcomb and Dan Spitzer handled this matter on behalf of the town.

Our firm serves as key outside counsel to a California-based energy company regarding their solar development projects. The Hodgson Russ team including Elizabeth Holden, Andrea Gervais, Betsy Mills and Jennifer Anthony provide advice, review and guidance on real-estate based development issues in a time-sensitive and consistent manner for the client's development team across four states. Dan Spitzer, Ryan Cummings, Chuck Malcomb, Mila Buckner and Jennifer Schlumberger provide permitting, PILOT Agreement, contract assistance and litigation support, including a successful Public Service Commission petition on their behalf.

Hodgson Russ successfully represented a county executive in a dispute with another elected official over the scope of the elected officials ability to establish specific salaries for managerial appointments. The case turned on the interpretation of provisions within the county's charter, which were unique to the county. Employing the authority granted to it by this State Legislature to adopt charter provisions, the legislature had reserved for itself the authority to establish salaries, but the elected official asserted that the grant of budgetary authority sufficient to pay a specific salary was the equivalent of approval of that higher salary. Hodgson Russ successfully argued that municipal authority is not expanded beyond what is explicitly stated in the law, and that the rules of statutory interpretation prevented the elected official from transferring budgetary authority from the county legislature to the official.

The Appellate Division for the 4th Department unanimously held that the petitioner had no standing to sue in his attempts to challenge a negative declaration issued under the SEQRA by a municipality's Planning Board regarding the demolition and reconstruction of an apartment complex with that city. He did not show the requisite environmental injury that differs from that of the public at large in order to challenge the Planning Board's SEQRA determination. His interest in historic preservation, his interest in photographing the apartment building and his position on the Preservation Board of the municipality were all insufficient to confer standing to sustain the lawsuit. Nor did the petitioner have standing on behalf of the apartment complex tenants. Charles Malcomb and Adam Perry handled this matter on behalf of the property developer.

CHARLES W. MALCOMB

In the News

Are Conduit Debt Issuers Liable for Unpaid Water Rents and Building Code Violations for the Buildings they “Own” Due to Bond Financing; Court of Appeals to Decide

New York Law Review, January 13, 2021

ECC Seeks Dismissal of ‘Frivolous’ Giambra Lawsuit

Buffalo News, December 23, 2014

Oil and Gas Trade Group Sets Agenda for Buffalo Meeting

Buffalo Business First, November 6, 2014

Six Hodgson Russ Attorneys Newly Admitted to New York State Bar

April 1, 2011

Six Hodgson Russ Attorneys Newly Admitted to New York State Bar

March 11, 2010

Press Releases

Fifty-Four Hodgson Russ Attorneys Ranked in 2021 Edition of Upstate New York Super Lawyers

Hodgson Russ Press Release, August 20, 2021

Christopher Canada and Charles Malcomb Appointed As Co-Chairs of Hodgson Russ Public Authority Practice

Hodgson Russ Press Release, May 18, 2021

Daniel Spitzer and Charles Malcomb Honored by JD Supra

Hodgson Russ Press Release, March 31, 2021

Sixty-Two Hodgson Russ Attorneys Named to 2020 Upstate New York Super Lawyers

Hodgson Russ Press Release, September 8, 2020

Sixty Hodgson Russ Attorneys Named to 2019 Upstate New York Super Lawyers

Press Release, August 12, 2019

Sixty-One Hodgson Russ Attorneys Named to 2018 Upstate New York Super Lawyers

Press Release, August 20, 2018

Hodgson Russ Announces Five Newly Elected Partners, Nine Attorneys Promoted to Senior Associate

Press Release, January 2, 2018

Seventy Hodgson Russ Attorneys Named to 2017 Upstate New York Super Lawyers, Hugh Russ Listed Among Top 50

Press Release, September 6, 2017

Sixty-three Hodgson Russ Attorneys Named to 2016 Upstate New York Super Lawyers, Hugh Russ Listed Among Top 50

Press Release, August 31, 2016

CHARLES W. MALCOMB

Sixty-Four Hodgson Russ Attorneys Named to 2015 Upstate New York Super Lawyers, Hugh Russ Listed Among Top 50
Press Release, August 19, 2015

Publications

New Bill Pushes Decarbonization of the Building Sector Across New York
Hodgson Russ Renewable Energy Alert, November 30, 2021

Local Sales Taxes on Solar-Generated Electricity
Hodgson Russ SALT and Renewable Energy Alert, November 15, 2021

Third Department Upholds Siting Board Rejection of Local Law Effective after the Close of the Evidentiary Record[1]
Hodgson Russ Renewable Energy Alert, November 9, 2021

On the Horizon: A Revised ASTM Standard for Conducting Phase I Environmental Site Assessments
Hodgson Russ Environmental Alert, November 5, 2021

EPA Announces Two Proposed Rulemakings to Regulate PFAS Under RCRA
Hodgson Russ Environmental Alert, November 2, 2021

Open Meetings Law Amendment Requires Making Materials Available At Least 24 Hours before Meetings
Hodgson Russ Municipal Alert, October 29, 2021

For Zoning Determinations, the Third Department Confirms that “Filed” Means Filed
Hodgson Russ Land Use & Economic Development Alert, October 22, 2021

EPA Announces a Multifaceted Approach to Regulating PFAS
Hodgson Russ Environmental Alert, October 20, 2021

New York Public Service Commission Directs Further Action be Taken by the State's Utilities Before Authorizing
Transmission Upgrades to Advance New York's Climate Goals
Hodgson Russ Renewable Energy Alert, September 14, 2021

Understanding the Reach and Limits of RPTL § 575-b and the State-Mandated Solar and Wind Real Property Assessment
Models
Hodgson Russ Renewable Energy Alert, September 8, 2021

Presentations & Events

New York Government Finance Officers' Association Western Holiday Seminar
New York Government Finance Officers' Association, RIT Conference Center, Rochester, December 9, 2021

Virtual IDA Academy
April 13, 2021

CHARLES W. MALCOMB

Hodgson Russ Municipal Webinar
January 27, 2021

Zoning Enforcement in Local Justice Courts
New York Planning Federation, November 10, 2020

AECOM Ethical Considerations for Municipal Officers
Albany, NY, September 25, 2019

Zoning & Land Use Fundamentals for Municipal Officials
Millennium Hotel, 2040 Walden Avenue, Cheektowaga, NY, June 13, 2019

Niagara Frontier Section Air & Waste Management Association 2019 Annual Enrichment Seminar
Templeton Landing, Buffalo, NY, January 24, 2019

34th Annual School Client Conference
Millennium Hotel Buffalo, January 18, 2019

New York State Bar Association, Local and State Government Law Section Fall Meeting
Buffalo, New York, September 28-29

WSTBOA Educational Conference
Mayville, New York, September 11, 2018

Professional Affiliations

- Environmental Law Institute
- New York State Bar Association
- Bar Association of Erie County

Community & Pro Bono

- Rivershore Foundation, Inc. board member



ALICIA LEGLAND

Associate

aleglan@hodgsonruss.com

518.433.2416

Alicia is a member of the Environmental and Renewable Energy Practices. Her experience and current work centers on environmental law, energy law, and land use and zoning law. A primary part of her practice involves preparing zoning analyses for renewable energy developers, representing clients involved in Article 78 proceedings, and assisting clients with regulatory compliance matters and environmental due diligence review.

Prior to joining Hodgson Russ, Alicia was a summer associate for a real estate law firm in New York City. During law school, she interned for the Honorable Andrew L. Carter Jr. in the U.S. District Court for the Southern District of New York in Manhattan.

Honors

- Former Research & Writing Editor, *Pace Environmental Law Review*
- J.D. with Advanced Certificate in Environmental law
- Teaching Assistant, Tort and Contract Law, Pace University - Elisabeth Haub School of Law

Publications

New Bill Pushes Decarbonization of the Building Sector Across New York
Hodgson Russ Renewable Energy Alert, November 30, 2021

Local Sales Taxes on Solar-Generated Electricity
Hodgson Russ SALT and Renewable Energy Alert, November 15, 2021

Third Department Upholds Siting Board Rejection of Local Law Effective after the Close of the Evidentiary Record[1]
Hodgson Russ Renewable Energy Alert, November 9, 2021

677 Broadway
Suite 301
Albany, NY 12207

Practices & Industries

Environmental
Land Use & Economic Development
Renewable Energy

Admissions

New York

Education

Adelphi University, B.A., *summa cum laude*

Pace University - Elisabeth Haub School of Law, J.D., *summa cum laude*

ALICIA LEGLAND

On the Horizon: A Revised ASTM Standard for Conducting Phase I Environmental Site Assessments

Hodgson Russ Environmental Alert, November 5, 2021

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New York Public Service Commission Directs Further Action be Taken by the State's Utilities Before Authorizing Transmission Upgrades to Advance New York's Climate Goals

Hodgson Russ Renewable Energy Alert, September 14, 2021

Understanding the Reach and Limits of RPTL § 575-b and the State-Mandated Solar and Wind Real Property Assessment Models

Hodgson Russ Renewable Energy Alert, September 8, 2021

New York Launches its Inclusive Community Solar Adder with \$52.5 Million Available for Qualifying Projects

Hodgson Russ Renewable Energy Alert, August 3, 2021

Presentations & Events

Air & Waste Management Association 2021 Annual Enrichment Seminar

Air & Waste Management Association - Niagara Frontier Sector, June 8-9, 2021



David M. Britton

Senior Project Manager



Qualified: Bachelor of Science (B.S.), Civil Engineering, 1992

Connected (professional affiliations): Registered Professional Engineer: New York; New York Chapter American Public Works Association, Western Branch; President (2011-18), Executive Board Member (2005-10), Erie Community College – Technical Advisory Board Member (2014-present)

Professional Summary: Dave has 26 years' experience in general municipal engineering involving planning, design and construction of civil, infrastructure, environmental, and multi-disciplinary engineering projects. He has directed numerous municipal consulting initiatives in the areas of stormwater management, capital planning, pipeline infrastructure, drainage, roadway/highway design, and (State Environmental Quality Review (SEQR) compliance. Dave has also served as Retained Engineer representing municipalities in the review and construction of multiple alternative energy projects throughout New York State.

Article 10 and Wind Energy Projects

Project Manager

**EverPower – Cassadaga Wind LLC |
Towns of Cherry Creek and Charlotte |
Chautauqua County, NY**

Dave is representing the municipalities of Cherry Creek and Charlotte in the review and assessment of the Application to construct a 126 MW wind project (up to 50 wind turbines) pursuant to the NYS Public Service Commission Article 10 process. The focus of the review was on study findings for adjustments to siting for a complete application.

Project Manager

**Invenergy – Bull Run Wind Energy Center |
Towns of Clinton, Ellenburg, Altona, Mooers |
Clinton County, NY**

Dave is representing the impacted communities in the review and analysis of the Preliminary Scoping Statement (PSS) for the development of a 400 MW wind park as part of NYS Public Service Commission Article 10 application process. Responsibilities include assisting the Towns in understanding the scope of studies, while providing recommendations to ensure the wind applicant is properly considering the impacts (i.e., land use effects, compliance with local laws, impacts of transportation and infrastructure, decommissioning, operational impacts, noise and vibration, visual impacts, public safety and security, drainage, geology and water resources, effects on communications, and socioeconomic effects).

Project Manager

**EDP Renewables – Arkwright Summit |
Town of Arkwright | Arkwright, NY**

Dave is managing the construction phase of a 79 MW wind park comprised of 36 wind turbines and associated facilities. Dave is acting as the Town's representative with respect to the review of construction plans, building permit applications, and roadway condition assessments (pre-

and post). Dave is overseeing onsite construction monitoring by GHD, which includes witnesses field-testing for conformance with approvals and permits, dispute resolution, and issuance of final certificates of completion. Responsibilities also include assisting the Town Highway Superintendent with assessment and repair activities associated with roads and roadway structures.

Project Manager

**Everpower Allegany Wind Park |
Town of Allegany | Allegany, NY | 2010**

Dave managed the review process of an application to construct an 80 MW wind park. Responsibilities include engineering consultation for assisting the Town through the environmental assessment process in accordance with the State Environmental Quality Review Act (SEQRA) requirements and procedures.

Project Manager

**Noble Wethersfield Wind Park | Town of
Wethersfield | Wethersfield, NY | 2006-2008**

Project Manager and municipal consultant for the review and construction of an 89 MW wind park. Dave completed a technical engineering review and provided guidance to the Town in compliance with the State Environmental Quality Review (SEQR). He was responsible for code and SEQR compliance and advisement of potential mitigation measures for identified significant environmental impacts. Dave was also responsible for managing construction document reviews, issuance of building permits, and the oversight of environmental monitoring services.

Project Manager

**North Country Wind Parks | Towns of Clinton,
Ellenburg and Altona | Clinton County, NY**

Dave provided municipal representation in connection with the application and construction of a 300 MW wind park that extended across three municipalities in upstate NY. Responsibilities include engineering consultation during the SEQR process and oversight for the execution



of the building permit and construction phase portion of the project. Project services include managing the construction document reviews, issuance of building permits, and the oversight of environmental monitoring services.

**Project Manager
Wind Project | Confidential Client | Stamford /
Roxbury, New York | 2012**

Project Manager responsible for overseeing the efforts of multiple consultants in connection with the compilation of existing information, providing supplementary engineering, mapping, and permitting services, and to coordinate and manage the submission of the Applications and Draft Environmental Impact Statement (DEIS) submissions to the Towns of Stamford and Roxbury, New York.

Municipal Engineering

**Engineer of Record/Project Manager
Town Engineering | Town of Pendleton |
Pendleton, NY | 2003-Present**

As Retained Engineer, Dave provides general municipal engineering services, including attendance at Town Board and Planning Board meetings, and construction phase assistance. He also performs site plan and subdivision reviews; SEQR environmental reviews; drainage reviews, stormwater modeling, Town and construction code compliance reviews; development of and updates to the Town's Capital Improvement Plan (drainage, sewer, water, and highway). Project overview as Retained Engineer:

- Engineering review for the siting of several large commercial projects with the potential for significant adverse environmental impact to include a proposed compressor station and facilities associated with the National Fuel Northern Access Project and two commercial solar farms with a rated capacity of 5 MW and 100 MW.
- Project Manager for a variety of Town owned facility improvements, which include sanitary, water, storm infrastructure upgrades; highway garage roof replacement and equipment updates; ADA compliant entrance and other Town Hall modifications; Town hall parking lot enhancements and expansion; and various recreational facility improvements.

**Project Manager
Town Engineering | Town of Lewiston |
Lewiston, NY | 2003-2009, 2014-Present**

Dave assists the Engineer of Record with general consulting for site plan and subdivisions acceptance, SEQRA environmental reviews, Town and construction code compliance, capital improvement project development, and construction phase assistance. Projects completed under our retainer include:

- Development of drainage and flood control designs
- Feasibility studies and preparation of contract documents for numerous infrastructure improvement projects involving water, sewer, and storm sewer systems.
- Draft Environmental Impact Statement (DEIS) involving a Town owned public golf course and future residential development.
- Develop contract documents for a water system capital improvement project consisting of replacing approximately 45,000 linear feet of 8, 12 and 16-inch water main and services throughout the Town.

**Engineer of Record/Project Manager
Municipal Engineering | Village of Hamburg |
Hamburg, NY | 2012-current**

Project Manager providing retained engineering services to the Village since 2012. General services provided include advice on technical matters and regulatory compliance issues; general code review and consultation; spot inspections of municipal facilities, capital improvement planning, and contract administration. Capital improvement projects completed as Retained Engineer include:

- Project Manager for the study, design and construction of improvements associated with the consolidation of the Village water system with Erie County Water Authority (ECWA). Water system upgrades include the replacement and transfer of services for approximately 29,000 linear feet of water mains.
- Project Manager for the design and construction management for the Sunset Drive complete streets project. Project elements included storm system upgrades, improved pedestrian access and safety measures, intersection realignment, reduced lane widths, ADA-compliant sidewalk improvements, and 5,800 feet of roadway rehabilitation. As part of the planning phase, Dave worked with the Village in the development of various complete street concepts and development of cost estimates.

Work history

2004 – present	Associate, GHD (formerly CRA Infrastructure & Engineering, Inc.), Buffalo NY Named Associate, 2013
1998 – 2004	O'Brien & Gere Engineers, Inc., Williamsville NY
1994 – 1998	E&M Engineers, Springville NY
1990 – 1994	Construction Team Management, Inc., Clarence NY

ATTACHMENT B

Charles W. Malcomb
Direct Dial: 716.848.1261
cmalcomb@hodgsonruss.com



December 28, 2021

Via E-mail [jmaerten@pendletonny.us]

Town of Pendleton
6570 Campbell Blvd.
Lockport, New York 14094

Dear Supervisor Maerten and Members of the Town Board:

Re: Legal Representation

We want to thank you for your continued confidence in our firm. This letter shall confirm the Town of Pendleton's (the "Town" or "you") continued engagement of our firm in connection with the Bear Ridge Solar, LLC project, to be located partially in the Town, and the application for a permit for a major renewable energy facility under Executive Law § 94-c. This letter shall serve as an update to our prior engagement letter, a copy of which is enclosed.

During the course of this engagement, the firm may collect certain personal information relating to the services contemplated by this letter. When we do so, we require that clients provide the minimum amount of personal information necessary for us to perform our legal services. The collection of any such personal information will be governed by, and such personal information will be processed in accordance with, the firm's Privacy Policy, as well as any applicable privacy laws and codes of professional conduct. You can obtain a copy of the firm's Privacy Policy on our website at www.hodgsonruss.com or by requesting one from us.

Fees. Our fees will be based on the amount of time spent on your behalf. Each lawyer and legal assistant has an hourly billing rate based generally on experience and special knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the basis for determining the fee. As of January 1, 2022, the fees for this matter will be as follows: partners will be billed at \$320 per hour and associates will be billed at \$299 per hour. I will remain primarily responsible for this matter and I will supervise Alicia Legland's work. I will use other attorneys as I determine appropriate under the circumstances.

The terms set forth in the enclosed March 13, 2019 engagement letter will be continued without change, except as specifically noted herein. Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "C. Malcomb", written over a white background.

Charles W. Malcomb

Encl.

Charles W. Malcomb
Direct Dial: 716.848.1261
Facsimile: 716.819.4737
cmalcomb@hodgsonruss.com



March 13, 2019

Via E-mail [jmaerten@pendletonny.us]

Town of Pendleton
Attn: Town Supervisor Joel Maerten
6570 Campbell Blvd.
Lockport, New York 14094

Dear Supervisor Maerten and Members of the Town Board:

Re: Legal Representation

Thank you for considering our firm to represent the Town of Pendleton (the "Town" or "you") in connection with the Bear Ridge Solar, LLC application for a Certificate of Environmental Compatibility and Public Need pursuant to Article 10 of the Public Service Law for construction of a solar electric generating facility to be located partially in the Town. This letter will spell out our firm's customary procedures and expectations in order to clarify our mutual responsibilities.

As a first matter, we must disclose that this firm currently represents Borrego Solar Systems, Inc. and its affiliated entities (collectively, "Borrego"), including with respect to a project located within the Town. Our professional obligations as lawyers do not permit us to simultaneously represent clients whose interests directly diverge, where our professional judgment or zealous representation might be affected. The work we have done, and continue to do for Borrego is not directly related to the work we are being asked to undertake on behalf of the Town. After examining the situation, we have concluded that the work we will do for Borrego will not in any way impact our representation of the Town on this matter and that a disinterested lawyer examining the situation would draw the same conclusion. You should, of course, feel free to consult another lawyer concerning this conflict issue if you would like, and you should call me with any questions.

The Town thus agrees (i) that the Town waives any conflict of interest that may arise as a result of our representation of Borrego; and (ii) that the Town will not now or in the future attempt to disqualify this firm from any representation of Borrego in any current or future matter, including where the Town is adverse.

Please be aware that the firm represents many other municipalities, companies, and individuals. It is possible that during the time that we are representing you, some of our present or future clients will have matters which may be adverse to you. You agree that we may

continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

To enable us to represent you effectively, you agree to cooperate fully with us and to provide promptly all information we believe to be relevant to our representation.

Fees. Our fees will be based on the amount of time spent on your behalf. Each lawyer and legal assistant has an hourly billing rate based generally on experience and special knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the basis for determining the fee. For this matter, my time will be billed at \$295 an hour. Mila Buckner's time will be billed at \$288 an hour. I will use other attorneys as I determine appropriate under the circumstances.

Costs. The firm typically incurs costs in connection with legal representation. These costs may include such matters as long distance telephone charges, special postage, delivery charges, telecopy and photocopy charges and related expenses, travel expenses, meals and use of other service providers, such as printers or experts. We separately bill for computerized legal research and related expenses. You also agree to pay the charges for copying documents for retention in our files, and for data hosting services. Except for specialized word processing services, we normally do not make a separate charge for secretarial work unless there is a situation that requires overtime staff work. At our option, we may forward third-party charges in excess of \$150 directly to you for payment.

You agree to pay our statements for services and other charges. Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due within thirty (30) days of receipt of our statement. If any statement remains unpaid, we may suspend performing services for you until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses. If payment is overdue by more than 45 days, we will impose a late payment fee calculated at the rate of 1 ½ % per month on the outstanding amount, unless some other arrangement has been made. In the unlikely event that a dispute arises between us relating to our fees, you may have the right to arbitration of that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon request.

Termination of Services. You may terminate our representation at any time by notifying us. Your termination of our services will not affect your responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or incurred

thereafter in connection with an orderly transition of the matters. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained in accordance with the firm's records management policy and procedures. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

We may withdraw from representation if you fail to fulfill your obligations under this agreement, including your obligation to pay our fees and expenses, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable written notice to you. We will take such steps as are reasonably practicable to protect your interest during any transition. We certainly anticipate that we will see this matter through to conclusion.

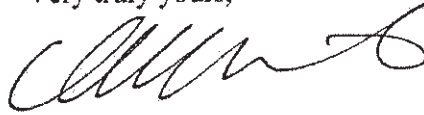
Conclusion of Representation; Disposition of Documents. Unless previously terminated, our representation in this matter will end when we send you our final statement for services rendered in the matter. During the course of our representation we will maintain a file of those documents necessary and material to the matter. Absent unusual circumstances we will provide you with copies of documents in our file at your request. If you provide us with documents, please make sure you retain the originals or copies. Our expectation is that we will not need to return to you documents you have provided to us. We will maintain our file for seven years after the matter has been concluded in accordance with the firm's records management policy and procedures. Absent specific reason to do so, we will not retain copies of documents produced to us by the other side, or by subpoena, and will not retain copies of documents you provided to us. After seven years the contents of your file will be destroyed, unless you ask us to return the file to you, or your matter fits into one of several exceptions. If you have policies that require us to use a different retention period, or any requirements that differ from our policies, please let us know and we will make appropriate arrangements. Otherwise, we will maintain our file as noted above.

If this matter requires us to maintain electronic documents in hosted storage, we will eliminate those services at the end of the matter, and delete the information on the database absent specific instruction to the contrary. If you request that we maintain the database in searchable form, you will be responsible for hosting fees.

Governing Law. This engagement letter, and all matters arising in connection with it, shall be governed by the law of the State of New York without regard to conflict of law principles. Please review this letter carefully and, if it meets with your approval, please sign the enclosed copy of this letter and return it to me so that we may begin work.

Please call me if you have any questions.

Very truly yours,



Charles W. Malcomb

Agreed and accepted:

Town of Pendleton

By:  _____

Title: Supervisor _____

Date: 3/15/2019 _____

285 Delaware Avenue, Suite 500
Buffalo, New York 14202
United States
www.ghd.com



Our ref: 11208430

December 14, 2021

Joel Maerten, Supervisor
Town of Pendleton
6570 Campbell Road
Lockport, New York 14094

Town Engineer – Request for Reappointment for 2022

Dear Mr. Maerten:

GHD would like to thank the Town of Pendleton (Town) for giving us the opportunity to serve as your Town Engineer in 2021, and hereby submit our request and proposal for the reappointment as Town Engineer for Fiscal Year 2022.

Our proposed 2022 retainer fee of \$1,200 per month covers the cost for attendance at Town meetings. It also includes associated direct travel expenses and miscellaneous preparation/follow-up work related to the Board meetings.

Please note that GHD will coordinate with Avalon Document Services for substantial sized document reproduction related to Town projects. Direct costs associated with reproduction completed on behalf of Town projects are documents owned by the Town and are not subject to New York State sales tax.

GHD will invoice engineering services associated with identified Town projects and other general services, as requested and authorized by the Town, in accordance with the 2022 Fee Schedule in Attachment 1.

Should you find the above scope of work and fee acceptable, please sign the Q1150 Professional Services Agreement in Attachment 2 and return a copy to us for our files.

On behalf of GHD, I would like to thank you for the opportunity to submit this request for reappointment as your Engineer and look forward to continuing our professional relationship.

Regards,

A handwritten signature in purple ink that reads "David Britton".

David Britton, PE
Senior Project Manager

+1 716 362-8815
david.britton@ghd.com

DMB/las

Copy to: Robert P. Lannon Jr., PE – GHD
Camie L. Jarrell, PE - GHD

Attachments

Attachment 1

**GHD Rates Per Employee Class
2022 Town of Pendleton**



GHD Rates Per Employee Class - 2022 Town of Pendleton

GHD Description	US Rates
PROFESSIONAL	
Senior Technical Director 1	\$ 252.00
Senior Technical Director 2	\$ 232.00
Senior Technical Director 3 (D. Britton)	\$ 185.00
Technical Director 1	\$ 195.00
Technical Director 2	\$ 174.00
Senior Professional 1 (C. Jarrell/G. Keyser)	\$ 155.00
Senior Professional 2	\$ 144.00
Professional 1	\$ 136.00
Professional 2	\$ 115.00
Professional 3	\$ 102.00
Vacationer / Intern	\$ 93.00
TECHNICAL	
Lead Design Technician 1	\$ 232.00
Lead Design Technician 2	\$ 212.00
Lead Design Technician 3	\$ 196.00
Senior Design Technician 1	\$ 175.00
Senior Design Technician 2	\$ 160.00
Design Technician 1	\$ 144.00
Design Technician 2	\$ 136.00
Drafting/Design 1	\$ 123.00
Drafting/Design 2	\$ 115.00
Drafting/Design 3	\$ 102.00
Drafting/Design 4	\$ 94.00
Intern Drafting/Design	\$ 84.00
ADMINISTRATION	
Business Services Manager 1	\$ 208.00
Business Services Manager 2	\$ 176.00
Senior Admin Officer 1	\$ 134.00
Senior Admin Officer 2	\$ 114.00
Admin Officer 1	\$ 102.00
Admin Officer 2	\$ 92.00
Admin Officer 3	\$ 60.00
PROJECT SUPPORT	
Business Services Manager 1	\$ 252.00
Business Services Manager 2	\$ 232.00
Senior Admin Officer 1	\$ 195.00
Senior Admin Officer 2	\$ 174.00
Admin Officer 1	\$ 160.00
Admin Officer 2	\$ 144.00
Admin Officer 3	\$ 135.00
Admin Officer 4	\$ 115.00
Admin Officer 5	\$ 102.00
Admin Officer 6	\$ 75.00
SITE BASED	
Senior Construction Manager	\$ 232.00
Construction Manager	\$ 196.00
Lead Site Engineer/Supervisor	\$ 174.00
Senior Site Engineer	\$ 160.00
Site Engineer	\$ 144.00
Lead Inspector (PIP / Resident Inspector)	\$ 120.00
Senior Inspector	\$ 102.00
Inspector / Specialist 1	\$ 88.00
Inspector / Specialist 2	\$ 80.00
Clerk / Specialist 3	\$ 76.00
Senior Site Manager 1	\$ 94.00
Senior Site Manager 2	\$ 84.00
Senior Site Manager 3	\$ 76.00
Senior Site Manager 4	\$ 68.00
Operator/Laborer 1	\$ 64.00
Operator/Laborer 2	\$ 60.00
Operator/Laborer 3	\$ 44.00

Attachment 2

Q1150 Professional Services Agreement



Q1150

Professional Services Agreement (North America)

Reference no: 11208430

This Professional Services Agreement (hereinafter "Agreement") is effective this ____ day of _____ 20____, ("Effective Date") between GHD Consulting Services Inc. (hereinafter "GHD") and Town of Pendleton (hereinafter "Client") (which are collectively referred to as the "Parties" or individually as a "Party"). In consideration of the mutual promises set forth herein, the Parties agree as follows:

1. Scope of work

GHD shall perform the work set forth in the "Scope of Work," attached hereto as Exhibit "A" (the "Services"). It is understood that the Services will be based on facts known and laws in place at the time of execution of this Agreement. Each Party will promptly inform the other in writing if facts are discovered that indicate that this Agreement or Scope of Work may need to be modified. If there is a change in law or project assumptions which materially affect either Party's obligations hereunder, upon receiving or providing the notice described above, the Parties shall execute an amendment which will include, at a minimum, a description of the proposed modifications and their effect on the scope, fees, and timelines on the Scope of Work (an "Amendment").

2. Changes in the services

- (a) Except for additional services required due to the fault of GHD, any change to the scope, schedule, extent, or character of the Services shall be set forth in an Amendment which includes an adjustment in the price or time for such Services and is signed by GHD and Client.
- (b) If the Parties are unable to agree on the price adjustment in an Amendment and GHD elects to perform the additional services without an Amendment, then GHD shall be compensated as set forth in Section 3(c) below.
- (c) Unless otherwise provided herein, GHD shall not be required to perform additional services unless the additional services, any additional compensation, and/or the time to perform such additional services are set forth in an Amendment.
- (d) GHD shall have no liability for any delay, and the contract time shall be extended by the equivalent delay, associated with Client's delay in executing an Amendment.

3. Payment for services

- (a) For Services rendered on a time plus expense basis:
 - (i) the fees will be in accordance with the fee schedule set forth in the Scope of Work. GHD's rates as set forth in the fee schedule are subject to revision on an annual basis. Personnel rates are all-inclusive, including overhead and profit, and apply to all hours expended with no premium charged for overtime hours.

- (ii) GHD shall be reimbursed for all expenses incurred in connection with its Services hereunder, plus reasonable markup as specified in the fee schedule and/or Scope of Work, as well as goods supplied by GHD's subcontractors, vendors, or suppliers, reasonable travel and living expenses of GHD staff; long distance telephone charges; information technology; telecopy charges; printing and reproduction costs; photographic expenses; advertising for bids; special delivery and express charges; costs of providing and maintaining site offices, supplies, and equipment; and all necessary and incidental costs associated with subcontracts where appropriate.
 - (iii) For Services performed by GHD's subcontractors, Client shall pay GHD for the cost of such Services plus markup, as set forth in the Scope of Work.
- (b) For Services rendered on a lump sum, unit price, or fixed fee basis: Client shall pay GHD for Services within the Scope of Work which are rendered on a percentage complete, or task complete basis in accordance with the fee schedule set forth in the Scope of Work. The fees are all-inclusive, including overhead and profit, and apply to all labor with no premium charged for overtime hours and no additional charges for expenses incurred, unless otherwise specified in this Agreement.
 - (c) GHD shall be entitled to an equitable adjustment to its compensation for any additional services GHD provides, and Client shall pay for any liability, cost or expense GHD incurs, if: (i) the approved scope, schedule, extent, or character of the Services is changed materially by Client; (ii) any information provided by or on behalf of Client to GHD is not complete and/or accurate; (iii) as a result of the Services, GHD or any GHD employees are required to give evidence before, or provide any information to, a court or other competent authority; (iv) Client fails to pay any amount due under this Agreement; (v) any event beyond the reasonable control of GHD affects GHD's ability to perform the Services within the cost and schedule set forth in the Scope of Work; or (vi) Client terminates this Agreement before the term of the Services concludes, as set forth herein.
 - (d) Unless otherwise agreed, GHD will invoice Client monthly for Services completed in accordance with the payment basis set forth in the Scope of Work. Payment of GHD invoices shall be due upon receipt by Client. Invoices not paid within 30 calendar days shall be subject to an assessed interest charge of eighteen percent (18%) per annum or the highest amount allowed by law, whichever is less. If Client disputes an invoice, Client shall notify GHD in writing within 30 calendar days of the invoice date identifying the cause of the dispute and paying that portion of the invoice not in dispute. Failure of Client to notify GHD of any disputed amounts within 30 calendar days of the invoice date shall deem the invoice accepted by Client. Any amounts in dispute shall be subject to the dispute resolution provisions of Section 14 below. Interest shall not accrue on any disputed amount.
 - (e) GHD reserves the right without penalty to suspend Services in the event Client fails to pay all amounts which are not subject to a bona fide dispute within 45 calendar days from the invoice date. All suspensions shall extend the completion date of any affected project commensurately unless otherwise agreed to by the Parties.

4. Insurance

GHD agrees to carry throughout the term of this Agreement insurance policies of the following types and with the following limits, unless otherwise set forth in the Scope of Work:

- (i) workers compensation – as statutorily required;
- (ii) employer's liability – \$1,000,000 per accident/disease/employee (US) or \$1,000,000 per occurrence and \$2,000,000 in aggregate (CAN);
- (iii) automobile liability – \$1,000,000 combined single limit;
- (iv) commercial general liability – \$1,000,000 per occurrence and \$2,000,000 in aggregate; and
- (v) professional liability – \$1,000,000 per claim and \$2,000,000 in aggregate.

5. Documents and data

- (a) Client shall be responsible for, and GHD may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Client to GHD pursuant to this Agreement ("Client Data"). GHD may use such Client Data in performing the Services.
- (b) Client shall, if requested by GHD, review any designs, drawings, plans, specifications, reports, bids, proposals, and other information provided by GHD before they are finalized. Client shall make decisions within a reasonable time and carry out its other responsibilities in a timely manner so as not to delay the work of GHD. Client shall give prompt written notice to GHD whenever Client observes or otherwise becomes aware of any failure by GHD to satisfy the requirements of the Scope of Work.
- (c) At the request of GHD, Client shall provide GHD with the following information (which shall also be considered "Client Data") to the extent such information is in Client's possession and is pertinent to the Services, as determined by GHD:
 - (i) all criteria and full information as to Client's requirements; copies of all design and construction standards which Client will require to be included in GHD's work; copies of Client's standard terms, conditions, and related documents for GHD to include in bidding documents, when applicable; and
 - (ii) any other available information pertinent to the project, including, without limitation, reports and data relative to previous designs or investigations; environmental, geological, and geotechnical conditions of the project site and all surrounding area at or adjacent to the project site; and insofar as such information is not available, Client agrees to pay GHD for the reasonable cost of obtaining the same such information.
- (d) Client shall be responsible for providing information (which shall also be considered "Client Data") regarding the location of all known subsurface structures at the project site including but not limited to pipes, tanks, sewer, and utilities (power, phone, cable, gas, water, etc.).
- (e) Upon GHD's review of Client Data, if applicable, and compliance with any notice requirements to all utilities concerning the possible location of underground utilities, and following any on-site marking or notification in writing to GHD from such utilities, in addition to other indemnity provisions in this Agreement, to the extent not prohibited by law, Client shall release GHD from and defend, indemnify, and hold GHD harmless from and against all costs, liability, loss, and expense whatsoever (including, without limitation, consequential or indirect damages, attorneys' fees, court costs, and expenses) arising out of any act or omission of GHD, its agents, contractors, subcontractors, and/or employees, relating in any way to subsurface structures, to the extent GHD's acts or omissions cause or contribute to: (i) any disruption of service to users or damage for business interruption, production losses, or loss of revenues,

profits, data or use; (ii) any damage to or destruction of any subsurface structure; (iii) any injury or damage to property or injury to or the death of any persons; (iv) any other economic loss; (v) any other damage or liability whatsoever; or (vi) the assertion or filing of any claim, cause of action, or judgment whatsoever relating to such matters.

- (f) Client warrants that it owns all rights to Client Data required to meet the relevant Client obligations set forth herein. Client agrees to grant and hereby grants to GHD a non-exclusive, royalty-free, perpetual, worldwide license to access, revise, reproduce, distribute, and otherwise use and display Client Data and perform all acts with respect to Client Data as necessary for GHD to provide the Services to Client. Client shall disclose to GHD all known regulations and legal requirements associated with the use of Client Data. GHD shall have no obligation to validate any contents of Client Data for content, correctness, usability or for any other purpose. Client shall comply with any reasonable demand by GHD to correct, discontinue, or remedy any violation of applicable laws or regulations pertaining to Client Data or any other content collected or used by the Services.
- (g) Client agrees that GHD may use Client Data to add insight, analytics, and data science to the Services and/or to provide or suggest additional solutions and services to Client. Client acknowledges and agrees GHD may store Client Data on systems which may run on a public cloud (e.g., Amazon or Microsoft).
- (h) Client acknowledges and agrees that GHD may obtain and aggregate technical and other data related to the Services that is: (i) is anonymized and presented in a way which does not reveal Client's identity; and (ii) may be combined with historical or recent data and information of other clients or additional data sources ("Aggregated Statistics"). Client agrees that all right, title, and interest in Aggregated Statistics, including all intellectual property rights, are hereby assigned to and owned solely by GHD. GHD may reproduce, distribute, display, make publicly available, and otherwise use the Aggregated Statistics for any business purpose, during and after the term of this Agreement, such as for creating solutions and products for other GHD clients.

6. Confidentiality

GHD shall not disclose any confidential information relating to Client to any third parties other than employees, subcontractors, or agents of GHD, without the prior written consent of Client, except as required by applicable law, regulation, or legal process, or as may be required by emergency situations. In the event GHD is requested pursuant to, or required by applicable law, regulation, or legal process to disclose any confidential information, GHD will notify Client of the circumstances requiring such disclosure and will refrain from such disclosure for the maximum period of time allowed by law so that Client may seek a protective order or other appropriate remedy to protect the confidentiality of the information. This provision shall not apply to data or information which (i) is or becomes part of the public domain other than as a result of disclosure by GHD; (ii) was acquired by GHD independently from third parties not under any obligation to Client to keep such data and information confidential; (iii) was in GHD's possession prior to disclosure of the same by Client; or (iv) has been independently developed by GHD, or its employees, subcontractors, or agents, without reference to Client's confidential information.

7. Independent contractor and subcontracting

The Parties acknowledge and agree that GHD shall be an independent contractor and shall have responsibility for and control over the means of providing the Services. GHD shall have the right to use subcontractors as GHD

deems necessary to assist in the performance of the Services. GHD shall not be required to employ any subcontractor that is unacceptable to GHD.

8. Site access and safety

Client shall provide right of entry and safe access as needed by GHD and necessary permissions in order for GHD to perform work under this Agreement. If Client does not own or control the project site, Client shall obtain permission from the project site owner for a right of entry as needed by GHD, its representatives, and its subcontractors to perform the Services. GHD shall only be responsible for the activities of its own employees and agents on a project site with respect to safety. GHD and its employees, agents, and subcontractors will comply with all reasonable known security, health, and safety requirements of the project site owner, as well as those of Client with respect to Client's facilities, which may be imposed upon GHD as a condition of its right of entry. If access to the project site is required to perform the Services and such access does not comply with all applicable Client approved safety plans, regulations and/or laws, GHD may, at its sole discretion, suspend services until such violations are remedied.

9. Hazards, materials, and samples

- (a) Unless otherwise stated in the Scope of Work, GHD shall have the primary responsibility of determining if known or potential health or safety hazards exist on or near the project site upon which Services are to be performed by GHD or its subcontractors, with particular reference to hazardous substances or conditions. To the extent that such information is in its possession, Client warrants that it will make full and accurate written disclosure as to any hazardous, radioactive, or toxic substance, or any irritant, contaminant, pollutant, or otherwise dangerous substance or condition ("Hazardous Conditions") which Client knows or has reason to believe exist at the project site prior to the commencement of the Services.
- (b) If Hazardous Conditions are discovered by GHD during the performance of its Services which it could not have reasonably discovered prior to the commencement of work, or which Client had in its possession and failed to disclose, and if the existence of such Hazardous Conditions materially changes the nature or conduct of GHD's work or responsibilities at the project site, Client and GHD shall seek to agree on an equitable adjustment to GHD's work to reflect such changes. If the Parties are unable to agree on such adjustments, or the delay exceeds 30 calendar days, the Agreement may be terminated by GHD in accordance with the termination provisions of this Agreement.
- (c) GHD and Client recognize and agree that GHD has neither created nor contributed to the existence of any Hazardous Conditions at the project site, and as such, GHD has no responsibility in relation to the presence of any such Hazardous Conditions. Accordingly, in the event of any claim against GHD arising out of any actual or alleged Hazardous Conditions on a project site, Client agrees to defend, indemnify, and hold GHD harmless from and against such claim(s) against GHD or its employees, agents, directors, officers, or subcontractors, unless such claims arise out of the willful misconduct of GHD. This indemnity obligation shall cover, without limitation, any claims or liability of GHD in relation to preexisting conditions on site, any statutory liability, and/or any strict liability under any federal, state, provincial, and/or local environmental laws alleging or asserting, without limitation, that GHD, by virtue of status as an owner, operator, handler, generator, arranger, transporter, treater, storer, or disposer, is liable for any Hazardous Conditions.

- (d) In the event GHD performs any Services for Client that involve the taking of samples, GHD shall preserve such samples obtained from the project site as it deems necessary for the project, but not longer than 45 calendar days after the issuance of any document that includes data obtained from such samples. GHD shall arrange for the disposal of samples containing hazardous materials on behalf of Client, which may consist of returning the samples to the project site, and Client agrees to pay GHD for the cost of returning or disposing of such samples. Samples shall remain the property of Client, and ultimate responsibility for their disposal shall remain with Client. Unless otherwise stated in the Scope of Work, GHD shall not assume title to any samples taken on behalf of Client

10. Standard of care

GHD represents that its Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of GHD's profession practicing under similar circumstances at the same time and in the same locality. No warranties, guaranties, or representations of any kind, either express or implied, are included or intended by this Agreement or in any proposal, contract, report, opinion, or other document in connection with this project. Upon receipt of notice from Client, GHD shall promptly correct, without additional compensation, any Services which fail to conform to the standard of care established in this Section.

11. Indemnity and liability

- (a) Subject to the limitations of Section 11(d) and Section 11(e) below, GHD agrees to indemnify and hold harmless Client (including its officers, directors and employees) from and against any and all losses, damages, liabilities and expenses (including reasonable legal fees, court costs, and costs of investigation) to the proportionate extent caused by: (i) the failure of GHD to comply in material respects with federal, state, provincial and/or local laws and regulations applicable to Services hereunder; (ii) a breach by GHD of representations or other provisions hereunder; or (iii) the negligence or willful misconduct on the part of GHD in performing Services hereunder.
- (b) Subject to the limitations of Section 11(d) and Section 11(e) below, Client agrees to indemnify and hold harmless GHD (including its parents, subsidiaries, affiliates, and the officers, directors, employees, agents, subcontractors, and any successors or assigns) from and against any and all losses, damages, liabilities and expenses (including reasonable legal fees, court costs, and costs of investigation) to the proportionate extent caused by: (i) any negligence or willful misconduct of Client; (ii) any breach by Client of any warranties or other provisions hereunder; or (iii) any condition existing at the project site prior to the arrival of GHD of which GHD had no actual knowledge and over which GHD had no control. In addition, Client shall indemnify, defend, and hold GHD harmless from all claims, damages, losses, and expenses including attorneys' fees or other costs arising out of or resulting from Client's unauthorized use, reuse, or modification of GHD IP, as defined in Section 12, without written verification or adaptation by GHD.
- (c) The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- (d) To the maximum extent permitted by law, for any damage caused by negligence, including errors, omissions, or other acts; or for any damages based in contract; or for any other cause of action; GHD's liability, including that of its employees, agents, directors, officers, and subcontractors, shall be strictly

limited to the greater of the contract value or \$50,000, but in no event shall GHD's liability exceed \$1,000,000, except as to damage resulting from the gross negligence or willful misconduct of GHD. Client's liability to GHD (not including payment obligations), except as to damage resulting from Client's gross negligence or willful misconduct, including that of its employees, agents, directors, officers and contractors, will be limited to \$1,000,000.

- (e) Except as explicitly provided herein, in no event shall either Party be liable to the other under this Agreement or otherwise for any consequential, special, indirect, incidental, or punitive damages, and/or damages resulting from the loss of profits, revenue, opportunity, anticipated savings, use, data and/or goodwill.

12. Intellectual property

- (a) All work product, including reports, plans, drawings and specifications, images, computer code, software, or any other work, prepared or furnished by GHD are instruments of service with respect to the Scope of Work, and GHD shall retain a copyright, ownership, and property interest therein whether or not the Scope of Work is completed. With respect to any inventions, works, products, software, other materials, and methodologies proprietary to GHD or its subcontractors or suppliers and created, conceived, or reduced to practice by GHD prior to or independently of this Agreement, and any trade secrets, know how, methodology, and processes related to GHD products or services (hereinafter the "GHD IP"), to the extent that any GHD IP is incorporated into any deliverable for Client and on the condition that Client has fully paid GHD for such deliverable, GHD hereby grants Client a limited, nonexclusive, nontransferable, perpetual, irrevocable, royalty-free, paid-up, license to utilize the GHD IP for the purposes of Client's project.
- (b) Client may make and retain copies for information and reference in connection with the construction, improvement, use or occupancy of the project by Client. Any reuse or modification without written verification or adaptation by GHD for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to GHD and Client agrees to defend, indemnify, and hold harmless GHD for any unauthorized reuse or redistribution.

13. Termination

- (a) Client will have the right to terminate this Agreement at any time with or without cause, based solely on Client's convenience, provided that GHD is provided 30 calendar days advance written notice of the termination. Client shall pay GHD for all Services performed and expenses incurred to the effective date of termination including but not limited to demobilization and remobilization costs, costs to cancel or suspend subcontracts, and other related close-out costs.
- (b) GHD may terminate its obligations pursuant to this Agreement under the following circumstances:
 - (i) In the event of a breach or default of any obligation by Client, except payment of disputed amounts as provided in Section 3 of this Agreement;
 - (ii) If GHD is unable, for any reason beyond its control, including, without limitation, a Force Majeure event, to perform its obligations pursuant to this Agreement in a safe, lawful, or professional manner;
or

- (iii) Upon the institution by or against Client of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of either Party's debts, upon Client making an assignment for the benefit of creditors, upon Client winding up or liquidating its business, upon Client's dissolution or ceasing to do business, or upon Client admitting in writing that it is unable to pay its debts as they generally become due.
- (c) If either circumstance described in Section 13(b)(i) or 13(b)(ii) above occurs, GHD shall notify Client of pertinent conditions and recommend appropriate action. If within 30 calendar days of such notice the circumstances described in Section 13(b)(i) or 13(b)(ii) above have not been remedied or cured, GHD may terminate its Agreement hereunder. In the event of termination, GHD shall be paid for Services performed to the date of termination plus reasonable termination expenses.

14. Dispute resolution

Both Parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this Agreement or the work to be performed hereunder. Following notification of a dispute, the Parties shall have 5 business days from the date of notification to begin negotiations and 15 business days from the notification date to complete negotiations, unless otherwise agreed in writing. If any dispute cannot be resolved through direct discussions, the Parties agree to endeavor to settle the dispute by mediation. The Parties shall have 45 business days within which to commence the first mediation session following the conclusion of their good faith negotiations or expiration of the time within which to negotiate. Either Party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator mutually selected by the Parties. The mediator shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the Parties. If the dispute is not resolved through mediation, the matter may be submitted to the judicial system in the courts of general jurisdiction where the project site is located, in which event all litigation and collection expenses, witness fees, court costs, and reasonable legal fees shall be paid to the prevailing Party. For the avoidance of doubt, GHD's statutory or other right, if any, to file a lien for Client's nonpayment will not be conditioned upon or subject to the dispute resolution rules contained in this Section.

15. Records and audit

Client shall have the right, upon reasonable advance notice, to audit records associated with the Services performed and with the charges invoiced to Client pursuant to this Agreement. Client's right to audit shall not extend to proprietary information or the profit margin and composition of GHD's fees, except for that portion of the Services priced on a cost reimbursable basis. Such records shall be open to inspection and audit by authorized representatives of Client during normal business hours at the place where such records are kept until the completion or termination of this Agreement and for a minimum of 3 years thereafter. GHD shall require its subcontractors to similarly maintain records and to permit the inspection and audit of such records by Client upon similar conditions and time periods.

16. Force majeure

If either Party is rendered unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Agreement, other than the obligation to pay funds due, that Party shall give the other Party prompt

written notice of the Force Majeure with reasonably full particulars thereof. Thereupon, the obligations of the Party giving notice, so far as they are affected by the Force Majeure, shall be suspended during, but not longer than, the continuance of the Force Majeure. The affected Party shall use all reasonable diligence to remove or remedy the Force Majeure as quickly as possible. The requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or other labor difficulty by the Party claiming Force Majeure contrary to its wishes. The term "Force Majeure" as used in this Agreement shall mean an Act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, pandemic, lightning, fire, storm, flood, explosion, blackout, governmental restraint, unavailability of equipment, personnel or information, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the Party claiming suspension.

17. Notice

Notices pertaining to this Agreement shall be in writing and deemed to have been duly given if delivered in person, by overnight courier, or by email to the respective Party's authorized representative identified below, or at such other address as may be changed by either Party by giving written notice thereof to the other:

GHD: GHD Consulting Services Inc.	Client
Attention:	David Britton, PE
Address:	285 Delaware Avenue, Suite 500 Buffalo, New York 14202
Email:	david.britton@ghd.com
Telephone:	716-362-8815
Facsimile:	716-856-2160

18. Miscellaneous

- (a) Third party beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.
- (b) Municipal advisor rule. GHD's Services do not include serving as a "municipal advisor" or advising Client or any other entity in any manner regarding municipal financial products or municipal securities.
- (c) Reliance. Client acknowledges that documents, information, and work product provided in the performance of GHD's services may not be relied on by any third party entity or person without GHD's prior written consent, which shall be granted only if such third party requests and is granted the right to rely prior to the commencement of GHD's services and such third party has (i) executed GHD's standard form reliance letter/deed and (ii) paid fees as specified in the Scope of Work.
- (d) Waiver. No failure or delay by either Party in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof.
- (e) Successors and assignment. Neither Party may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the

written consent of the other Party. The obligations of the Parties under this Agreement will not terminate upon any attempted assignment that violates this Agreement. Any assignment or attempted assignment violating this Agreement is void. Notwithstanding the preceding provisions of this Section, Client hereby agrees that this Agreement may be assigned to another entity within the GHD group of companies that will be directly or indirectly wholly owned by GHD Group Limited (a "Related Entity"). Any such Related Entity shall assume all GHD's liabilities, duties, and obligations in, to, and under this Agreement. Client hereby agrees that this assignment may be effected without any notice or action on the part of GHD. Upon request, Client agrees to execute and deliver any documents as may be reasonably requested by GHD or its successor to evidence consent to such assignment.

- (f) Severability and survival. The Parties agree that, in the event one or more of the provisions or a portion thereof of this Agreement should be declared void or unenforceable, the remaining provisions shall not be affected and shall continue in full force and effect. The Parties also agree that the obligations and representations which by their nature are intended to survive the termination of this Agreement, including those pertaining to indemnification, limitations of liability, intellectual property, and confidentiality shall survive the termination of this Agreement.
- (g) Governing law. This Agreement shall be governed by the laws of the State or Province in which the project site is located, or if no such single site exists, and no agreement exists between the Parties as to applicable law, then the State or Province in which GHD is incorporated.
- (h) Authority to sign. Each of the persons signing below on behalf of any Party hereby represents and warrants that they are signing with full and complete authority to bind the Party on whose behalf they are signing, to every term of this Agreement. This Agreement may be executed in any one or number of counterparts, each of which will be deemed an original and which together will constitute one and the same instrument.
- (i) Entire agreement. This Agreement, including all attached Exhibits and documents referenced in those Exhibits, constitute the complete and final agreement between GHD and Client regarding the subject matter hereof. This Agreement supersedes all prior or contemporaneous communications, representations, undertakings, or understandings of the Parties, whether oral or written, relating to the Services and subject matter of this Agreement, except to the extent that such prior communications have explicitly been incorporated into the Agreement or one of the attached Exhibits. Modifications of this Agreement shall not be binding unless made in writing and signed by an authorized representative of each Party.

In witness whereof, GHD and Client have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

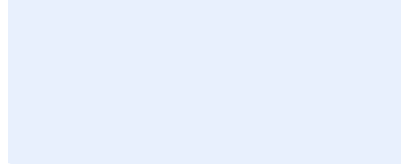
GHD

GHD Consulting Services Inc.



Robert P. Lannon Jr., PE
Project Director

Client



Name:
Title:

Exhibit “A”: Scope of Work

Scope of Work	The scope of Services to be provided by GHD is as follows:
Description of the Services	Refer to GHD Request for Reappointment proposal dated December 14, 2021
GHD Subcontractor(s)	N/A
Fee Schedule including markups	See GHD letter dated December 14, 2021, Attachment 1
Materials/premises to be provided by Client	N/A
Other information relevant to the Services	N/A
Key dates	
Commencement date	[Select date]
Milestones, deadlines, timelines	[Enter details]
End date	[Select date]
Additional Terms and Conditions	
Special Conditions	N/A

ATTACHMENT C

Attachment C: Detailed Statement of Expert Services and Basis for Fees

The following statement of expert services is in response to Section 6(a):

<p>The attorneys retained by the Town of Pendleton (Town) will provide the following <u>legal services</u> in relation to this Proceeding:</p>	<p>Prepare and file the Request For Local Agency Account Funding Form</p> <p>Provide a comprehensive review of the Application and its exhibits</p> <p>Represent the Town in public comment hearings and adjudicatory hearings, as needed</p> <p>Attend and assist the Town with all public meetings regarding review of the Application</p> <p>Review and respond as needed to public comments or filings by other participants in this Proceeding</p> <p>Prepare and file a statement of compliance with local laws and regulations</p> <p>Prepare and file a petition for party status, including identification of substantive and significant issues, for participation in an adjudicatory hearing, if necessary</p> <p>Oversee the work of and coordinate Application review procedures with the technical expert (GHD)</p> <p>Review and provide comments on draft certificate provisions</p> <p>Represent the Town in any negotiations, as needed</p> <p>Review and provide comments on pre-construction filings to ensure final plans (e.g., operation and maintenance plans, traffic control plans, etc.) are in compliance with relevant local laws and regulations</p> <p>Represent the Town in efforts with the Applicant to complete the decommissioning plan and necessary financial security instruments</p> <p>Review and provide comments on the draft decision presented by ORES</p> <p>Prepare and file reports and accountings of the local agency account fund</p>
<p>The technical expert retained by the Town will provide the following <u>engineering and environmental consulting services</u> in relation to this Proceeding:</p>	<p>Attend public comment meetings to guide the Town and Town residents through the local issues raised in the Application, for instance, by ensuring data and graphics provided in the Application and its Exhibits are</p>

	understandable by the public and Town officials
	Provide technical assistance to the Town in review of the Application and the studies and data presented by the Applicant (e.g., visual impact assessments, storm water pollution prevention plan (SWPPP), etc.), focusing particularly on local impacts that may be identified, and providing suggested alternatives or mitigation strategies to lessen such impacts
	Review the Project specifications and plan sets to ensure compliance with local laws and regulations, including relevant portions of the Town's zoning code, as well as the Section 94-c regulations
	Provide engineering assessments of the plan specifications included in the Application Exhibits
	Attend meetings with the Town Highway Department to review and assess local traffic impacts of the Project, including such Application materials as traffic control plans, and provide mitigation strategies to address any local concerns identified
	Provide technical perspectives and input to the Town officials and attorneys for completion of the statement of compliance with local laws and regulations and identification of substantive and significant issues for adjudication, if necessary
	Review and provide comments on all pre-construction filings regarding adherence to relevant local laws and regulations

The following detailed basis of fees for Local Agency Account Funds requested is in response to Section 6(b):

Basis of fees for legal services:

Attorney	Task	Expected Hours	Billing Rate	Total Cost
Alicia Legland	Prepare and file the Request For Local Agency Account Funding Form	6	\$299.00	\$1,794.00
Charles Malcomb	Provide a comprehensive review of the Application and its exhibits, as well as draft certificate provisions	8	\$320.00	\$2,560.00
Charles Malcomb	Prepare for and represent the Town in public comment hearings	3	\$320.00	\$960.00
Charles Malcomb	Attend and assist the Town with all public meetings	3.1	\$320.00	\$992.00
Alicia Legland	Review and respond as needed to public comments or filings by other participants in this Proceeding	6	\$299.00	\$1,794.00
Charles Malcomb	Prepare and file a statement of compliance with local laws and regulations	15	\$320.00	\$4,800.00
Alicia Legland	Prepare and file a petition for party status, including identification of substantive and significant issues, for participation in an adjudicatory hearing	12	\$299.00	\$3,588.00
Charles Malcomb	Prepare for and represent the Town in adjudicatory hearings	20	\$320.00	\$6,400.00
Charles Malcomb	Represent the Town in any negotiations, as needed	3	\$320.00	\$960.00
Alicia Legland	Review and provide comments on pre-construction filings	6	\$299.00	\$1,794.00
Charles Malcomb	Represent the Town in efforts with the Applicant to complete the decommissioning plan and necessary financial security instruments	3	\$320.00	\$960.00
Charles Malcomb	Review and provide comments on the draft decision presented by ORES	3	\$320.00	\$960.00
Alicia Legland	Prepare and file reports and accountings of the local agency account fund	2	\$299.00	\$598.00
Total Legal Services Cost:				\$28,160.00

Basis of fees for consulting services:

Professional	Task	Expected Hours	Billing Rate	Total Cost
David Britton	Attend public comment meetings and ensure studies, data, graphics, etc. provided in the Application materials will be understandable to the public and Town officials	10	\$185.00	\$1,850.00
	Provide technical assistance to the Town in review of the Application and the studies and data presented by the Applicant (<i>e.g.</i> , visual impact assessments, storm water pollution prevention plan (SWPPP), etc.), focusing particularly on local impacts that may be identified, and providing suggested alternatives or mitigation strategies to lessen such impacts	12	\$185.00	\$2,220.00
	Review the Project specifications and plan sets to ensure compliance with local laws and Section 94-c regulations	15	\$185.00	\$2,775.00
	Provide engineering assessments of the Project's plan specifications	10	\$185.00	\$1,850.00
	Attend meetings with the Town Highway Department	3	\$185.00	\$555.00
	Provide technical feedback to the Town officials and attorneys for completion of the statement of compliance with local laws and regulations and identification of substantive and significant issues for adjudication, if necessary	8	\$185.00	\$1,480.00
	Review and provide comments on all pre-construction filings	6	\$185.00	\$1,110.00
Total Consulting Services Cost:				\$11,840.00