

CITY OF READING  
RESOLUTION NO. 97 2012

RESOLUTION FOR AWARD OF ENGINEERING CONTRACT  
FOR THE  
REHABILITATION OF SECONDARY ANAEROBIC DIGESTERS PROJECT

WHEREAS, the City of Reading, (the "City") has sought competitive proposals from qualified engineering and consulting firms in order to perform a study and evaluation for determining the best equipment and means for conversion of Secondary Anaerobic Digester No. 4 to a primary digester with the addition of thickened blended sludge feed, heating, mixing and transfer of digested sludge to Secondary Anaerobic Digester No. 5; the cleaning of both Secondary Anaerobic Digester No. 4 and Secondary Anaerobic Digester No. 5; a detailed design phase for the project; preparation of a full set of bid documents for the construction of the project; bid phase assistance; and construction administration and construction engineering services (collectively, the "Project"); and

WHEREAS, the City desires to proceed expeditiously with the award of contracts and commencement of construction activities with respect to the Project in order to perform its obligations under a Consent Decree with the United States Department of Justice, United States Environmental Protection Agency and Pennsylvania Department of Environmental Protection.

NOW, THEREFORE, be it resolved by the members of City Council of the City of Reading, Pennsylvania, as follows:

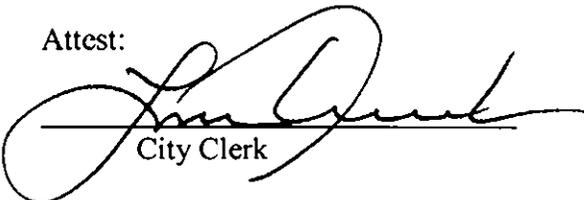
"RESOLVED, that City hereby approves the award of the engineering evaluation and design contract for the Project to T&M Associates, for a total contract amount of Two Hundred Two Hundred Five Thousand Dollars (\$205,000), including an additional Three Thousand Dollars (\$3,000) for reimbursable expenses, subject to increases and decreases to the contract amount in accordance with the terms of the Agreement.

"RESOLVED, the Mayor of the City of Reading is hereby authorized to enter into and execute the Agreement Between Owner and Engineer for Project, attached hereto as Exhibit "A" and incorporated here.

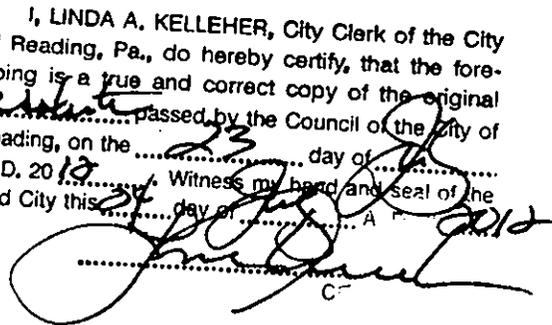
Adopted by Council on July 23 2012

  
\_\_\_\_\_  
President of Council

Attest:

  
\_\_\_\_\_  
City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original ..... passed by the Council of the City of Reading, on the 23 day of July, A. D. 20 12. Witness my hand and seal of the said City this 24 day of July, A. D. 2012

  
\_\_\_\_\_  
C

**Exhibit "A"**

## AGREEMENT BETWEEN OWNER AND ENGINEER

### REHABILITATION OF SECONDARY ANAEROBIC DIGESTERS PROJECT

**THIS AGREEMENT BETWEEN OWNER AND ENGINEER** ("Agreement") is made as of the 25<sup>th</sup> day of July, 2012, by and between **CITY OF READING**, a city of the third class in the Commonwealth of Pennsylvania, with an administrative address at 815 Washington Street, Reading, PA 19601 ("Owner") and T&M Associates, a New Jersey corporation, with a principal place of business at 525 Plymouth Road, Suite 315, Plymouth Meeting, PA 19462 ("Engineer").

Intending to be legally bound, the Owner and Engineer agree as follows.

#### **ARTICLE 1 PROJECT**

**1.1.** The Project includes, without limitation, a study and evaluation phase for determining the best equipment and means for conversion of Secondary Anaerobic Digester No. 4 to a primary digester with the addition of thickened blended sludge feed, heating, mixing and transfer of digested sludge to Secondary Anaerobic Digester No. 5; the cleaning of both Secondary Anaerobic Digester No. 4 and Secondary Anaerobic Digester No. 5; a detailed design phase associated with the Project; preparation of a full set of bid documents for the construction of the Project; bid phase assistance; and construction administration and construction engineering services. As provided herein, Engineer's Basic Services shall include, without limitation, all civil, geotechnical, mechanical, structural, electrical and instrumentation engineering services, and other design, engineering, architectural, permitting, surveying and/or consulting services required for the completion of the Project. Without limiting the generality of the foregoing, the Engineer's Basic Services shall include the completion and/or design of the tasks set forth in the Owner's Request for Proposals for Engineering Services for the Rehabilitation of Secondary Anaerobic Digesters, dated March 26, 2012, as revised on April 25, 2012, and any supplements thereto, (collectively, the "Owner's RFP") which is attached hereto and incorporated herein in Schedule "C" and Engineer's Technical and Cost Proposal in response thereto, including all supplements thereto (the "Proposal"), which is attached hereto as Schedule "D".

**1.2.** This Agreement is based on the initial information set forth in the Owner's RFP. The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth in Figure 5-1: Project Schedule of the Proposal (the "Project Schedule"). The Owner and Engineer may rely on the initial information. Both parties, however, recognize that such information will likely change as the Project's requirements, schedule and construction budget are refined, and such changes do not entitle the Engineer to an adjustment in the Project Schedule, Engineer's services or Engineer's compensation, except as otherwise expressly set forth in this Agreement.

#### **ARTICLE 2 ENGINEER'S RESPONSIBILITIES**

**2.1.** The Engineer shall provide the professional services as set forth in this Agreement.

**2.2.** The Engineer will follow the highest standards of the profession in performing all services under this Agreement. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**2.3.** The Engineer shall identify a representative(s) authorized to act on behalf of the Engineer with respect to the Project, which representative(s) are set forth in Schedule "A" attached hereto

and incorporated herein. The Engineer shall utilize such individuals to perform its services of the Project, and shall not change the individuals handling critical positions without the Owner's prior written consent.

2.4. Except with the Owner's knowledge and written consent, the Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Engineer's professional judgment with respect to this Project.

2.5. The Engineer shall carry and maintain all insurance as set forth in the Owner's RFP. With respect to any of the insurance policies provided by the Engineer pursuant to this Agreement which are "claims made" policies, in the event, at any time such policies are canceled or not renewed, the Engineer shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal, the Engineer, shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of final completion of the Project.

2.6. The Engineer's services shall be performed in coordination and/or conjunction with those services rendered by any Clerk of the Works, Construction Manager, Program Manager and/or other Project representative retained by the Owner. The Engineer shall cooperate with the Clerk of the Works, Construction Manager, Program Manager and/or other Project representative to the fullest extent possible in relation to the performance of their respective contractual obligations to the Owner. The Owner's retention of a Clerk of the Works, Construction Manager, Program Manager and/or other Project representative shall not relieve the Engineer of its responsibilities under this Agreement or entitle Engineer to an adjustment in the Project Schedule, Engineer's services or Engineer's compensation.

2.7. Engineer represents and warrants to the Owner as follows:

2.7.1. The Engineer may lawfully conduct its business in the Commonwealth of Pennsylvania with power and authority to enter into this Agreement, to carry on its business and to incur and perform its obligations.

2.7.2. The execution and delivery of this Agreement and performance by the Engineer of its obligations under this Agreement do not and will not violate any provision of law and will not result in the breach of, or constitute a default under, any agreement to which the Engineer is a party or by which it is bound.

2.7.3. There is no action, suit or proceeding at law or in equity or by any governmental instrumentality or other agency now pending or, to the knowledge of the Engineer, threatened against or affecting the Engineer that, if adversely determined, would materially impair Engineer's right to carry on business substantially as now conducted and as contemplated under this Agreement, or to perform its obligations under this Agreement, or would materially adversely affect its financial condition, except those previously disclosed to the Owner in writing.

2.7.4. The Engineer possesses the necessary license or licenses to perform, in the Commonwealth of Pennsylvania, the services contemplated under this Agreement and if any part

of such services is to be subcontracted or subconsulted, its subcontractors and subconsultants have the necessary license or licenses to perform such services.

**2.7.5.** The Engineer possesses the expertise, experience, personnel and resources to perform the desired services and all personnel engaged to perform services hereunder shall be fully qualified and authorized or permitted under applicable law and regulations to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior written permission of the Owner.

**2.8.** The Engineer, as part of Basic Services, shall provide the services of professional civil, mechanical, structural, electrical and instrumentation engineering, and other engineers, architects, surveyors and/or consultants, qualified by training and experience in their respective fields, as needed, to address all of the requirements of the Project. Prior to entering into any formal arrangement for the performance of services regarding the Project by such engineers and/or consultants, the Engineer shall submit to the Owner, in writing, the names of such proposed engineers and/or consultants, a description of the scope of services to be performed by such engineers and/or consultants, and such other pertinent information as the Owner may reasonably request. Services relating to the Project shall not be performed by such proposed engineers and/or consultants prior to review and written approval by the Owner, which approval shall not be unreasonably withheld. The Engineer shall not replace such engineers and/or consultants or change the scope of their responsibilities, without obtaining the Owner's prior written approval thereof in each instance, which approval shall not be unreasonably withheld. Nothing contained herein shall create any express or implied obligation or contractual relationship between such engineers and/or consultants and the Owner.

**2.9.** Except to the extent directly caused by the Owner's gross negligence or willful misconduct, the Engineer shall indemnify, defend and hold harmless the Owner, its directors, officers and employees, from and against any and all third party claims, losses, damages, expenses, costs or other liabilities, including reasonable attorney's fees, arising out of, or resulting from any breach of the provisions set forth herein and/or the error or negligent act or omission of the Engineer, any of its directors, officers, agents and/or employees or anyone directly or indirectly employed by them or anyone whose acts or omissions they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The Engineer shall further indemnify, defend and hold harmless the Owner, its directors, officers and employees from and against any and all claims made for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings or specifications furnished by the Engineer in the performance of this Agreement.

### **ARTICLE 3 SCOPE OF ENGINEER'S BASIC SERVICES**

**3.1.** The Engineer's Basic Services consist of any and all services described in the Owner's RFP, the Proposal, this ARTICLE 3 or any other services identified in this Agreement as part of Basic Services, and include all professional civil, geotechnical, mechanical, structural, electrical and instrumentation design and engineering services, and other engineering, architectural, permitting, surveying and/or consulting services necessary to produce a complete and accurate set of Construction Documents, as described in Section 3.4, and all responsibilities assigned to Engineer in such Construction Documents. Basic Services shall not include those engineering services provided by the Owner.

3.1.1. The Engineer shall manage the Engineer's services, consult with the Owner and Owner's consultants, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. The Engineer shall prepare a written record of all meetings, conferences, discussions and decisions made between and/or among the Owner, Engineer and Contractor during all phases of the Project and concerning any material change in the requirements, scope, performance and/or sequence of the Work and to provide promptly a copy of such record to the Owner and/or the Contractor.

3.1.2. The Engineer shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Engineer shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner. The Engineer shall provide prompt written notice to the Owner if the Engineer becomes aware of any error, omission or inconsistency in such services or information.

3.1.3. The Engineer shall engage in value engineering services as may be directed by the Owner.

3.1.4. Upon the Owner's request, the Engineer shall submit, for the Owner's approval, an update to the Project Schedule for the performance of the Engineer's services which may be adjusted in writing by mutual agreement of the parties as the Project proceeds. The schedule initially shall include anticipated dates for performance of the Engineer's services, the commencement of construction and for Substantial Completion of the Work as set forth in this Agreement. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Unless otherwise approved by the Owner in a writing signed by the Owner's Managing Director, time limits established by the Project Schedule shall not, except for reasonable cause, be exceeded by the Engineer or Owner.

3.1.5. The Engineer shall, at appropriate times, contact the governmental authorities required to approve the Design Documents and/or Construction Documents and the entities providing utility services to the Project. The Engineer shall be responsible for making such changes in the Design Documents and/or Construction Documents as may be suggested and/or required by said governmental authorities or utilities at Engineer's expense when instructed to do so by the Owner.

3.1.6. The Engineer's assistance in connection with the Project shall include, but not be limited to, the Engineer's preparation and submission of any documentation (including, but not limited to, permit applications) required by the Commonwealth of Pennsylvania, the Pennsylvania Department of Environmental Protection, the United States Army Corps of Engineers, and/or the United States Environmental Protection Agency for approval of the Project and/or reimbursement for the Project, as well as Labor & Industry documentation, applications and filings with any and all local municipalities or other governmental authorities, if applicable. Owner shall cooperate with Engineer in connection with these provisions.

3.1.7. The Engineer shall provide services to investigate existing conditions and facilities and to make measured drawings thereof and to verify the accuracy of drawings or other information furnished by the Owner.

**3.1.8.** Engineer acknowledges that this Project is to receive grant funding. The "grant" shall mean the grant(s) awarded by Pennsylvania H2O program for the Project. The "Grant Agreement" shall mean the Grant Agreement(s) entered into between the applicable grantor and the Owner (or other Grantee) for the Project.

**3.1.8.1.** As part of Basic Services, the Engineer shall perform and comply with all terms and conditions of the grant, or provide such information as may be required by the Owner for purposes of applying for such grant, and Grant Agreement applicable to the Project (such as, without limitation, compliance with anti-discrimination provisions, acknowledgement of financial assistance on Project signage or other media, insurance requirements, record keeping and preservation of records, and inclusion of all grant requirements applicable to Owner's contractors in the Construction Documents). Engineer shall execute an amendment to this Agreement, if requested by Owner, to expressly include any such terms from the Grant Agreement in this Agreement at no additional cost to the Owner. Engineer shall use its best efforts to assist the Owner with the Owner's compliance with the terms and conditions of the grant and Grant Agreement, and shall fully cooperate with the Owner's grant coordinator, and the grantor's grant coordinator during the entire Project and during any audit process.

**3.1.8.2.** Engineer acknowledges and agrees that the Owner's award of the construction contracts is contingent upon no revocation of the grant or Grant Agreement prior to Owner's issuance of a notice to proceed to the Contractor, and that such non-revocation of the grant and Grant Agreement is a pre-requisite to the undertaking of the Project.

**3.1.8.3.** In the event that the Owner does not receive the full grant funding under the Grant Agreement as a result, in whole or in part, from the Engineer's negligent acts, omissions or non-performance under this Agreement, the Engineer shall be liable to the Owner and agrees to reimburse the Owner for the lost grant funds, together with any and all costs and expenses (including, without limitation, reasonable attorneys fees and court costs) incurred by the Owner in enforcing this provision against the Engineer or the Engineer's liability insurance carrier. The parties stipulate that the damages, costs and expenses described under this paragraph are actual damages recoverable by the Owner against the Engineer. In the event of the concurrent non-performance of the Engineer on the one hand and that of the Owner or any other entity on the other hand, the Engineer's obligation to reimburse the Owner shall be proportionately limited to the extent of the Engineer's negligent acts, omissions or non-performance, including, without limitation, its proportionate share of the above referenced enforcement costs and expenses.

**3.1.8.4.** To the extent the grant or Grant Agreement has a mandated close-out audit, the Engineer shall provide all documentation necessary for the close-out audit and/or requested by the auditor.

**3.1.9.** If required by the Owner, the Engineer, shall submit monthly written reports to the Owner and/or the Owner's agents regarding: (1) the status of Plan preparation; (2) the status of approvals being prosecuted; (3) any problems that may have resulted in the planning process; (4) preparation of Specifications; (5) a summary of the listing of all Change Orders processed and the amounts thereof; and (6) any other information regarding the Project which the Owner requests the Engineer to include in these written reports.

3.1.10. The Engineer shall prepare digital data for transmission to the Owner's consultants and contractors, or to any recipient authorized by the Owner in writing.

### **3.2. STUDY PHASE SERVICES**

3.2.1. Within five (5) business days of the Effective Date, the Engineer shall attend an initial meeting with the City to discuss the overall Project concepts and request any additional information it may need to perform the Basic Services herein.

3.2.2. The Engineer shall prepare a preliminary evaluation of the Project, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other initial information, applicable laws, codes and regulations, each in terms of the other, to ascertain the requirements of the Project. The Engineer shall promptly notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

3.2.3. The Engineer shall present its preliminary evaluation and design to the Owner and shall attend a design review meeting with the Owner at the conclusion of the Study Phase to discuss alternative approaches to the design and construction of the Project, including, without limitation, the feasibility of incorporating environmentally responsible design approaches, and present a budget for the Cost of Work to the Owner for its approval. The Engineer shall reach an understanding with the Owner regarding the requirements of the Project, shall commit such understanding to writing, and shall furnish a copy of such commitment to the Owner for review and approval before proceeding beyond the Study Phase.

3.2.4. The Engineer shall consider environmentally responsible design alternatives, such as material choices, together with other considerations based on the Project and aesthetics, in developing a design that is consistent with the Project, schedule and budget for the Cost of the Work. The Engineer shall consider the value of alternative materials, systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Project, schedule and budget for the Cost of the Work and owning and operating costs.

### **3.3. DESIGN DEVELOPMENT PHASE SERVICES**

3.3.1. As part of the Design Development Phase, the Engineer shall conduct all necessary and appropriate field investigation activities and obtain any and all licenses or permits in support of the Project.

3.3.2. The Engineer shall submit the Design Documents to the Owner, and shall prepare for and attend a design review meeting with the Owner at the 60% Design, 90% Design, and 100% Design (Issued for Bid) progress milestones. During each of these meetings, the Engineer shall advise the Owner in reasonable detail of any adjustments to the estimate of the Cost of the Work and owning and operating costs. With the Owner's approval, the Engineer shall make such adjustments to the Cost of the Work. The Engineer shall also obtain the Owner's approval of the status and content of the Design Documents at each progress milestone.

3.3.3. The Design Documents shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of systems to fix

and describe the size and character of the Project as to structural, mechanical, electrical, civil and instrumentation engineering elements as may be appropriate. The Design Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. To the extent applicable, the Design Documents shall comply with all laws, statutes, ordinances, codes, orders, rules and regulations in force as of the date of the development of the documents.

3.3.4. Any approval of the Design Documents by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Engineer.

#### **3.4. CONSTRUCTION DOCUMENTS PHASE SERVICES**

3.4.1. Based on the Owner's approval of the Design Documents, and on the Owner's authorization of any adjustments in the Project requirements, schedule and the budget for the Cost of the Work, the Engineer shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work, including, but not limited to, the work required for the structural, general, mechanical, electrical, plumbing, and site work construction and the necessary general conditions of the contract. The Engineer shall provide the services of professional structural, mechanical, plumbing, electrical, civil and other engineers, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project, and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations. The Owner and Engineer acknowledge that in order to perform the Work, Contractor(s) will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Engineer shall review in accordance with Section 3.6.4.

3.4.2. During the development of the Construction Documents, the Engineer shall prepare the drawings and specifications for the Project. During the development of the Construction Documents, the Engineer shall assist the Owner and Owner's legal counsel with the development and preparation of: (1) the bidding and procurement information (i.e., the Advertisement to Bidders) that describes the time, place and conditions of bidding as well as the bidding forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Engineer shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms after first consulting with the Owner's legal counsel. Bidding Documents shall be subject to the review and approval of the Owner's legal counsel, and shall be provided to Owner's legal counsel in sufficient time for review and approval prior to issuance to bidders.

3.4.3. The Engineer shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work and submit the final estimate of the Cost of the Work, and request the Owner's approval. Approval of the Construction Documents by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Engineer for the Project.

### **3.5. BIDDING PHASE SERVICES**

**3.5.1. GENERALLY:** The Engineer shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Engineer shall assist the Owner in (1) obtaining competitive bids, using multiple primes as required by law and requested by Owner; (2) confirming responsiveness of bids; (3) determining the successful bid, if any; and, (4) awarding and preparing contracts for construction.

#### **3.5.2. COMPETITIVE BIDDING**

**3.5.2.1.** Bidding Documents shall consist of bidding requirements and proposed Construction Documents.

**3.5.2.2.** The Engineer shall:

- .1 procure the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 prepare documents for alternate, separate or sequential bids as requested by Owner;
- .3 issue and distribute the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .4 organize and conduct a pre-bid conference for prospective bidders;
- .5 prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
- .6 organize and conduct the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner;
- .7 assist Owner in analyzing bids, and making recommendations to Owner with respect to the awarding of the contracts or the rejection of bids; and
- .8 prepare, for issuance by Owner, alternates, addenda, amendments and/or supplementary drawings and specifications required in connection with the bidding process.

**3.5.2.3.** The Engineer shall include a requirement that the Contractor(s) provide operation manuals and adequate training for the Owner in the operation of systems installed by the Contractor(s) in the Bidding Documents.

**3.5.2.4.** The Engineer shall consider requests for substitutions, if the Bidding Documents permit substitutions or if substitutions are permitted by law, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

**3.5.2.5.** The Engineer shall evaluate the qualifications of bidders and provide the Owner with such evaluation.

**3.5.2.6.** In the event the lowest possible bid (or bids) exceeds the final estimate of the Cost of the Work provided by the Engineer and approved by Owner pursuant to Section 3.4.3 of this Agreement, the Engineer, in consultation with and at the direction of the Owner, shall provide such modification in the Construction Documents, which modification shall include, but not be limited to, a revision of the Project specifications and drawings, as shall be necessary to bring the cost of the Project within the final estimate of the Cost of the Work provided by the Engineer pursuant to Section 3.4.3 as referred to above, as the Owner shall determine in its sole discretion. In such event, Engineer shall further assist Owner in modifying and rebidding the Project. If Project is required to be rebid as a result of a defect, error or insufficiency with the Construction Documents or Bidding Documents, the Engineer shall make such modification and rebid the Project at no additional cost to Owner.

### **3.6. CONSTRUCTION PHASE SERVICES**

#### **3.6.1. GENERAL**

**3.6.1.1.** The Engineer shall provide administration of the Contract for Construction between the Owner and the Contractor(s) as set forth below and in the General Conditions of the Contract for Construction, as amended by Owner.

**3.6.1.2.** The Engineer shall advise and consult with the Owner during the Construction Phase. The Engineer shall have the authority to act on behalf of the Owner only to the extent provided in this Agreement. The Engineer shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, except to evaluate whether the Work is in accordance with the Construction Documents as set forth herein. Except as provided in this Agreement, the Engineer shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Construction Documents. The Engineer shall be responsible for the Engineer's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of a Contractor.

**3.6.1.3.** The Engineer shall prepare drawings, specifications and other documentation and supporting data, evaluating Contractors' proposals, and providing other services in connection therewith as well as evaluating substitutions, Change Orders and Construction Change Directives proposed by the Contractor(s) and making subsequent revisions to drawings, specifications and other documentation resulting therefrom.

**3.6.1.4.** The Engineer shall require the Contractor(s) to prepare or provide as a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor(s) to the Engineer, including, but not limited to, the location of water, sewer, telephone, electric, gas and any other utility lines. The Contractor(s) shall certify these drawings as accurate. Said drawings shall be provided by the Contractor(s) to the Engineer for final revision and review based upon the Engineer's own analysis, and shall then be forwarded by the Engineer to Owner on paper (hard

copy), sepia Mylar, and on CD-Rom in Auto CAD format (Version 14), or such other formats as requested by Owner.

**3.6.1.5.** Any defective Drawings, Specifications or other Construction Documents furnished by the Engineer shall be promptly corrected by the Engineer at no cost to the Owner. The Owner's approval, acceptance, use or payment for all or any part of the Engineer's services hereunder or the Project itself shall in no way diminish or limit the Engineer's obligations and liabilities or the Owner's rights.

**3.6.1.6.** The Engineer's responsibility to provide Construction Phase Services commences with the awarding of any Contract for Construction and terminates at the later of the issuance, with the Owner's approval, of the final Certificate for Payment to all Contractors, issuance of all required approvals from applicable governmental agencies indicating the final completion of the Project, or submission of record drawings.

**3.6.1.7.** The Engineer shall furnish services of geotechnical engineers when such services are reasonably required by the scope of the Project, which may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**3.6.1.8.** The Engineer shall cause the Contractor(s) to turn over to the Owner all operation manuals, maintenance instructions, and warranties for all equipment on or before Final Completion of the Project.

**3.6.1.9.** If applicable, the Engineer shall provide services required for and in connection with the selection, procurement or installation of built-in furniture, furnishings and related equipment.

### **3.6.2. EVALUATIONS OF THE WORK**

**3.6.2.1.** Unless otherwise specified by the Owner in writing, the Engineer shall visit the site not less than once per week while Work is in progress and as often as necessary and appropriate to the stage of construction (with particular emphasis on structural work) to observe the site and Work; to familiarize itself with the progress and quality of the Work; and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the terms and intent of the Construction Documents and Construction Schedule. The Engineer shall use reasonable care to guard the Owner against defects and deficiencies in the Work and a Contractor's failure to carry out the Work in accordance with the Construction Documents and the Construction Schedule. On the basis of its on-site observations and inspections as an Engineer, the Engineer shall keep the Owner informed of the progress and quality of the Work, and shall give prompt notice to the Owner in writing of deviations from the Construction Documents in the Work and from the most recent Construction Schedule submitted by the Contractor. At no additional cost to the Owner, the Engineer shall provide services necessary to correct any defect or deficiencies in the Work of the Contractor(s) or their agents or employees which, through reasonable care, should have been discovered by the Engineer and promptly reported to the Owner and Contractor(s), but which the Engineer failed to discover and/or report.

**3.6.2.2.** The Engineer shall perform any additional site inspections at the Owner's request. Furthermore, the Engineer shall require its mechanical, civil, structural, electrical and instrumentation engineers and/or consultants to visit the Project site as often as necessary and appropriate to the stage of construction.

**3.6.2.3.** The Engineer has the authority to reject Work that does not conform to the Construction Documents. When the Owner considers it reasonably necessary or advisable for implementation of the intent of the Construction Documents, the Owner shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Construction Documents, whether or not such Work is fabricated, installed or completed. Such additional inspection and testing shall be provided by the Engineer as a Basic Service under this Agreement and such additional inspection and testing is to be required by the Engineer only upon advance written notice from the Owner.

**3.6.2.4.** The Engineer shall interpret and decide matters concerning performance under, and requirements of, the Construction Documents on written request of either the Owner or Contractor. The Engineer's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**3.6.2.5.** Interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer shall endeavor to secure faithful performance by the Contractor(s), and shall not be liable for results of interpretations or decisions rendered in good faith and without negligence or recklessness.

**3.6.2.6.** Unless the Owner and Contractor(s) designate another person to serve as an initial decision maker, the Engineer shall render initial decisions on claims between the Owner and Contractor(s) as provided in the Construction Documents. However, Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Construction Documents.

**3.6.2.7.** The Engineer shall provide services in evaluating claims submitted by the Contractor(s) or others in connection with the Work.

### **3.6.3. CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**3.6.3.1.** Based on the Engineer's observations of the Work and evaluations of a Contractor's Applications for Payments, the Engineer may assist in the review of the amounts due to the Contractor. Said review shall be completed within ten (10) days of the Engineer's receipt of each Application for Payment. Based on the Engineer's evaluation of the Work, observations and on the data comprising a Contractor's Application for Payment, the Engineer shall determine if the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Construction Documents, and that the Work has been performed in a good and workmanlike fashion.

**3.6.3.2.** The Engineer shall maintain a record of the Applications for Payment.

### **3.6.4. SUBMITTALS**

**3.6.4.1.** The Engineer shall review and approve a Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Engineer's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, Contractor(s) or other separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review.

**3.6.4.2.** In accordance with the Engineer-approved submittal schedule, the Engineer shall review and approve or take other appropriate action upon each Contractors' submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with the Construction Documents and all applicable laws, statutes, ordinances, codes, rules and regulations. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor(s), which are the Contractors' responsibility to the extent required by the Construction Documents. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures.

**3.6.4.3.** If the Construction Documents specifically require the Contractor(s) provide professional design services or certifications by a design professional related to systems, materials or equipment, the Engineer shall specify the appropriate performance and design criteria that such services must satisfy. The Engineer shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor(s) that bear such professional's seal and signature when submitted to the Engineer. The Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**3.6.4.4.** The Engineer shall review and respond to requests for information about the Construction Documents. The Engineer shall set forth in the Construction Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Engineer's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, Contractor(s) or other separate contractors. If appropriate, the Engineer shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

**3.6.4.5.** The Engineer shall maintain a record of submittals and copies of submittals supplied by the Contractor(s) in accordance with the requirements of the Construction Documents.

**3.6.4.6.** Engineer shall not be entitled to additional compensation from Owner for reviewing Contractor's submittal out of sequence from the submittal schedule agreed to by the Engineer, or for responding to a Contractor's requests for information that are not prepared in accordance with the Construction Documents or where such information is available to the

Contractor from a careful study and comparison of the Construction Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

### **3.6.5. CHANGES IN THE WORK**

**3.6.5.1.** The Engineer may authorize minor changes in the Work that are consistent with the intent of the Construction Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such minor changes shall be effected by written orders issued through Engineer and approved by the Owner. The Engineer shall prepare Change Orders and Construction Change Directives, with supporting documentation, drawings, specifications and other data and shall provide other services in connection with Change Orders and Construction Change Directives, including, but not limited to, reviewing and negotiating Contractor proposals and evaluating substitutions. Said Change Orders and Construction Change Directives shall be submitted for the Owner's approval and execution in accordance with the Construction Documents.

**3.6.5.2.** The Engineer shall maintain records relative to changes in the Work.

### **3.6.6. PROJECT COMPLETION**

**3.6.6.1.** The Engineer shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Construction Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Construction Documents.

**3.6.6.2.** The Engineer's inspections shall be conducted, with the Owner at Owner's request, to check conformance of the Work with the requirements of the Construction Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected, but the Owner's presence at such inspections shall not relieve the Engineer of its responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

**3.6.6.3.** When the Work is found to be substantially complete, the Engineer shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**3.6.6.4.** The Engineer shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Construction Documents.

## **ARTICLE 4 ADDITIONAL SERVICES**

**4.1.** The Additional Services described under Section 4.2 and 4.4 shall only be provided if authorized in advance, in writing by the Owner. If Engineer proceeds with such Additional Services without first obtaining Owner's prior written consent, Engineer shall not be entitled to additional compensation. If, in the opinion of the Engineer, services described under Contingent Additional Services in Section 4.3 are required due to circumstances beyond the Engineer's control, the Engineer shall notify the Owner of the need for those services in writing prior to commencing such services. If the Owner deems that such services described under Section 4.3 are not required, the Owner shall give prompt written notice to the Engineer. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Engineer shall have no obligation to provide those services. If, however, services described under Section 4.3 are required due to circumstances within the control of the Engineer, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Engineer for any Additional Services that become necessary as a result of the fault or negligence of the Engineer or its agents or employees.

### **4.2. PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**4.2.1.** If more extensive representation at the site by Engineer than is described in ARTICLE 3 is required in writing by the Owner, the Engineer shall provide additional Project Representatives to assist in carrying out such additional on-site responsibilities.

### **4.3. CONTINGENT ADDITIONAL SERVICES**

**4.3.1.** Upon recognizing the need to perform the following Additional Services, the Engineer shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Engineer shall not proceed to provide the following services until the Engineer receives the Owner's written authorization:

**4.3.1.1.** Making material and substantial revisions in drawings, specifications or other documents when such revisions are (a) inconsistent with previous instructions or approvals given by the Owner, including revisions made necessary by adjustments in the Project or the Project budget, or (b) due to a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or procurement or delivery method, except for services required under Section 3.5.2.6;

**4.3.1.2.** Providing services made necessary by the termination of the Contractor by Owner or by major defects or deficiencies in the Work of the Contractor;

**4.3.1.3.** Making material and substantial revisions in drawings, specifications or other documents when such revisions are necessitated by decisions of the Owner not rendered in a timely manner after providing Owner adequate due notice and opportunity to render such decisions and expressly advising Owner of the implications of its failure to render such decisions;

**4.3.1.4.** Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Engineer is party thereto (in which case, the Engineer shall not be entitled to any compensation from the Owner); or

**4.3.1.5.** Consultation concerning replacement of Work resulting from fire or other casualty during construction.

**4.3.2.** The Engineer shall serve, when requested by the Owner, as a witness and shall provide such other services as requested by the Owner in connection with any arbitration proceeding, legal proceeding or administrative law proceeding to which the Owner is a party concerning the Project; provided, however, these services shall be part of Basic Services to the extent that the Engineer is a party to such arbitration proceeding, legal proceeding or administrative law proceeding concerning the Project.

#### **4.4. OPTIONAL ADDITIONAL SERVICES**

**4.4.1.** The Owner may request that the Engineer perform certain Optional Additional Services in addition to the Basic Services. Engineer shall not proceed to provide the following services until the Engineer receives the Owner's written authorization:

**4.4.1.1.** Providing financial feasibility or other special studies, but only to the extent not contemplated by this Agreement.

**4.4.1.2.** Providing planning surveys, site evaluations or comparative studies of prospective sites.

**4.4.1.3.** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, for other than those surveys, studies and submissions required to be provided by Engineer as part of Basic Services.

**4.4.1.4.** Providing services relative to future facilities, systems and equipment.

**4.4.1.5.** Providing detailed quantity surveys or inventories of material, equipment and labor.

**4.4.1.6.** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

**4.4.1.7.** Upon request of the Owner, and prior to the expiration of one year from the date of Final Completion, the Engineer shall conduct a meeting with the Owner to review the facility operations and performance.

**4.4.1.8.** Providing services other than those required to be provided by Engineer as a part of Basic Services.

#### **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**5.1.** The Owner shall, with the Engineer's assistance, identify requirements for the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

5.2. The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Engineer. The Owner and the Engineer shall thereafter agree to a corresponding change in the Project's scope and quality.

5.3. The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Engineer's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services. The Owner's representative is Ralph Johnson, Wastewater Treatment Plant Manager for the City of Reading.

5.4. Unless otherwise required under this Agreement to be provided by Engineer, and if reasonably required by the scope of the Project, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. If any surveys are necessary, Engineer (as part of Basic Services) shall coordinate and assist Owner in obtaining surveying services, including, without limitation, preparing a request for proposals, reviewing and analyzing proposals received, and making a recommendation to Owner on which surveyor to engage. Engineer shall provide underground utility location survey, topographic survey, site investigation and field investigation as required in Owner's RFP.

5.5. The Engineer (as part of Basic Services) shall coordinate the services of Owner's consultants with those services provided by the Engineer.

5.6. Unless otherwise required under this Agreement to be provided by Engineer, the Owner shall furnish tests, inspections and reports required by law or the Construction Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

5.7. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

5.8. The Owner shall provide prompt written notice to the Engineer if the Owner becomes aware of any fault or defect in the Project, or nonconformance with the Construction Documents, but the Owner's failure or omission to do so shall not relieve the Engineer of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

5.9. Except as otherwise provided in this Agreement, or when direct communications have been specifically authorized, the Owner shall endeavor to communicate with the Contractor(s) and the Engineer's consultants through the Engineer about matters arising out of or relating to the Construction Documents. The Owner shall promptly notify the Engineer of any direct communications that may affect the Engineer's services.

5.10. The Owner shall provide the Engineer a copy of the executed agreement between the Owner and Contractor(s).

**5.11.** The Owner shall provide the Engineer access to the Project site prior to commencement of the Work and both the Owner and the Engineer shall at all times have access to the Work wherever it is in preparation or progress.

## **ARTICLE 6 COST OF THE WORK**

**6.1.** For purposes of this Agreement, the Cost of the Work shall be the total cost or, prior to the award of contracts to the separate contractors, the estimated cost to the Owner to construct all elements of the Project designed or specified by the Engineer and shall include the cost at current market rates of labor and materials and built-in equipment furnished by the Owner and equipment designed, specified, selected or specially provided for by the Engineer, Contractors' general conditions costs, and a reasonable allowance for Contractors' overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work. The Cost of the Work does not include the compensation of the Engineer, the compensation of the Construction Manager, Program Manager or similar Owner's representative, the costs of the land, rights-of-way, financing, or other similar costs that are the responsibility of the Owner.

**6.2.** The Owner's budget for the Cost of the Work is provided in the initial information, and may be adjusted throughout the Project. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Engineer, represent the Engineer's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Engineer nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**7.1.** If the Owner and Engineer intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**7.2.** Drawings, specifications and other documents, including, without limitation, those in electronic form, prepared by the Engineer and/or the Engineer's consultants for this Project are the property of the Owner who shall be vested with all common law, statutory and other reserved rights. At the Owner's request, the Engineer and/or the Engineer's consultants shall provide the Owner and any third party designated by the Owner, all drawings, specifications and other documents prepared in connection with the Project as well as a full and complete release in form and substance acceptable to the Owner, of any and all rights the Engineer and/or the Engineer's consultants may have to the drawings, specifications and other documents prepared by the Engineer and/or the Engineer's consultants for this Project. The Owner shall provide the Engineer and/or the Engineer's consultants with a full and complete release of liability in form and substance acceptable to the Engineer, of any and all liability arising from the use of the drawings, specifications and other documents prepared by the Engineer and/or the Engineer's consultants for this Project, in any other project of Owner other than this Project.

## **ARTICLE 8 CLAIMS AND DISPUTES**

**8.1.** The Owner and Engineer shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution set forth in Section 8.3 below, within the period specified by applicable law.

**8.2.** The Engineer waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages incurred by Engineer due to either party's termination of this Agreement.

**8.3.** Claims, disputes or other matters in question between the parties to this Agreement, arising out of or related to this Agreement or breach thereof, shall be exclusively litigated in the Court of Common Pleas of Berks County and shall not be subject to arbitration except for compulsory arbitration as provided by the County's Civil Rules. The parties hereby agree to the exclusive jurisdiction and venue of the Court of Common Pleas of Berks County, Commonwealth of Pennsylvania.

**8.4.** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in litigation.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**9.1.** If the Owner fails to make payments to the Engineer of any undisputed amounts due in accordance with this Agreement without just cause relating to Engineer's failure to perform in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Engineer's option, cause for suspension of performance of services under this Agreement. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Engineer shall be paid all sums due prior to suspension. Prior to any suspension of services or termination of this Agreement, the Engineer shall give sixty (60) calendar days' written notice to the Owner during which period Owner may cure its nonperformance by making payment of all sums due to Engineer and not in dispute.

**9.2.** If the Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of the Engineer, then the Engineer shall be compensated for services performed prior to notice of such suspension when the Project is resumed.

**9.3.** If the Owner suspends the Project for more than one hundred twenty (120) consecutive days for reasons other than the fault of the Engineer, the Engineer may terminate this Agreement at anytime thereafter by giving not less than thirty (30) days' written notice to the Owner provided that the Project has not resumed prior thirty days after such written notice.

**9.4.** The Owner may terminate this Agreement upon not less than seven (7) days' written notice should the Engineer substantially fail to perform in accordance with the terms of this Agreement. Should the Owner exercise its right of termination, the written notice shall set forth the nature of such failure.

9.5. The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Engineer for the Owner's convenience and without cause.

9.6. In the event of termination not the fault of the Engineer, the Engineer shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

9.7. Upon termination of this Agreement for any reason, the Engineer shall transfer to Owner in the manner, to the extent and at the time directed by Owner, all drawings, plans, specifications, supplies, materials and other property produced as part of, or required in the performance of, Engineer's services in connection with the Project.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

10.1. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

10.2. The Owner and Engineer, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Engineer shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project.

10.3. If the Owner requests the Engineer to execute certificates, the proposed language of such certificates shall be submitted to the Engineer for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests the Engineer to execute consents reasonably required to facilitate assignment to a lender, the Engineer shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Engineer for review at least fourteen (14) days prior to execution. The Engineer shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

10.4. The parties acknowledge and agree that the Owner shall be named as a third party beneficiary of any and all agreements by and between the Engineer and each of its subconsultants performing any of the Basic Services hereunder. The Owner shall have the rights of enforcement and remedies against the Engineer's subconsultants as are available to the Owner hereunder. Furthermore, the parties acknowledge and agree that none of the Owner's obligations and duties under this Agreement shall in any way or manner be deemed or construed to create any contractual relationship with or a cause of action in favor of a third party against the Owner.

10.5. Unless otherwise required in this Agreement, the Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Engineer shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Engineer discovers that such substances, as described herein, have been used or exist in the Project, the Engineer shall promptly notify the Owner in writing. When asbestos containing materials or polychlorinated biphenyl (PCB) are suspected or found in the course of the Project, Engineer shall cause all activities that may disturb such materials to cease immediately until an appropriately qualified expert or consultant is retained by the Owner and determines the proper course of action.

10.6. The Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials. The Engineer shall be given reasonable access to the completed Project to make such representations for a period of thirty (30) days following the final completion of the Project. However, the Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Engineer in the Owner's promotional materials for the Project.

10.7. The Engineer shall keep fully informed on all Federal, state and local laws, regulations and all orders and decrees of bodies having any jurisdiction or authority which in any way affect those engaged or employed on the Project or which in any way affect the Project. The Engineer shall at all times during the terms of this Agreement observe and comply with all such laws, ordinances, regulations, orders and decrees in force at the time of the award. In addition to the indemnity set forth in Section 2.9, the Engineer shall indemnify, defend and hold harmless the Owner and its representatives against any claim or liability based on the violation of any such law, ordinance, regulation, order or decree whether by the Engineer or the Engineer's agent(s) or employee(s). No extension of time or additional payment will be made for loss of time or disruption of work caused by any actions against the Engineer for any violation of applicable laws. Furthermore, each and every provision of law and clause required by law to be inserted in this Agreement for this Project will be deemed to be inserted herein and the Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise such provision is not inserted, or is not correctly inserted, then upon of the Owner, the Agreement shall forthwith be physically amended to make such insertion.

#### **ARTICLE 11 COMPENSATION**

11.1. For the Engineer's Basic Services described under ARTICLE 3 or elsewhere in this Agreement as part of Basic Services, the Owner shall compensate the Engineer as follows: As per the hourly rates for assigned personnel as set forth in Schedule A, computed to the nearest tenth of an hour. Owner shall pay for only those services actually provided. The actual number of hours worked for each function shall be interchangeable but the total Basic Compensation shall not exceed Two Hundred Five Thousand Dollars (\$205,000), excluding Reimbursable Expenses and Permit Fees, without prior written authorization of Owner.

11.2. For Additional Services designated in ARTICLE 4 , the Owner shall compensate the Engineer as follows: As per hourly rates in the attached Schedule "A" computed to the nearest tenth of an hour, or such other method as is mutually agreed to by Owner and Engineer, in writing.

11.3. Compensation for Additional Services of the Engineer's subconsultants, when not included in Section 11.1, shall be the amount invoiced to the Engineer with no mark-up.

11.4. The compensation for each phase of services shall be as follows, and shall be based on the total not-to-exceed Basic Compensation figure, and reconciled as the phases progress:

Study Phase – Structural Study	\$27,225
Study Phase – Mechanical/Process Study	\$21,290

Design Development Phase	\$102,315
Bidding Phase	\$10,600
Construction Phase	\$43,570
<hr/>	
Total Basic Compensation	\$205,000

## **11.5. COMPENSATION FOR REIMBURSABLE EXPENSES AND PERMIT FEES**

**11.5.1.** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and shall be payable provided they are approved in advance and in writing by the Owner. Reimbursable Expenses include actual expenses incurred by the Engineer and the Engineer's consultants directly related to the Project, as follows:

**11.5.1.1.** The actual cost incurred by the Engineer for reproductions of drawings, specifications, and other documents (except for reproductions for the office use of the Engineer, the Engineer's consultants and up to five (5) copies for the Owner's use), which costs are set forth on Schedule B attached hereto and made part hereof;

**11.5.1.2.** Renderings, models, and mock-ups requested by the Owner; and

**11.5.1.3.** Other actual expenses set forth on Schedule B.

**11.5.2.** For Reimbursable Expenses the compensation shall be the expenses incurred by the Engineer and the Engineer's consultants without mark-up.

**11.5.3.** Reimbursement for expenses shall not exceed Three Thousand Dollars (\$3,000) without prior written authorization of Owner.

**11.5.4.** Engineer shall itemize and provide Owner with a list of all fees required for securing the required approvals, permits, or licenses from authorities having jurisdiction over the Project ("Permit Fees") at least five (5) business days prior to submitting any permit application. Owner will review such list and provide Engineer with a written approval, disapproval or request for clarification of such itemized Permit Fees within three (3) business days of Owner's receipt of such list. Upon Owner's approval of the Permit Fees, Engineer shall pay all approved Permit Fees as required by applicable laws. Engineer shall prepare an invoice detailing all Permit Fees paid by Engineer. In addition to the compensation for Basic Services, Additional Services and Reimbursable Expense, Owner shall pay Engineer the actual cost of all Permit Fees in accordance with the procedures set forth in Section 11.6.

## **11.6. PAYMENTS TO THE ENGINEER**

**11.6.1.** Payments for services shall be made monthly in proportion to services performed within each phase of service, on the basis set forth in Sections 11.4 and 11.5. Payments are due and payable upon presentation of the Engineer's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate of 0.5% per month or 0.0165% per day simple interest.

**11.6.1.1.** Each invoice shall clearly set forth a schedule of values with the detail of how each task was completed, describing the portion of the task completed, the value associated therewith, the percentage of each task completed and the computations for determining the fee due, any supporting documentation and the overall percentage of the phase of service completed as of the date of such invoice. The invoice shall also identify the portion of each task yet to be completed, the value associated therewith, and the percentage completed.

**11.6.1.2.** No payments made under this Agreement shall be evidence of the proper performance of this Agreement, either in whole or in part, and no payment, including the final payment, shall be construed to be an acceptance of defective or improper services or relieve the Engineer of its responsibility to perform its services in a professional manner and in accordance with the terms of this Agreement.

**11.6.1.3.** In the event of any dispute between the Owner and the Engineer as to the percentage or quality of services completed or the absence of supporting documentation, the Owner shall not be obligated to pay the amount in dispute until a final resolution of the dispute. Unless the parties expressly agree otherwise in writing, in the event a dispute arises under this Agreement in connection with payments to be made on any invoice, or otherwise, the Engineer, shall continue to perform its services under this Agreement, including, without limitation, the Basic Services, during the pendency of such dispute

**11.6.2.** Records of Reimbursable Expenses, Permit Fees, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## **ARTICLE 12 SCOPE OF THE AGREEMENT**

**12.1.** This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer.

**12.2.** The Schedules listed below are incorporated into and made a part of this Agreement. Unless otherwise indicated, references to this Agreement shall be interpreted to include the main body of this Agreement and the Schedules. In interpreting this Agreement and resolving any conflicts, inconsistencies, discrepancies or ambiguities between and/or within this Agreement and the Schedules attached hereto, the main body of this Agreement takes precedence over the Schedules. Any conflict, inconsistency, discrepancy or ambiguity between or among the Schedules shall be governed by the provisions of the Schedules in the following listed order:

**12.2.1.** Schedule A – Hourly Rates and Engineer’s Representatives

**12.2.2.** Schedule B – Reimbursable Expenses

**12.2.3.** Schedule C – Owner’s RFP and any supplements thereto

**12.2.4.** Schedule D - Engineering Technical and Cost Proposal and all supplements thereto

[Signatures on the Following Page]

This Agreement entered into as of the day and year first written above.

**OWNER:**  
**CITY OF READING**

**ENGINEER:**  
**T&M Associates**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

# SCHEDULE "A" TO THE CONTRACT

## Hourly Rates and Engineer's Representatives

TABLE 1: ENGINEERING TEAM HOURLY RATES

NAME	ROLE	HOURLY BILLING RATE
Keith W. Henderson	Principal In Charge	\$282.95
Richard P. Crane	QA/QC Manager	\$191.73
Charles Volk	Project Manager	\$152.05
Frank S. Buczek	Structural-TM	\$131.45
David D. Faccas	Electrical-TM	\$135.52
Charles F. Hopkins	I&C-TM	\$156.28
Diana D. Rodriguez	HVAC-TM	\$131.18
Mark Ambrose	Permitting-TM	\$102.53
Jerry Jameson	Grants-TM	\$77.16
Mark Hansen	Arch.-TM	\$130.07
Charles Volk	CA-TM	\$152.05
Stephanie Bennett	Admin	\$66.63

1. "TM" - Task Manager
2. All support staff billed at 2.75 times such person's hourly salary (not to exceed \$79.00/hour)

**TABLE 2: ADDITIONAL PERSONNEL HOURLY RATES\***

<b>Billing Titles</b>	<b>Hourly Billing Rate</b>
<b>Jr. Technical Staff Administrative Support Staff</b>	<b>\$63.00</b>
<b>Field Staff Professional Entry Level</b>	<b>\$79.00</b>
<b>Technical Staff Jr. Professional Staff</b>	<b>\$114.00</b>
<b>Professional Staff Senior Technical and Field Staff</b>	<b>\$124.00</b>
<b>Supervising Professional Staff</b>	<b>\$132.00</b>
<b>Principal Division Manager Corporate Manager</b>	<b>\$151.00</b>
<b>Survey Crew 1 Party Chief Senior Party Chief w/ Robotic Equipment</b>	<b>\$132.00</b>
<b>Survey Crew 2 Party Chief or Senior Party Chief with 1 Survey Technician</b>	<b>\$168.00</b>
<b>Survey Crew 3 Party Chief or Senior Party Chief with 2 Survey Technicians</b>	<b>\$200.00</b>

\*Table 2 identifies the hourly rates for additional persons (by billing) as may be added to the Engineering Team by the Engineer. The Engineer shall notify the Owner of the name of the name, resume and billing title for such additional person(s). Such additional person(s) shall not be engaged on the Project until Engineer has provided the Owner with such information and the Owner has issued a Change Order approving the same.

**Engineer's Representatives**

**Charles Volk  
Richard P. Crane**

# **SCHEDULE "B" TO THE CONTRACT**

## **Reimbursable Expenses**

Auto Mileage: \$0.555 per mile

Copies of 8½" x 11" documents at \$0.10 per copy

Copies of 11" x 17" documents at \$0.20 per copy

Drawing plots, blue lines, xerographic prints at \$0.30 per square foot

Reimbursable Expenses include meals, tolls, parking, overnight accommodations, special transportation and outsource printing. All such Reimbursable Expenses will be billed at cost without mark-up.

**SCHEDULE "C" TO THE CONTRACT**

**Owner's RFP and Supplements Thereto**

**SCHEDULE "D" TO THE CONTRACT**  
**Engineer's Technical and Cost Proposal and**  
**Supplements Thereto**