



City of Elkins

Sanitary Board

September 18, 2023

10:00 AM

401 Davis Avenue
Council Chamber, 2nd Floor

Meets every 3rd Monday of the month

AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
 - a. Proposed minutes for the meeting of August 21, 2023
4. **Presentation**
5. **Reports**
 - a. Chief Wastewater Operator
 - b. Wastewater Collection Supervisor
 - c. Financial Statements as of August 31, 2023
6. **Unfinished business**
 - a. Discussion on Phase III Projects with Engineering Firm B&N
 - b. Discussion Concerning Property at 116 1/2 1st Street
 - c. Discussion on Replacement/Repair of Water and Sewer Lines in the City of Elkins
7. **New business**
 - a. Approval of Sewer Invoices
 - b. General Engineering Agreement for Burgess & Niple
 - c. Discussion of Incident on Beverly 5 Lane
8. **Announcements**
9. **Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of August 21, 2023
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. Sanitary Board- 2023_08_21- minutes2

SANITARY BOARD COMMITTEE REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
August 21, 2023
10:00 AM***

Present were Committee Members: Victor White, Jerry Marco, Randall Biller

Also present were: Tracy Judy (City Treasurer), Whitney Hymes (Chief Wastewater Operator), Gerry Roberts (City Attorney), Mark Hartley (Wastewater Collection Supervisor), Liz Roberts (Executive Secretary).

MINUTES

Randall Biller, **MOVED APPROVAL OF THE MINUTES OF THE JULY 17,2023, MEETING.** The motion carried.

REPORTS

- The chief wastewater operator reported that there was nothing new to report on for the meeting.
- The wastewater collection supervisor reported that there was nothing new to report for the meeting.
- The treasurer reported that the expenses have been covered and we are still in the positive side which is a huge improvement. The rate increase will help the wastewater system stay on budget.

UNFINISHED BUSINESS

- Jerry Marco **MOVED TO POSTPONE THE DISCUSSION ON PHASE III PROJECTS WITH ENGINEERING FIRM B&N TO A LATER DATE.** The motion carried.
- Gerry Roberts reported that the Consent Decree case was closed, and that the sanitary department should just keep doing the reports as they have been. The reports she has read on the decree said that we had finished everything in the agreement, and she does think that back tracking would be a good way to go.

NEW BUSINESS

Victor White **MOVED APPROVAL OF SEWER INVOICE CRIMLAWINVOICE 368.** The motion carried.

Randall Biller, **MOVED APPROVAL OF ENTERING INTO EXECUTIVE SESSION ON THE ATTORNEY/CLIENT CONSULTATION EXEMPTION FOR THE AGENDA ITEM “DISCUSSION ON RANDOLPH AVE FOAM ISSUES AND DAVIS MEMORIAL PRESBYTERIAN CHURCH.”** The motion carried. The council entered executive session at 10:17 am p.m. and returned at 10:36 am. The chair announced that no action was taken.

Randall Biller **MOVED APPROVAL OF** the Replacement/Repair of Water and Sewer Lines in the city of Elkins.

Jerry Marco, **MOVED APPROVAL OF ENTERING INTO EXECUTIVE SESSION ON THE ATTORNEY/CLIENT CONSULTATION EXEMPTION FOR AGENDA ITEM “PROPERTY AT 116 ½ 1ST STREET AND BURGESS & NIPLE CONTRACT DISCUSSION CONCERNING PHASE II.”** The motion carried. The council entered executive session at 10:39 a.m. and returned at 12:02 p.m. The chair announced that no action was taken.

ANNOUNCEMENTS

Jerry Marco **MOVED ADJOURNMENT.** The motion carried.

The meeting was adjourned at 12:05 p.m.

The foregoing minutes were approved at the meeting of _____, 2023

Name & Title

Signature

BUDGET CONTROL REPORT

Revenues	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	Total
	\$216,523.92	\$207,080.31											\$14,607.54	\$423,604.23
Expenses	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
	\$216,314.62	\$192,682.07												\$408,996.69

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND

FINANCIAL SUMMARY

% OF YEAR COMPLETED: 16.67

	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>REVENUE SUMMARY</u>							
TAXES	19,000	2,168.60	0.00	3,623.09	0.00	15,376.91	19.07
CHARGES FOR SERVICES	2,182,093	199,293.60	0.00	392,749.01	0.00	1,789,343.99	18.00
MISCELLANEOUS REVENUE	221,340	5,618.11	0.00	27,232.13	0.00	194,107.87	12.30
TOTAL REVENUE	2,422,433	207,080.31	0.00	423,604.23	0.00	1,998,828.77	17.49
<u>EXPENDITURE SUMMARY</u>							
CSO	40,639	2,333.44	0.00	4,742.67	0.00	35,896.33	11.67
CSO-OTHER	141,856	10,110.90	0.00	21,749.08	0.00	120,106.92	15.33
SEWER COLLECTION	1,031,164	59,287.31	0.00	146,688.67	0.00	884,475.33	14.23
SEWER TREATMENT	1,421,581	94,821.64	0.00	203,278.47	0.00	1,218,302.53	14.30
UTILITY BILLING	27,958	1,883.14	0.00	3,810.50	0.00	24,147.50	13.63
ADMIN & GENERAL	444,754	24,245.64	0.00	47,155.64	0.00	397,598.36	10.60
CAPITAL OUTLAY	0	0.00	0.00	9,984.00	0.00	(9,984.00)	0.00
TOTAL EXPENDITURES	3,107,952	192,682.07	0.00	437,409.03	0.00	2,670,542.97	14.07
REVENUE OVER/(UNDER) EXPENDITURES	(685,519)	14,398.24	0.00	(13,804.80)	0.00	(671,714.20)	2.01

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND

% OF YEAR COMPLETED: 16.67

REVENUES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>TAXES</u>							
401-000-302-0000 Penalty Income	19,000	2,168.60	0.00	3,623.09	0.00	15,376.91	19.07
TOTAL TAXES	19,000	2,168.60	0.00	3,623.09	0.00	15,376.91	19.07
<u>CHARGES FOR SERVICES</u>							
401-000-361-0000 Metered Sales to Res Cu	956,923	87,852.02	0.00	177,848.62	0.00	779,074.38	18.59
401-000-361-0001 Metered Sales to Comm C	840,000	74,099.57	0.00	142,194.66	0.00	697,805.34	16.93
401-000-361-0002 Unmetered Sales to Res	15,170	1,477.47	0.00	2,607.01	0.00	12,562.99	17.19
401-000-361-0003 Taps & Connections	10,000	4,832.66	0.00	5,582.66	0.00	4,417.34	55.83
401-000-361-0004 Services to Other Syste	360,000	31,031.88	0.00	64,516.06	0.00	295,483.94	17.92
TOTAL CHARGES FOR SERVICES	2,182,093	199,293.60	0.00	392,749.01	0.00	1,789,343.99	18.00
<u>MISCELLANEOUS REVENUE</u>							
401-000-380-0000 Interest Earned	8,050	541.19	0.00	1,072.80	0.00	6,977.20	13.33
401-000-381-0000 Reimbursements	2,000	0.00	0.00	594.54	0.00	1,405.46	29.73
401-000-382-0000 Refunds & Rebates	5,000	871.57	0.00	871.57	0.00	4,128.43	17.43
401-000-383-0000 Sale Of Fixed Asset	5,290	0.00	0.00	0.00	0.00	5,290.00	0.00
401-000-386-0000 Insurance Claims	0	0.00	0.00	0.00	0.00	0.00	0.00
401-000-399-0000 Miscellaneous	1,000	77.00	0.00	106.00	0.00	894.00	10.60
401-000-399-0001 Lab Analysis Services	200,000	4,128.35	0.00	24,587.22	0.00	175,412.78	12.29
TOTAL MISCELLANEOUS REVENUE	221,340	5,618.11	0.00	27,232.13	0.00	194,107.87	12.30
TOTAL REVENUE	2,422,433	207,080.31	0.00	423,604.23	0.00	1,998,828.77	17.49

FINANCIAL STATEMENT (UNAUDITED)

AS OF: AUGUST 31ST, 2023

401-SEWER FUND

CSO

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>PERSONAL SERVICES</u>							
401-509-103-0000 Salaries & Wages	10,850	1,464.00	0.00	2,924.40	0.00	15,925.60	15.51
401-509-104-0000 FICA Tax	1,570	111.89	0.00	223.51	0.00	1,346.49	14.24
401-509-105-0000 Group Health Insurance	5,815	565.95	0.00	1,131.90	0.00	4,683.10	19.47
401-509-106-0000 Retirement	1,850	136.70	0.00	273.08	0.00	1,576.92	14.76
401-509-108-0000 Overtime/Extra Help	<u>1,667</u>	<u>54.90</u>	<u>0.00</u>	<u>109.80</u>	<u>0.00</u>	<u>1,557.20</u>	<u>6.59</u>
TOTAL PERSONAL SERVICES	29,752	2,333.44	0.00	4,662.69	0.00	25,089.31	15.67
<u>CONTRACTUAL SERVICES</u>							
401-509-216-0000 Maint of CSO Equipment	4,387	0.00	0.00	0.00	0.00	4,387.00	0.00
401-509-217-0000 Maint Repair Autos & Tr	<u>1,000</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,000.00</u>	<u>0.00</u>
TOTAL CONTRACTUAL SERVICES	5,387	0.00	0.00	0.00	0.00	5,387.00	0.00
<u>COMMODITIES</u>							
401-509-341-0000 Supplies & Materials	4,000	0.00	0.00	79.98	0.00	3,920.02	2.00
401-509-343-0000 Automobile Supplies	<u>1,500</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,500.00</u>	<u>0.00</u>
TOTAL COMMODITIES	5,500	0.00	0.00	79.98	0.00	5,420.02	1.45
TOTAL CSO	40,639	2,333.44	0.00	4,742.67	0.00	35,896.33	11.67

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND

CSO-OTHER

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>PERSONAL SERVICES</u>							
401-510-103-0000 Salaries & Wages	104,000	7,633.71	0.00	15,869.96	0.00	88,130.04	15.26
401-510-104-0000 FICA Tax	8,300	583.21	0.00	1,266.92	0.00	7,033.08	15.26
401-510-105-0000 Group Health Insurance	9,270	1,119.38	0.00	2,239.51	0.00	7,030.49	24.16
401-510-106-0000 Retirement	9,436	643.32	0.00	1,394.09	0.00	8,041.91	14.77
401-510-108-0000 Overtime/Extra Help	<u>10,850</u>	<u>131.28</u>	<u>0.00</u>	<u>978.60</u>	<u>0.00</u>	<u>9,871.40</u>	<u>9.02</u>
TOTAL PERSONAL SERVICES	141,856	10,110.90	0.00	21,749.08	0.00	120,106.92	15.33
TOTAL CSO-OTHER	141,856	10,110.90	0.00	21,749.08	0.00	120,106.92	15.33

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND
SEWER COLLECTION

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>PERSONAL SERVICES</u>							
401-511-103-0000 Salaries & Wages	103,000	7,633.75	0.00	15,870.22	0.00	87,129.78	15.41
401-511-104-0000 FICA Tax	8,600	583.17	0.00	1,266.93	0.00	7,333.07	14.73
401-511-105-0000 Group Health Insurance	12,820	1,130.50	0.00	2,261.77	0.00	10,558.23	17.64
401-511-106-0000 Retirement	9,436	643.27	0.00	1,394.04	0.00	8,041.96	14.77
401-511-108-0000 Overtime/Extra Help	11,750	131.32	0.00	978.70	0.00	10,771.30	8.33
TOTAL PERSONAL SERVICES	145,606	10,122.01	0.00	21,771.66	0.00	123,834.34	14.95
<u>CONTRACTUAL SERVICES</u>							
401-511-211-0000 Telephone	2,500	413.59	0.00	413.59	0.00	2,086.41	16.54
401-511-213-0000 Utilities/Purchased Pow	102,000	6,067.60	0.00	13,787.99	0.00	88,212.01	13.52
401-511-214-0000 Travel	0	0.00	0.00	0.00	0.00	0.00	0.00
401-511-215-0002 Stormwater Supplies	17,425	0.00	0.00	0.00	0.00	17,425.00	0.00
401-511-216-0000 Maint Pumping Equipment	55,000	0.00	0.00	0.00	0.00	55,000.00	0.00
401-511-216-0001 Maint Structures/Improv	15,000	0.00	0.00	72.99	0.00	14,927.01	0.49
401-511-217-0000 Maint Repair Autos & T	15,000	0.00	0.00	1,021.47	0.00	13,978.53	6.81
401-511-221-0000 Training & Education	2,500	0.00	0.00	0.00	0.00	2,500.00	0.00
401-511-230-0000 Contracted Services	2,000	247.50	0.00	13,722.86	0.00	11,722.86	686.14
401-511-240-0000 Refunds & Reimbursement	7,725	0.00	0.00	0.00	0.00	7,725.00	0.00
TOTAL CONTRACTUAL SERVICES	219,150	6,728.69	0.00	29,018.90	0.00	190,131.10	13.24
<u>COMMODITIES</u>							
401-511-341-0000 Supplies & Materials	48,000	0.00	0.00	1,781.75	0.00	46,218.25	3.71
401-511-343-0000 Automobile Supplies	27,500	0.00	0.00	1,753.94	0.00	25,746.06	6.38
401-511-345-0000 Uniforms	5,000	0.00	0.00	271.86	0.00	4,728.14	5.44
401-511-399-0000 Miscellaneous	16,500	0.00	0.00	441.91	0.00	16,058.09	2.68
TOTAL COMMODITIES	97,000	0.00	0.00	4,249.46	0.00	92,750.54	4.38
<u>CAPITAL OUTLAY</u>							
401-511-458-0000 Bond Payable S-1-09-A-R	33,965	2,830.41	0.00	5,660.82	0.00	28,304.18	16.67
401-511-458-0001 Bond Payable S-1-15-A-R	87,233	7,269.39	0.00	14,538.78	0.00	72,694.22	16.67
401-511-458-0003 Bond Payable S-1-20-A-R	321,421	26,784.32	0.00	53,568.64	0.00	267,852.36	16.67
401-511-458-0004 Bond Payable S-2-20-A-R	31,442	2,620.15	0.00	5,240.30	0.00	26,201.70	16.67
401-511-459-0000 2018 Van & Sewera Camer	26,034	2,212.60	0.00	4,419.39	0.00	21,614.61	16.98
401-511-459-0001 2021 Ford F-150	6,858	563.16	0.00	1,126.32	0.00	5,731.68	16.42
401-511-459-0002 Capital Outlay	36,350	0.00	0.00	0.00	0.00	36,350.00	0.00
401-511-459-0003 900 ECO Cleaner	23,708	0.00	0.00	6,775.43	0.00	16,932.57	28.58
TOTAL CAPITAL OUTLAY	567,011	42,280.03	0.00	91,329.68	0.00	475,681.32	16.11
<u>OTHER EXPENDITURES</u>							
401-511-670-0000 Interest & Penalties	2,397	156.58	0.00	318.97	0.00	2,078.03	13.31
TOTAL OTHER EXPENDITURES	2,397	156.58	0.00	318.97	0.00	2,078.03	13.31
TOTAL SEWER COLLECTION	1,031,164	59,287.31	0.00	146,688.67	0.00	884,475.33	14.23

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND
SEWER TREATMENT

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>PERSONAL SERVICES</u>							
401-512-103-0000 Salaries & Wages	257,000	17,846.97	0.00	36,294.32	0.00	220,705.68	14.12
401-512-104-0000 FICA Tax	20,810	1,395.48	0.00	2,828.18	0.00	17,981.82	13.59
401-512-105-0000 Group Health Insurance	47,225	3,427.11	0.00	7,417.66	0.00	39,807.34	15.71
401-512-106-0000 Retirement	23,350	1,625.53	0.00	3,172.31	0.00	20,177.69	13.59
401-512-108-0000 Overtime/Extra Help	15,000	771.31	0.00	1,548.85	0.00	13,451.15	10.33
TOTAL PERSONAL SERVICES	363,385	25,066.40	0.00	51,261.32	0.00	312,123.68	14.11
<u>CONTRACTUAL SERVICES</u>							
401-512-211-0000 Telephone	3,200	349.90	0.00	349.90	0.00	2,850.10	10.93
401-512-213-0000 Utilities/Purchased Pow	164,000	14,761.09	0.00	27,439.06	0.00	136,560.94	16.73
401-512-214-0000 Travel	3,500	1,156.03	0.00	1,156.03	0.00	2,343.97	33.03
401-512-215-0000 Maint of Bldgs & Ground	200	0.00	0.00	0.00	0.00	200.00	0.00
401-512-216-0000 Maint Treat/Disp System	65,000	0.00	0.00	3,671.46	0.00	61,328.54	5.65
401-512-216-0001 Maint Structures/Improv	26,000	0.00	0.00	87.94	0.00	25,912.06	0.34
401-512-217-0000 Maint Repair Autos & Tr	15,000	0.00	0.00	0.00	0.00	15,000.00	0.00
401-512-218-0000 Postage	90	0.00	0.00	0.00	0.00	90.00	0.00
401-512-221-0000 Training & Education	2,000	0.00	0.00	1,500.00	0.00	500.00	75.00
401-512-222-0000 Dues & Subscriptions	2,090	0.00	0.00	315.00	0.00	1,775.00	15.07
401-512-230-0000 Contracted Services	37,000	998.80	0.00	7,319.44	0.00	29,680.56	19.78
TOTAL CONTRACTUAL SERVICES	318,080	17,265.82	0.00	41,838.83	0.00	276,241.17	13.15
<u>COMMODITIES</u>							
401-512-341-0000 Supplies & Materials	12,000	748.00	0.00	2,034.07	0.00	9,965.93	16.95
401-512-341-0001 Supplies & Matls Chemic	28,000	0.00	0.00	1,236.56	0.00	26,763.44	4.42
401-512-341-0002 Purification Supplies	4,000	0.00	0.00	0.00	0.00	4,000.00	0.00
401-512-343-0000 Automobile Supplies	9,500	912.28	0.00	1,734.77	0.00	7,765.23	18.26
401-512-345-0000 Uniforms	6,000	0.00	0.00	195.97	0.00	5,804.03	3.27
401-512-399-0000 Miscellaneous	34,238	0.00	0.00	125.00	0.00	34,113.00	0.37
TOTAL COMMODITIES	93,738	1,660.28	0.00	5,326.37	0.00	88,411.63	5.68
<u>CAPITAL OUTLAY</u>							
401-512-459-0000 Bond Payable S-1-06-A-R	563,269	46,939.02	0.00	93,878.04	0.00	469,390.96	16.67
401-512-459-0001 Bond Payable S-1-86-B-R	12,962	1,080.16	0.00	2,160.32	0.00	10,801.68	16.67
401-512-459-0002 Ford F-350	6,639	553.21	0.00	1,106.42	0.00	5,532.58	16.67
401-512-459-0003 Sewer Areation Equipmen	26,597	2,248.17	0.00	4,492.05	0.00	22,104.95	16.89
401-512-459-0005 Capital Outlay	25,000	0.00	0.00	0.00	0.00	25,000.00	0.00
TOTAL CAPITAL OUTLAY	634,467	50,820.56	0.00	101,636.83	0.00	532,830.17	16.02
<u>OTHER EXPENDITURES</u>							
401-512-670-0000 Interest & Penalties	11,911	8.58	0.00	3,215.12	0.00	8,695.88	26.99
TOTAL OTHER EXPENDITURES	11,911	8.58	0.00	3,215.12	0.00	8,695.88	26.99
TOTAL SEWER TREATMENT	1,421,581	94,821.64	0.00	203,278.47	0.00	1,218,302.53	14.30

FINANCIAL STATEMENT (UNAUDITED)

AS OF: AUGUST 31ST, 2023

401-SEWER FUND

UTILITY BILLING

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>PERSONAL SERVICES</u>							
401-513-103-0000 Salaries & Wages	17,704	1,293.10	0.00	2,590.50	0.00	15,113.50	14.63
401-513-104-0000 FICA Tax	1,265	92.70	0.00	185.56	0.00	1,079.44	14.67
401-513-105-0000 Group Health Insurance	3,042	295.73	0.00	591.44	0.00	2,450.56	19.44
401-513-106-0000 Retirement	1,667	117.95	0.00	236.07	0.00	1,430.93	14.16
401-513-108-0000 Overtime/ Extra Help	<u>280</u>	<u>17.41</u>	<u>0.00</u>	<u>32.38</u>	<u>0.00</u>	<u>247.62</u>	<u>11.56</u>
TOTAL PERSONAL SERVICES	23,958	1,816.89	0.00	3,635.95	0.00	20,322.05	15.18
<u>CONTRACTUAL SERVICES</u>							
401-513-214-0000 Travel	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL CONTRACTUAL SERVICES	0	0.00	0.00	0.00	0.00	0.00	0.00
<u>COMMODITIES</u>							
401-513-341-0000 Supplies & Materials	<u>4,000</u>	<u>66.25</u>	<u>0.00</u>	<u>174.55</u>	<u>0.00</u>	<u>3,825.45</u>	<u>4.36</u>
TOTAL COMMODITIES	4,000	66.25	0.00	174.55	0.00	3,825.45	4.36
TOTAL UTILITY BILLING	27,958	1,883.14	0.00	3,810.50	0.00	24,147.50	13.63

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND
ADMIN & GENERAL

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>PERSONAL SERVICES</u>							
401-514-103-0000 Salaries & Wages	13,500	225.00	0.00	450.00	0.00	13,050.00	3.33
401-514-104-0000 FICA Tax	1,700	17.22	0.00	34.44	0.00	1,665.56	2.03
401-514-105-0000 Group Health Insurance	540	0.00	0.00	550.00	0.00	10.00	101.85
401-514-106-0000 Retirement	1,750	0.00	0.00	0.00	0.00	1,750.00	0.00
401-514-108-0000 Overtime/Extra Help	1,000	0.00	0.00	0.00	0.00	1,000.00	0.00
TOTAL PERSONAL SERVICES	18,490	242.22	0.00	1,034.44	0.00	17,455.56	5.59
<u>CONTRACTUAL SERVICES</u>							
401-514-218-0000 Postage	9,000	733.23	0.00	1,446.26	0.00	7,553.74	16.07
401-514-220-0000 Advertising	200	0.00	0.00	0.00	0.00	200.00	0.00
401-514-223-0000 Professional Services	29,560	680.00	0.00	2,280.00	0.00	27,280.00	7.71
401-514-226-0000 Insurance & Bonds	9,600	722.37	0.00	1,996.99	0.00	7,603.01	20.80
401-514-226-0001 Insurances & Bonds/GL	22,300	0.00	0.00	9,321.92	0.00	12,978.08	41.80
401-514-230-0000 Contracted Services	20,500	52.50	0.00	986.43	0.00	19,513.57	4.81
401-514-230-0001 Cont Serv/Consent Decre	0	0.00	0.00	0.00	0.00	0.00	0.00
401-514-232-0000 Bank Charges	56	0.00	0.00	0.00	0.00	56.00	0.00
TOTAL CONTRACTUAL SERVICES	91,216	2,188.10	0.00	16,031.60	0.00	75,184.40	17.58
<u>COMMODITIES</u>							
401-514-341-0000 Supplies & Materials	2,000	0.00	0.00	0.00	0.00	2,000.00	0.00
401-514-348-0000 Charges by Other Funds	91,398	3,159.25	0.00	6,318.50	0.00	85,079.50	6.91
401-514-353-0000 Computer Software	11,000	0.00	0.00	13.38	0.00	10,986.62	0.12
401-514-399-0000 Miscellaneous Expenses	1,000	64.60	0.00	123.30	0.00	876.70	12.33
TOTAL COMMODITIES	105,398	3,223.85	0.00	6,455.18	0.00	98,942.82	6.12
<u>CAPITAL OUTLAY</u>							
401-514-465-0000 Depreciation Expense	0	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL CAPITAL OUTLAY	0	0.00	0.00	0.00	0.00	0.00	0.00
<u>OTHER EXPENDITURES</u>							
401-514-568-0000 Transfers	0	0.00	0.00	0.00	0.00	0.00	0.00
401-514-670-0000 Interest & Penalties	1,000	0.00	0.00	0.00	0.00	1,000.00	0.00
401-514-676-0000 Regulatory Commission	12,000	0.00	0.00	5,042.95	0.00	6,957.05	42.02
401-514-677-0000 R & R Requirement	66,650	5,437.59	0.00	5,437.59	0.00	61,212.41	8.16
401-514-677-0001 SB234 Requirement	150,000	13,153.88	0.00	13,153.88	0.00	136,846.12	8.77
TOTAL OTHER EXPENDITURES	229,650	18,591.47	0.00	23,634.42	0.00	206,015.58	10.29
TOTAL ADMIN & GENERAL	444,754	24,245.64	0.00	47,155.64	0.00	397,598.36	10.60

CITY OF ELKINS
FINANCIAL STATEMENT (UNAUDITED)
AS OF: AUGUST 31ST, 2023

401-SEWER FUND

CAPITAL OUTLAY

% OF YEAR COMPLETED: 16.67

EXPENDITURES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR PO ADJUST.	Y-T-D BALANCE	TOTAL ENCUMBERED	BUDGET BALANCE	% OF BUDGET
<u>CONTRACTUAL SERVICES</u>							
401-515-216-0000 Depreciation Acc Mtn Tr	0	0.00	0.00	9,984.00	0.00 (	9,984.00)	0.00
401-515-216-0001 Depreciation Acct Mnt/	0	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL CONTRACTUAL SERVICES	0	0.00	0.00	9,984.00	0.00 (	9,984.00)	0.00
<u>TOTAL CAPITAL OUTLAY</u>							
TOTAL CAPITAL OUTLAY	0	0.00	0.00	9,984.00	0.00 (	9,984.00)	0.00
<u>TOTAL EXPENDITURES</u>							
TOTAL EXPENDITURES	3,107,952	192,682.07	0.00	437,409.03	0.00	2,670,542.97	14.07
<u>REVENUE OVER/(UNDER) EXPENDITURES</u>							
REVENUE OVER/(UNDER) EXPENDITURES	(685,519)	14,398.24	0.00 (	13,804.80)	0.00 (	671,714.20)	2.01



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	Unfinished business
Category:	Presentation
Agenda Item Name:	Discussion on Phase III Projects with Engineering Firm B&N
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. ElkinsCSSImpPh3Agreement 9-18-2023

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

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

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1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of September 18, 2023 ("Effective Date") between
City of Elkins Sanitary Board ("Owner") and
Burgess & Niple, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Combined Sewer System Improvements, Phase 3 ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:
Basic Services – Study and Report, Preliminary Design, Final Design, Bidding or Negotiating, Construction (including Resident Project Representative), and Post Construction Phases, inclusive of Additional Services as described herein.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

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

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make

resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals,

revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.

- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least ~~10~~ 30 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such

additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

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

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on ~~seven~~ 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are

or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

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

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of

Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. **Not used.**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.

K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

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

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner:

City of Elkins Sanitary Board

By: _____

Print name: **The Honorable Jerry A. Marco**

Title: **Chairman**

Date Signed: _____

Engineer:

Burgess & Niple, Inc.

By: _____

Print name: **Rodney D. Holbert, PE**

Title: **Vice President**

Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

C00056-00

State of: _____

West Virginia

Address for Owner's receipt of notices:

401 Davis Avenue

Elkins, West Virginia 26241

Address for Engineer's receipt of notices:

4424 Emerson Avenue

Parkersburg, West Virginia 26104

Designated Representative (Paragraph 8.03.A):

Whitney Hymes

Title: _____

Wastewater System Chief

Operator

Phone Number: _____

(304) 636-1122

E-Mail Address: _____

whymes@cityofelkinswv.com

Designated Representative (Paragraph 8.03.A):

Michael P. Davis, PE

Title: _____

Project Engineer

Phone Number: _____

(304) 485-8541

E-Mail Address: _____

michael.davis@burgessniple.com

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
2. Not used.
3. Not used.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solutions to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project. Governmental authorities will be contacted to solicit their comments and identify their requirements applicable to the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
 10. Not used.
 11. Not used.
 12. Not used.
 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables:
 - a. Attend a kickoff meeting with Owner staff to discuss the goals of the project. It is anticipated a site visit will be required for each of the proposed sites.
 - b. Prepare a flow evaluation of the Steward Avenue Lift Station to determine proper sizing. Along with the current flows, an estimated future flow will be developed for potential growth along the intersection of Corridor H and North Randolph Avenue.
 - c. Review the anticipated scope of improvements necessary to separate the combined sewers upstream of the Steward Avenue Lift Station.
 - d. Determine the sizing and layout of a new south interceptor beginning near the Glendale Lift Station and extending east to the crossing of the Tygart Valley River for the Cherokee Lift Station.
 - e. Evaluate a maximum of three alternatives for the Steward Avenue Sewer Separation and the South Interceptor Sewer Relocation project, which will include preparation of cost estimates, alignments, and advantages/disadvantages of the alternatives.
 - f. Prepare a Preliminary Engineering Report as defined by requirements of the West Virginia Infrastructure and Jobs Development Council summarizing the results of the evaluation.
 15. Furnish 3 review copies of the Report and any other Study and Report Phase deliverables to Owner within 45 days of the Effective Date and review it with Owner. Within 14 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish 5 copies of the revised Report and any other Study and Report Phase deliverables to the Owner within 14 days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 3. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information. Surveys and collection of topographic information will be provided under Additional Services in accordance with Paragraph A2.02.
 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for

Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables: None identified.
 10. Furnish 3 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 90 days of authorization to proceed with this phase, and review them with Owner. Within 14 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 3 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 14 days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be

applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables:
 - a. Assist the Owner with preparing applications for permits from the following agencies:
 - i. West Virginia Bureau for Public Health
 - ii. West Virginia Division of Highways
 - iii. U.S. Army Corps of Engineers
 - iv. West Virginia Division of Natural Resources, Office of Land and Streams
 - v. West Virginia Department of Environmental Protection.
 - b. Provide bi-weekly status reports to the Owner during the design phase.
 - c. Attend a meeting with the Owner prior to bidding to discuss the plans and specifications. Based upon results of the meeting, make final changes to the contract documents prior to advertising for bids.
 10. Furnish for review by Owner, its legal counsel, and other advisors, 3 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within 120 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 14 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of such documents to Owner within 14 days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled

Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is two. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 - 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 - 4. Consult with Owner as to the qualifications of prospective contractors.
 - 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents)

prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:
 - a. Upon award of the Construction Contract, the Engineer shall furnish up to six (6) executed copies of each of the Contract Documents.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.

4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as

Exhibit A – Engineer's Services

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indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and

hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will

constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any

remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: Prepare a SharePoint website for the Owner to have access to project files during the construction phase. Attend a minimum of six Sanitary Board Meetings during the project. Perform construction staking for the Contractor.
 25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
 26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables: Attend startup of improved, replaced or new lift stations and/or treatment plant as applicable.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;

- b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
- 8. Furnishing services of Consultants for other than Basic Services.
- 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
- 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
- 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
- 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
- 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.

Exhibit A – Engineer's Services

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16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or

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obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
9. Provide soil borings at locations recommended by Engineer and a geotechnical report summarizing the results of such borings.
10. Perform field surveying of project areas necessary to supplement topographic mapping provided by Owner. The purpose of the field surveying is to further identify within the zone of influence of construction above-ground features and subsurface utilities (locations identified/marked by utility owners) that may be impacted by construction activities. Additionally, perform surveying for the purpose of establishing benchmarks for the Contractor's use during construction of Project. The number and locations of benchmarks will be determined by the Engineer. Further includes manhole inspections and smoke testing of existing sewers.

11. Assist with completing preliminary application for funding assistance for submittal to the West Virginia Infrastructure and Jobs Development Council (WVIJDC). Such assistance will include:
 - a. Preparing and submitting online forms required of the WVIJDC.
 - b. Attending one meeting of the WVIJDC's Funding Committee and one meeting of the full Council of the WVIJDC.
 - c. Providing information to the Owner's Public Service Commission of West Virginia (PSC) Counsel for completion of the Project Ordinance.
 - d. Assisting the Region VII Planning & Development Council with funding applications for a maximum of three sources.
12. Prepare an update to the Asset Management Plan, if required by the West Virginia Department of Environmental Protection.
13. Perform sewer cleaning and closed-circuit televising (CCTV) using a subconsultant.
14. Prepare exhibits for use of the Owner in acquiring easements and/or rights-of-way. Includes changes to the plans to meet accepted requests from the property owners during negotiations.
15. Assist Owner with securing a License Agreement with the West Virginia State Rail Authority.
16. Prepare a Post Construction Monitoring Report as required by the Owner's Long-Term Control Plan for Combined Sewer Overflows.

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Owner's Responsibilities

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

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 5. **Unless otherwise identified in A2.02**, environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

T. Perform or provide the following:

1. Acquire the quantity of easements required by the funding agency(s) necessary to obtain their authorization to advertise for bids and close project financing. Upon acquiring the required easements, the Owner will seek authorizations to advertise for bids and close project financing

This is **EXHIBIT C**, consisting of 6 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated September 18, 2023.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

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

1. A Lump Sum amount of \$11,200 based on the following estimated distribution of compensation :

a. Study and Report Phase	\$	11,200
b. Preliminary Design Phase	\$	TBD
c. Final Design Phase	\$	TBD
d. Bidding and Negotiating Phase	\$	TBD
e. Construction Phase	\$	TBD
f. Post-Construction Phase	\$	TBD

The amounts identified above as TBD (“to be determined”) will be provided upon request of Owner and included in an Amendment(s) to this Agreement.

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses: None.

- B. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- C. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **24** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

COMPENSATION PACKET RPR-2: Resident Project Representative – Standard Hourly Rates

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

C2.04 *Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment*

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

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. If authorized in advance by Owner, overtime work will be billed at rates equal to the Standard Hourly Rates multiplied by a factor of 1.5. The total compensation under this paragraph will be determined following completion of Final Design Phase services and added by amendment to this Agreement.

B. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.0**.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

COMPENSATION PACKET AS-1: Additional Services – Standard Hourly Rates

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

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

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

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$27,900, which is based on the following assumed distribution of compensation for the professional services rendered in accordance with paragraphs of Exhibit A listed below (note that fees stated as "To Be Determined" or "TBD" will be inserted into Agreement following the report phase):

	<i>Fee</i>	<i>Exhibit A Paragraphs</i>
a. Geotechnical Investigations	TBD	A2.02A.9
b. Engineering Surveys and Mapping	\$24,100	A2.02A.10
c. Funding Application Assistance	\$3,800	A2.02A.11
d. Asset Management Plan Assistance	TBD	A2.02A.12
e. Sewer Cleaning & Televising	TBD	A2.02A.13
f. Easement Assistance	TBD	A2.02A.14
g. Railroad Permit Assistance	TBD	A2.02A.15
h. Post Construction Monitoring Report	TBD	A2.02A.16

Engineer may alter the distribution of compensation between the individual tasks noted above to be consistent with the services rendered. The estimated total fee shall not be exceeded unless approved by the Owner. Compensation for all other Additional Services shall be per the Standard Hourly Rates Method of Payment.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.

Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.

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2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.0.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment for Additional Services:*

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

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

- | | | |
|----|--|------------------------------|
| 1. | Local travel (auto) | \$0.655 per mile * |
| 2. | Other Owner authorized travel including meals and lodging | At actual out of pocket cost |
| 3. | Other reimbursable expenses, including equipment rental and temporary personnel. | At actual out of pocket cost |

* It is understood that the reimbursable cost for local travel shown on this Appendix 1 is based on the optional standard mileage rate established by the Internal Revenue Service (IRS). It is further understood that any future modifications to the optional standard mileage rate by the IRS will effectively modify the reimbursable costs for local travel no sooner than the effective date established by the IRS.

This is **Appendix 2 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

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

	Minimum	Maximum
Principals/Associates	\$180.00	\$260.00
Project Director	170.00	230.00
Staff Consultant	170.00	230.00
Senior Staff		
Architect	140.00	219.00
Chemical Engineer	140.00	209.00
Civil Engineer	140.00	209.00
Electrical Engineer	140.00	245.00
Environmental Engineer	140.00	209.00
Environmental Scientist	140.00	209.00
Geotechnical Engineer	140.00	239.00
Hydrogeologist	140.00	209.00
Geologist	140.00	209.00
Instrumentation Engineer	140.00	235.00
Mechanical Engineer	140.00	225.00
Sanitary Engineer	140.00	209.00
Structural Engineer	140.00	225.00
Staff Categories		
Administrative Aide	60.00	110.00
Architect	95.00	155.00
CADD Operator	72.00	130.00
Chemical Engineer	101.00	159.00

	Minimum	Maximum
Civil Engineer	99.00	159.00
Designer	95.00	180.00
Drafter	65.00	115.00
Electrical Engineer	105.00	169.00
Engineering Aide	62.00	132.00
Environmental Scientist	85.00	152.00
Estimator	90.00	157.00
Geologist	90.00	168.00
Geotechnical Engineer	100.00	168.00
Hydrogeologist	100.00	168.00
Instrumentation Engineer	99.00	168.00
Mechanical Engineer	99.00	168.00
Project Representative	78.00	162.00
Sanitary Engineer	99.00	168.00
Structural Engineer	99.00	168.00
Surveyor	95.00	168.00
Surveyor Crewman	69.00	112.00
Technician	62.00	152.00

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

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

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- ~~6.~~ Not used.
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
 - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

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

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. If directed by Engineer, obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

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

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Combined Sewer System Improvements, Phase 3

OWNER: City of Elkins Sanitary Board

CONTRACTOR: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: _____

ENGINEER: Burgess & Niple, Inc.

NOTICE DATE: _____

To: _____
City of Elkins Sanitary Board
Owner

And To: _____
Contractor

From: _____
Burgess & Niple, Inc.
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated September 18, 2023, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit* **Not used.**

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:
 - 1. By Engineer: Refer to Engineer's Certificate of Insurance on following pages.



CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 1

DATE (MM/DD/YYYY)
03/24/2023

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

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

PRODUCER Willis Towers Watson Northeast, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 37205191 USA		CONTACT NAME: Willis Towers Watson Certificate Center PHONE (A/C No. Ext): 1-877-945-7378 FAX (A/C No): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: National Union Fire Insurance Company of P	NAIC # 19445
		INSURER B: Continental Insurance Company	35289
		INSURER C: New Hampshire Insurance Company	23841
		INSURER D: Continental Casualty Company	20443
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: W28445440

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			GL 5268138	04/01/2023	04/01/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			CA 4489627	04/01/2023	04/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			CUE 6080621408	04/01/2023	04/01/2024	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N No	N/A	WC 015893628	04/01/2023	04/01/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			AEH008215011	04/01/2023	04/01/2024	Each Claim: \$10,000,000 Aggregate: \$10,000,000 Deductible \$500,000

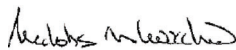
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Umbrella/Excess policy does not sit excess over Professional Liability coverage.

City of Elkins Sanitary Board is included as an Additional Insured as respects to General Liability, Auto Liability and Umbrella Liability when required by written contract..

CERTIFICATE HOLDER

CANCELLATION

City of Elkins Sanitary Board 401 Davis Avenue Elkins, WV 26241	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2016/03)

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SR ID: 23907407

BATCH: 2906699

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This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. In the event the Owner and Engineer cannot resolve a dispute in accordance with Paragraph 6.08, it is agreed that the dispute shall be resolved in a court of the State of West Virginia, Randolph County.**

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement.

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

This is **EXHIBIT J**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

Special Provisions

See State Subagreement Clauses attached

STATE SUBAGREEMENT CLAUSES

§5.2.6

1. Applicability and scope of this subpart.

(a) This subpart applies to all State recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

2. Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §5.2.6 and the appropriate clauses in §5.2.6.1, in each procurement subagreement.

3. Subagreement Provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

- (a) Nature, scope and extent of work to be performed;
- (b) Timeframe for performance;
- (c) Total cost of the subagreement; and
- (d) Payment provisions.

4. Labor standards provisions.

Recipients shall maintain a copy of EPA Form 5720-4 "Labor Standards Provisions for Federally Assisted Construction Contracts" in each subagreement for construction (as defined by the Secretary of Labor). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a-276a-7); the Copeland Regulations (29 CFR Part 3); the Contract Work Hours and Safety Standards Act-Overtime Compensation (940 U.S.C.327-333) and the nondiscrimination provisions in Executive Order 11246, as amended.

5. Patents data and copyrights clause.

Except for construction grant subagreements, all subagreements shall include notice of Federal requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with

respect to any discovery or invention that arises or is developed in the conduct of work under a subagreement. This notice shall also include Federal requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

6. Violating facilities clause.

Subagreements in excess of \$100,000 shall contain a provision that requires engineer compliance with all applicable standards, orders or requirements issued under Section 06 of the Clean Air Act (42 U.S.C. 1857 (a) Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

7. Energy efficiency clause.

Subagreements shall comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

§5.2.6.1 Model Subagreement clauses.

1. Supersession

The recipient and the engineer agree that this and other appropriate clauses in Title 47 Series 31 §5.2.6 apply to that work eligible for STATE assistance to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. Privity of subagreement

This subagreement is expected to be funded in part with funds from the State Revolving Fund. Neither the United States, West Virginia, nor any of its departments, agencies or employees is, will be, a party to this subagreement or any lower tier sub-agreement. This subagreement is subject to State regulations contained in Title 47 Series 31 in effect on the date of the loan agreement for this project.

3. Remedies

Unless otherwise provided in this subagreement, all claims, counter-claims, disputes and other matters in question between the recipient and the engineer arising out of, or relating to, this subagreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

4. Audit; Access to Records

- (a) The engineer shall maintain books; records, documents and other evidence directly pertinent to performance on State funded work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied. The engineer shall also maintain the financial information and data used in the preparation of support of the cost submission required under for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The engineer will provide proper facilities for such access and inspection.
- (b) The engineer agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated subagreement amendments affecting the subagreement price.
- (c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or auditing agency (ies).
- (d) The engineer agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).
- (e) Records under paragraphs (a) and (b) above shall be maintained by the engineer during performance on State assisted work under this subagreement and for three (3)

years beyond performance certification. In addition, those records that relates to any controversy arising under a State loan agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the engineer for such time until settlement has occurred.

(f) Access to records is not limited to the required retention periods. The authorized representative designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all subagreements regardless of the type of subagreement, and all subagreement amendments. In addition this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments;

(1) To the extent the records pertain directly to subagreement performance;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(3) If the subagreement is terminated for default or for convenience.

5. Covenant Against Contingent Fees

The engineer assures that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the engineer for the purpose of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement with liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

6. Gratuities

(a) If the recipient finds after a notice hearing that the engineer or any of the engineer's agents or representatives offered or gave gratuities (in the form of

entertainment, gifts or otherwise) to any official, employee or agent of the recipient, or the State in an attempt to secure a subagreement or favorable treatment in awarding, amendment or making any determinations related to the performance of this subagreement, the recipient may, be written notice to the engineer, terminate this subagreement. The recipient may also pursue other rights and remedies that the law or this subagreement provides.

However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this subagreement.

(b) In the event this subagreement is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the engineer as it could pursue in the event of a breach of the subagreement by the engineer, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the engineer incurs in providing any such gratuities to any such officer or employee.

7. Responsibility of the Engineer

(a) The following clause applies only to subagreements for services.

(1) The Engineer is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the engineer under this subagreement. If the subagreement involves environmental measurements or data generation, the engineer shall comply with State quality assurance requirements. The engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(2) The engineer shall perform the professional services necessary to accomplish the work specified in this subagreement in accordance with their subagreement and applicable State requirements in effect on the date of execution of the loan agreement for this project.

(3) The owner's or State's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the engineer of responsibility for the technical adequacy of his work. Neither the owner's nor State's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this subagreement.

(4) The engineer shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or the State caused by the engineer's negligent performance of any of the services furnished under this subagreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The engineer shall not be responsible for any time delays in the project caused by circumstances beyond the engineer's control.

(5) The engineer's obligations under this clause are in addition to the engineer's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the engineer for faulty materials, equipment or work.

8. Final Payment

Upon satisfactory completion of the work performed under this subagreement, as a condition before final payment under this subagreement or as a termination settlement under this subagreement the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this subagreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this subagreement, by State law or otherwise expressly agreed to by the parties to this subagreement or settlement upon termination of this subagreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this subagreement or applicable performance and payment bonds.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 18, 2023.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

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

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

OWNER:

ENGINEER:

By: _____
Print
name: _____

Title: _____

Date Signed: _____

By: _____
Print
name: _____

Title: _____

Date Signed: _____



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	Unfinished business
Category:	Presentation
Agenda Item Name:	Discussion Concerning Property at 116 1/2 1st Street
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	None



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	Unfinished business
Category:	Presentation
Agenda Item Name:	Discussion on Replacement/Repair of Water and Sewer Lines in the City of Elkins
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	None



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	New business
Category:	Presentation
Agenda Item Name:	Approval of Sewer Invoices
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	None



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	New business
Category:	Presentation
Agenda Item Name:	General Engineering Agreement for Burgess & Niple
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. BNGeneral Agreement 9-18-2023 2. Task Order 01 Misc Engineering

**AGREEMENT BETWEEN THE
CITY OF ELKINS SANITARY BOARD
AND
BURGESS & NIPLE, INC.
FOR
ENGINEERING SERVICES**

SECTION I – GENERAL

This Agreement is made effective as of the ____ day of _____, 20____, by and between the City of Elkins Sanitary Board, Elkins, West Virginia, a municipal utility of the State of West Virginia, hereinafter referred to as the “Board”, and Burgess & Niple, Inc., 4424 Emerson Avenue, Parkersburg, West Virginia 26104, hereinafter referred to as “B&N”.

WHEREAS, the Board from time to time requires professional services of B&N in connection with various matters; and

WHEREAS, B&N has performed satisfactorily on previous assignments for the Board and has knowledge of the Board’s needs and facilities; and

WHEREAS, this Agreement defines and establishes conditions upon which the Board may authorize B&N to provide various professional services in connection with operating, maintaining, upgrading and improving the Board’s wastewater system and B&N agrees to provide such professional services; and

WHEREAS, B&N shall describe, in writing in the form of Attachment C included with this Agreement, the scope of professional services and the fee structure related to such assignments for which the Board desires to utilize the services of B&N, which will be subject to mutual agreement of the Board and B&N prior to any performance thereof.

NOW, THEREFORE, the Board and B&N, in consideration of their mutual promises and covenants stated herein, agree as follows:

SECTION II – SCOPE OF ENGINEERING SERVICES

- A. Upon request of the Board and agreement of B&N as provided herein, B&N shall provide professional services on an as-needed basis that may include, but not be limited to, the following:
1. Preparing reports, studies, facilities plans, master plans, funding applications, plans (preliminary and final designs), specifications, bid packages and contract documents necessary for construction of improvements;
 2. Providing professional services during the construction phase, which may include construction contract administration and resident project representative services;
 3. Participating in meetings and inspections with regulatory agencies;

4. Preparing reports and correspondence related to compliance with the requirements of regulatory agencies;
5. Assisting with establishing the format and structure of databases of electronic data files;
6. Surveying and related services, including those associated with:
 - a. Developing, preparing, modifying or populating the Geographic Information System (GIS).
 - b. Establishing the boundary of property or easements, which may further include researching property records and preparing exhibits of easements or plats of property.
7. Preparing specifications for materials to be bid and purchased;
8. Performing tasks associated with “Sanitary Sewer Evaluation Surveys” (SSES) and Infiltration and Inflow (I/I) investigations. These services may include, among others, smoke testing, dye testing, flow monitoring, reviewing videos of sewer CCTV, evaluating sewer conditions, rainfall monitoring and computer modeling;
9. Reviewing plans submitted by developers for proposed improvements affecting wastewater systems;
10. Preparing estimates of costs including those associated with operation and maintenance (O&M) and construction;
11. Assisting with preparing and updating the Five-Year Plan or Capital Improvements Plan (CIP);
12. Assisting with addressing matters associated with National Pollutant Discharge Elimination System (NPDES) permits (wastewater).

SECTION III – PROCEDURE FOR APPROVAL OF SERVICES

- A. In order to initiate an assignment of professional services, the Board shall request B&N to prepare and deliver to Board a Task Order, which includes a written description of the proposed assignment of services the Board desires B&N to perform.
- B. Promptly upon request of such proposal from the Board, B&N shall respond using the form of Attachment C to specify in writing the professional services necessary and appropriate for such proposal and propose the form of fee to be charged for the described services, including whether the fee will be on a lump sum or hourly rate basis. If B&N is to be compensated on an hourly rate basis, see Attachments A and B of this Agreement for the hourly rates and reimbursable expenses applicable to Task Orders.

- C. Only after receipt by B&N of an executed copy of the Task Order may B&N proceed to perform and complete such assignment of professional services.

SECTION IV – SERVICES TO BE FURNISHED BY THE BOARD

- A. It is understood B&N may require information and assistance from the Board to complete assignments. Assistance provided by the Board may include, but will not be limited to, the following:
 - 1. Providing available information including existing engineering reports; soil borings and related reports; correspondence; plans and specifications; topographic maps; boundary surveys; plats and legal descriptions; tax maps; and shop drawings insofar as they are applicable to a project assignment and are available or may be secured by the Board's officers, employees, and agents.
 - 2. Legal services, land title research, and other services necessary to assure title as required for all property, land and water rights, easements and rights-of-way, and assume responsibility for the adequacy of such titles.
 - 3. Sewer cleaning and televising (CCTV), including an electronic version of the results of the CCTV efforts.
 - 4. Assisting B&N during the performance of smoke and/or dye testing.
 - 5. Providing flow monitors and rainfall gauges.
 - 6. Providing for B&N's access to public and private properties, as required to perform professional services requested by the Board.

SECTION V – PAYMENT FOR PROFESSIONAL SERVICES

- A. B&N shall submit invoices monthly for the professional services provided in accordance with this Agreement. Invoices will be due and payable upon receipt by the Board. Invoices remaining unpaid for a period exceeding 60 calendar days from the date of receipt shall accrue interest at a rate of one percent per month, beginning on the date of the invoice.
- B. The Board agrees to pay B&N as compensation for professional services performed for the Board pursuant to assignments authorized in accordance with **SECTION III** of this Agreement. The amounts to be paid for monthly invoices shall be made in accordance with the following terms:
 - 1. For payment made on a lump sum basis, the amount of each monthly invoice will be based on the B&N's estimate of the percentage of professional services completed to-date less the amounts previously paid.
 - 2. For payment made on an hourly rate basis, the amount of each monthly invoice will be based on the hours charged per staff category multiplied by the applicable hourly rate plus reimbursable expenses.

- a. If B&N utilizes the professional services of a subconsultant, the amount charged the Board will equal the amount charged B&N by the subconsultant multiplied by a factor of 1.10.
- b. It is understood that the hourly rates and reimbursable expenses are subject to annual adjustment effective on January 1 of each calendar year.
- c. Reimbursable expenses shall include the actual out-of-pocket expenses associated with the performance of the professional services, including transportation to and from the B&N's and the Board's offices. In addition, the Board shall reimburse B&N for costs associated with temporary personnel, equipment rental and reasonable travel expenses. Attachment B identifies the costs allocable to reimbursable expense categories.

SECTION VI – NO ASSIGNMENT WITHOUT CONSENT

- A. The Board and B&N have bound themselves, their members, successors, executors, administrators, and assigns to this Agreement and to all covenants in this Agreement. Neither the Board nor B&N shall assign or transfer its rights and/or obligations under this Agreement without the written consent of the other party hereto.

SECTION VII – TERMINATION CLAUSE

- A. This Agreement may be terminated by either party upon 90 days' prior written notice for cause or for no cause.
- B. Nothing in this Agreement shall commit or require the Board to request B&N perform any professional engineering or related services pursuant to this Agreement. Any and all work or services requested from B&N shall be at the Board's sole judgment and discretion.
- C. Notwithstanding the termination of this Agreement, B&N shall be entitled to payment for all work or services authorized by B&N and performed prior to the effective date of the termination, together with reimbursable expenses.

SECTION VIII - STANDARD OF PERFORMANCE

- A. B&N shall perform its services in accordance with the standards for such professional services which prevail in the area in which, and at the time that, those services are rendered. No warranty, guarantee, or representation, either expressed or implied, is included or intended in any materials, plans, specifications, designs, reports, or other services provided by B&N.

SECTION IX – PERIOD OF AGREEMENT

- A. It is understood that this Agreement shall remain valid for a period of one (1) year, with an option to renew at the end of each successive year for a total of five (5) years from the date first above written. Each renewal period is for a period of one year and renews automatically at the end of the preceding year unless communicated otherwise in writing by either party.

SECTION X – OTHER PROVISIONS OF THE AGREEMENT

- A. This Agreement is made subject to all applicable provisions of the West Virginia Code and its application and interpretation shall be governed by West Virginia law. The parties hereto consent to the jurisdiction of the courts located in the State of West Virginia and agree that any and all actions or lawsuits shall be brought and maintained before a court located in Randolph County, West Virginia.
- B. B&N will carry and maintain liability and property damage insurance, including professional errors and omissions insurance, in the amounts shown on the attached certificates of insurance. B&N will carry and maintain workers compensation and other employment related insurance in accordance with the requirements of the West Virginia law. It is further understood that insurances coverages shall be provided for Comprehensive General Liability, Automobile Liability/Bodily Injury, Excess/Umbrella Liability, Workers Compensation, and Employer Liability comporting with the minimum requirements as set out by pertinent statutory minimums with Comprehensive Liability being no less than \$2,000,000 and the remainder being no less than \$1,000,000 save for Workers' Compensation which must comport with statutory requirements and at the levels set by West Virginia law.

SECTION XI – BANKRUPTCY

- A. In the event B&N files for bankruptcy protection, this Agreement is automatically null and void, and is terminated without further order.

SECTION XII - SIGNATURES

IN WITNESS WHEREOF, the Board and B&N hereby approve and accept the terms and conditions of this Agreement. To demonstrate said acceptance and approval, the parties hereto by their duly authorized representatives have executed this Agreement as of the day and year first above mentioned.

CITY OF ELKINS SANITARY BOARD
a municipal utility

By: _____
The Honorable Jerry A. Marco

Its: _____
Chairman

BURGESS & NIPLE, INC.

By: _____
Rodney D. Holbert, PE

Its: _____
Vice President

By: _____
Michael P. Davis, PE

Its: _____
Project Manager
CDR:jkm

**ATTACHMENT A
TO
2023 HOURLY RATES**

	Minimum	Maximum
Principals/Associates	\$180.00	\$260.00
Project Director	170.00	230.00
Staff Consultant	170.00	230.00
Senior Staff		
Architect	140.00	219.00
Chemical Engineer	140.00	209.00
Civil Engineer	140.00	209.00
Electrical Engineer	140.00	245.00
Environmental Engineer	140.00	209.00
Environmental Scientist	140.00	209.00
Geotechnical Engineer	140.00	239.00
Hydrogeologist	140.00	209.00
Geologist	140.00	209.00
Instrumentation Engineer	140.00	235.00
Mechanical Engineer	140.00	225.00
Sanitary Engineer	140.00	209.00
Structural Engineer	140.00	225.00
Staff Categories		
Administrative Aide	60.00	110.00
Architect	95.00	155.00
CADD Operator	72.00	130.00
Chemical Engineer	101.00	159.00
Civil Engineer	99.00	159.00
Designer	95.00	180.00
Drafter	65.00	115.00
Electrical Engineer	105.00	169.00
Engineering Aide	62.00	132.00
Environmental Scientist	85.00	152.00
Estimator	90.00	157.00
Geologist	90.00	168.00
Geotechnical Engineer	100.00	168.00
Hydrogeologist	100.00	168.00
Instrumentation Engineer	99.00	168.00
Mechanical Engineer	99.00	168.00
Project Representative	78.00	162.00
Sanitary Engineer	99.00	168.00
Structural Engineer	99.00	168.00
Surveyor	95.00	168.00
Surveyor Crewman	69.00	112.00
Technician	62.00	152.00

ATTACHMENT B

**BURGESS & NIPLE, INC.
2023 REIMBURSABLE COSTS**

- | | |
|---|---|
| 1. Local travel (auto) | At the current rate accepted
by the Federal Government |
| 2. Other BOARD-authorized travel
including meals and lodging | At cost |
| 3. BOARD-authorized subconsultant services | Subconsultant invoice amount plus 10%
markup |
| 4. Other reimbursable expenses | At cost |

ATTACHMENT C

**REQUEST FOR PROFESSIONAL SERVICES
BY THE CITY OF ELKINS SANITARY BOARD
TO
BURGESS & NIPLE, INC.**

Task Order No. ____

In accordance with Section III of the Agreement dated and effective as of _____, 2023, the Board submitted a request to B&N for professional services. The following is the B&N's submitted response.

General Description of Professional Services Requested

Response of B&N Describing, in detail, the Scope of Professional Services to be Provided

Description of Form and Limits, if Any, of Compensation to be Paid for Services Described Above

Description of scope of professional services and form of compensation respectfully submitted by:

BURGESS & NIPLE, INC.

By: Rodney D. Holbert, PE
Its: Vice President

By: Michael P. Davis, PE
Its: Project Manager

In accordance with the terms of the Agreement, the professional services and form of compensation as described above are hereby authorized by:

CITY OF ELKINS SANITARY BOARD

By: The Honorable Jerry A. Marco
Its: Chairman

Dated: _____

ATTACHMENT C
REQUEST FOR ENGINEERING AND RELATED SERVICES
BY THE CITY OF ELKINS SANITARY BOARD
TO
BURGESS & NIPLE, INC.

Task Order No.
2023-01
Miscellaneous Professional Services

In accordance with Section III of the Agreement dated and effective as of TBD, 2023 the Board submitted a request to B&N for professional services. The following is B&N's submitted response.

General Description of Professional Services Requested

The Board requires the professional services of B&N to complete various assignments, at its convenience, on an as-needed and as-requested basis. These assignments may vary in size, scope, complexity, or duration and involves the Board's wastewater system.

Response of B&N Describing, in detail, the Scope of Professional Services to be Provided

It is understood that assignments identified by the Board to be completed in accordance with this Task Order may vary in size, scope, complexity, and duration. The professional services provided in accordance with this Task Order may include, but may not be limited to, the following:

1. Monitoring or evaluating portions of the wastewater system.
2. Preparing reports, plans, specifications, permit applications or cost estimates for projects.
3. Preparing bidding forms, specifications or other relevant documents associated with the Board's purchase of equipment or materials.
4. Reviewing plans, specifications, calculation, reports or costs estimates of improvements proposed by developers.
5. Assisting with the review or development of codes, ordinances, resolutions or policies.
6. Attending meetings with the Board or its designated representatives.
7. Participating in meetings and evaluations with regulatory agencies.
8. Assisting with preparing mapping, including field surveying and data collection associated with populating the Geographic Information System (GIS).
9. Preparing forms, reports or correspondence related to compliance with the requirements of State or Federal regulatory agencies.
10. Assisting with preparing and updating the Capital Improvements Plan.
11. Performing tasks associated with "Sanitary Sewer Evaluation Surveys" (SSES) and Infiltration and Inflow (I/I) investigations. These services may include, among others, smoke testing, dye testing, flow monitoring, reviewing videos of sewer CCTV, evaluating sewer conditions, rainfall monitoring and computer modeling.

The following is further understood:

- This Task Order does not preclude the Board from requesting and requiring a separate Task Order for any assignment it deems appropriate.
- The Board may request B&N to provide an estimate of the fee associated with any assignment authorized in accordance with this Task Order.

Description of Form and Limits, if Any, of the Compensation to be Paid for the Services Described Above

The Board agrees to pay B&N's hourly rates and reimbursable expenses as compensation for the professional services performed for the Board pursuant to services requested and authorized in accordance with this Task Order. The hourly rates and reimbursable expenses are set forth in Attachments A and B of the Agreement, respectively. A fee limit is not applicable for this Task Order. However, a fee limit may be applicable to individual assignments issued by the Board.

Description of scope of work and form of compensation respectfully submitted by:

BURGESS & NIPLE, INC.

By: _____
Rodney D. Holbert, PE
Its: Vice President

By: _____
Michael P. Davis, PE
Its: Project Manager

In accordance with the terms of the Agreement, the professional services and form of compensation as described above are hereby authorized by:

CITY OF ELKINS SANITARY BOARD

By: _____
The Honorable Jerry A. Marco
Its: Chairman

Dated: _____



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 18, 2023
Section:	New business
Category:	Presentation
Agenda Item Name:	Discussion of Incident on Beverly 5 Lane
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	None