

Jefferson County Industrial Development Agency
800 Starbuck Avenue, Suite 800
Watertown, New York 13601
Telephone: (315) 782-5865 or (800) 553-4111 Facsimile (315) 782-7915
www.jcida.com

Notice of Board Meeting

Date: January 20, 2022

To: John Jennings
David Converse
W. Edward Walldroff
Paul Warneck
William Johnson
Lisa L'Huillier

From: Chairman Robert Aliasso

Re: Notice of Board of Directors' Meeting

=====

The Jefferson County Industrial Development Agency will hold their monthly Board Meeting on **Thursday, February 3, 2022 at 8:30 a.m.** in the board room at 800 Starbuck Avenue, Watertown, NY.

The live stream link will be available at www.jcida.com.

Zoom:
<https://us02web.zoom.us/j/84355250468?pwd=R0t4VjRPdGJBZDJrL2JQYVVjKytDdz09>
If the link doesn't work, click on Join Meeting and enter the information below:
Meeting ID: 843 5525 0468
Passcode: 011440
1-929-205-6099 US (New York)

Please confirm your attendance with Peggy Sampson pssampson@jcida.com at your earliest convenience.

pss

c: David Zembiec, CEO
Marshall Weir
Lyle Eaton
Christine Powers
Greg Gardner
Kent Burto
Rob Aiken
Justin Miller, Esq.
Media

BOARD MEETING AGENDA
Thursday, February 3, 2022 - 8:30 a.m.

- I. Call to Order**
- II. Pledge of Allegiance**
- III. Privilege of the Floor**
- IV. Minutes – January 6, 2022**
- V. Treasurer’s Report – January 31, 2022**
- VI. Committee Reports**
 - a. Alternative Energy Ad Hoc Committee**
 - b. Building and Grounds Ad Hoc Committee**
 - c. Loan Review Committee**
 - i. Resolution No. 02.03.2022.01 for April Miralles d/b/a Pink Kettle, LLC**
- VII. Unfinished Business**
 - 1. Ratify BCA Contract for Business Complex**
 - 2. MDD, LLC Stipulation Agreement**
- VIII. New Business**
 - 1. 2022 Committee Structure**
 - 2. Resolution No. 02.03.2022.02 to Cancel Service Agreement with Waste Management for dumpster at 146 Arsenal Street**
- IX. Counsel**
- X. Adjournment**

**Jefferson County Industrial Development Agency
Board Meeting Minutes
January 6, 2022**

DRAFT

The Jefferson County Industrial Development Agency held their board meeting on Thursday, January 6, 2022 in the board room at 800 Starbuck Avenue, Watertown, NY.

Present: Robert E. Aliasso, Jr., W. Edward Walldroff

Zoom: Paul Warneck, John Jennings, David Converse, Lisa L'Huillier, William Johnson

Excused: None

Absent: None

Also Present (Zoom): Justin Miller, Esq., Christine Powers, Rob Aiken, Mike Ramos (Purcell Construction), Craig Fox (Watertown Daily Times)

Staff Present: David Zembiec, Marshall Weir, Lyle Eaton, Peggy Sampson, Joy Nuffer

- I. Call to Order:** Chairman Aliasso called the meeting to order at 8:12 a.m.
- II. Privilege of the Floor:** Chairman Aliasso invited guests to speak. No one spoke.
- III. Minutes:** Minutes of the annual meeting held December 2, 2021 were presented. A motion to approve the minutes as presented was made by Mr. Converse, seconded by Mr. Jennings. All in favor. Carried.
- IV. Treasurer's Report:** Mr. Warneck reviewed the financials for the period ending December 31, 2021. He reported two loan delinquencies – Taste of Design and Colleen's Cherry Tree Inn. Mr. Eaton reported a default and indicated that a demand letter has been sent to Sarah's Barber Shop. After discussion, a motion was made by Mr. Warneck to accept the financial report as presented, seconded by Mr. Johnson. All in favor. Carried.
- V. Committee Reports:**
 - a. Alternative Energy Ad Hoc Committee** – Mr. Warneck reviewed the minutes of the committee meeting. He said that Dave and Marshall met with Lyme School District superintendent regarding their issues with doing a PILOT for the Convergent project without the educational contribution.
 - i. Proposed Fee Schedule** – Mr. Warneck said the proposed fee schedule helps the IDA come in line to where we should be to be consistent with other agencies.
 - ii. Renewable Energy Application information update** – Mr. Warneck said the update in the renewable section is to help us gather information to comply with the state's new appraisal model.

A motion was made by Mr. Converse, seconded by Ms. L'Huillier to approve the proposed fee schedule and the added language to the renewable energy section of the application. All in favor. Carried.

DRAFT

Convergent – Mr. Zembiec said that when we met with the school, they seemed concerned about losing and an increase in the budget after the PILOT. He thinks there is a misunderstanding. He said that Attorney Miller is trying to touch base with the Convergent attorney since we haven't heard from them directly. He said that the school thinks the tax cap will reduce after the PILOT; however, Mr. Zembiec and Mr. Warneck agree that that is incorrect. Mr. Warneck suggested another meeting with the school to get a better handle on what their fears are.

Attorney Miller noted that when a project goes into a PILOT and becomes exempt in the first instance the nuisance with regard to the tax cap is that ratable assessed value can never be counted towards their growth factor. He said it doesn't change anything when a PILOT stops and that ratable becomes taxable from exempt. He said the revenue is always there whether its PILOT revenue or tax revenue when it becomes taxable. He doesn't think it's a budget hit or a hit on their tax rate in any particular year, it's just a growth factor issue. He thinks its an educational thing and working through the logic with each taxing jurisdiction.

Chairman Aliasso left the meeting at 8:29 a.m.

b. Building and Grounds Ad Hoc Committee – Mr. Zembiec said that Mike Ramos from Purcell has joined the meeting to provide an update on the 146 Arsenal Street remediation project.

i. 146 Arsenal Street Remediation – Mr. Ramos reported that the demolition portion is complete. He said that there was an allowance of \$227,000 for an additional 1/8 of an inch in the contract. He said they broke the building up by 10x10 squares, so a unit price was done if a change order was needed. He said the \$227,000 was used for 636 squares. He said some of the squares took more than 6 passes which was 3/4 of an inch deep. He said that he was told by BCA that structurally they couldn't go any deeper than 3/4 of an inch. There were 10 remaining squares out of 642 that did not pass which led to the engineer saying that it had to be removed without damaging the deck. He said it was started last night after hours using six men for eight hours and they removed 6 of the 10 squares. He said it will be finished tonight during off hours. Then it will get cleaned up and ready for the concrete. He noted that Watertown Concrete cancelled because of today's weather, but said that it is scheduled to pour cement Wednesday, Thursday and Friday of next week and Monday and Tuesday of the following week.

Mr. Ramos said that there is one area which the YMCA is calling their mechanical room which is approximately 2,000 square feet that needs an underlayment material which is 1/4 inch thick. He said that area will be done on Wednesday the 12th.

Mr. Ramos said that with the additional grinding, they let everyone know that there was a \$8,120 allowance for additional concrete that may be needed. He said it will probably be used. The 636 squares used the allowance and we ended up with 496 new ones in addition to the 636 squares. They grinded 1,157 squares total. He said that 25 squares were a misinterpretation of the rules which will be

DRAFT

paid by Paradigm which put it down to 1,132 and then they took the 636 out of the allowance and ended up 496 additional. He said he sent the proposal over the Dave. He said the additional concrete will be taken care by the allowance and won't change the contract value and they have a RFI in the old harvest house area. He said that six floor drains were found where the kitchen used to be and that we are waiting on a response from BCA for that. He is assuming they will want those floor drains removed and it will be an additional cost for HydeStone to do that work. He said in the same vicinity there was some broken up concrete, but he is hopeful the engineer will say to pour concrete overtop. He said when all is complete they will remove the temporary fencing so the City can use the parking lot and maintain it again.

Mr. Warneck asked if board members can tour the building to see what has been done before the concrete is poured. Mr. Ramos said that he can meet members at the building.

Mr. Walldroff said that with all the work being done on the floor, he assumes BCA has coordinated that with future plans. His concern is that he is hoping that we are not missing any opportunities at this point in time re-doing the floor to the point where down the road when they start the rebuild something was missed and have to tear up floor sections because they didn't anticipate blueprints. He assumes they are seeking future plans with opportunity now with the floor being demoed. Mr. Ramos said that he agrees and indicated that it was the plan all along. Mr. Weir said that BCA has been a part of this since we have two meetings a week. Mr. Walldroff just wants to be sure that all parties involved are forward thinking that way the YMCA won't have to go back and demo the floor that we are pouring down because something was missed. Mr. Zembiec said that there is cross communication weekly/monthly with involved parties.

A motion was made Mr. Walldroff to approve an additional \$300,000 (for a new total of \$2,600,000) to the Purcell contract for additional PCB remediation, seconded by Mr. Converse. All in favor. Carried.

Mr. Ramos left the meeting at 8:52 a.m.

- ii. **Proposed Second Amendment to Lease Agreement (with YMCA for 146 Arsenal Street)** – Mr. Zembiec said that the draft amendment extends the expiration date to February 18, 2022. He suggested extending the expiration date to April 15, 2022 to allow time to negotiate with the YMCA for the main ground lease. A motion was made by Mr. Converse, seconded by Ms. L'Huillier. Roll call vote was taken. Mr. Converse – Yea, Mr. Walldroff – Yea, Mr. Aliasso – Absent, Mr. Jennings – Yea, Mr. Warneck – Yea, Mr. Johnson – Yea, Ms. L'Huillier – Yea. Carried.

VI. Unfinished Business:

- 1. **Initial Project Resolution No. 01.06.2022.01 for CWT Farms International Inc.** – Mr. Zembiec said that the proposed project doubled in size, so we requested a new application. Attorney Miller said we are restarting the process for the increased square footage and noted that construction is planned to start in late spring. It was noted that the company is still waiting to hear about the Empire State Development state funding for the project.

DRAFT

A motion was made by Ms. L'Huillier to approve the resolution, seconded by Mr. Warneck. Roll call vote was taken. Mr. Converse – Yea, Mr. Jennings – Yea, Mr. Aliasso – Absent, Mr. Walldroff – Yea, Mr. Johnson – Yea, Ms. L'Huillier – Yea, Mr. Warneck – Yea. Carried.

VII. New Business:

1. **Bowers & Co. – Engagement Letter for Stub Period Audit (10/1/21 – 12/31/21)** – Vice Chairman Jennings read the resolution. The stub period audit will start on January 31, 2022 and will cost \$6,500 for the audit and \$400 for preparation of information returns. A motion was made by Mr. Warneck to approve the resolution, seconded by Mr. Converse. All in favor. Carried.
2. **American Recovery Plan Funds from Jefferson County** – Mr. Zembiec said the County approved \$4.6 million that will be allocated to the IDA and JCLDC. He said IDA items will include the 146 Arsenal Street remediation and the sewer project at the Business Complex at the airport. He said that he will work with Attorney Miller and the County for an MOU for the funds.
3. **Proposed MOU with NYSDEC/County of Jefferson/NYSERDA for Deferiet Mill** – Mr. Zembiec said today's proposed MOU follows up on the MOU that was approved last month. He said it provides protection from DEC for the IDA, the County, and NYSERDA.

Attorney Miller said that the first MOU sets the stage for how the County will contemplate closing on the property and transferring it. He said the IDA may need to create a bankruptcy remote sister agency to hold the property, so the IDA won't be held as the responsible party. He said that the DEC is the enforcing authority and will let the IDA/County/NYSERDA off the hook for their good efforts but could go after previous owners if they pursue it.

Mr. Walldroff asked why we should take further action now before the exploratory results are received. Mr. Zembiec said the MOU puts the agencies (IDA/County/NYSERDA) at ease, so we won't be responsible.

Mr. Zembiec indicated that the County has already approved the MOU. A motion was made by Mr. Warneck to approve the MOU as presented, seconded by Mr. Walldroff. All in favor. Carried.

Mr. Walldroff asked about the timeline. Mr. Zembiec said that NYSERDA is working on Phase I and will then proceed to Phase II.

4. **Supplemental Project Authorizing Resolution 01.06.2022.03 for Roth Industries Inc.** – Attorney Miller said Roth approached staff regarding their cost increases for their project which stemmed from supply chain materials. He said the project is nearly done and they have requested an increase in the sales tax benefit for a total of \$91,800.

A motion was made by Ms. L'Huillier to approve the resolution, seconded by Mr. Converse. Roll call vote was taken. Mr. Aliasso – Absent, Mr. Converse – Yea, Mr. Jennings – Yea, Mr. Johnson – Yea, Ms. L'Huillier – Yea, Mr. Walldroff – Yea, Mr. Warneck – Yea. Carried.

Jefferson County Industrial Development Agency
Board Meeting Minutes
January 6, 2022

DRAFT

VIII. Counsel: None.

Other – Mr. Johnson asked about the Newton Falls track upgrade. Mr. Zembiec said that St. Lawrence County received a grant, and the three counties (Jefferson, Lewis and St. Lawrence) created a PILOT. He said that he believes the improvements have been completed, but indicated that the track has not been utilized yet.

IX. Adjournment: With no further business before the board, a motion to adjourn was made by Mr. Converse, seconded by Ms. L'Huillier. All in favor. The meeting adjourned at 9:20 a.m.

Respectfully submitted,

Peggy Sampson

JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Income Statement for the Four Month Period Ending January 31, 2022

Prepared by Lyle Eaton, January 26, 2022

UNRECONCILED

	Current Year Budget	Year-to-Dat e Total	Current Month	Previous Month	Balance Remaining
Revenues					
Application & Process Fees	\$ 10,000.00	(1,250.00)	\$ 0.00	0.00	11,250.00
Bond Admin Fee	3,000.00	3,000.00	3,000.00	0.00	0.00
PILOT/Sale Leaseback Fees	900,000.00	327,142.33	0.00	99,552.47	572,857.67
Fee Income - RLF Program	10,000.00	14,474.24	0.00	7,237.12	(4,474.24)
Fee Income - Micro Program	5,000.00	8,389.12	0.00	4,194.56	(3,389.12)
Interest Income	2,000.00	481.17	0.00	60.88	1,518.83
Interest Income - RLF Program	24,185.00	6,012.16	1,080.39	253.49	18,172.84
Interest Income - City Fund	3,600.00	988.25	328.00	0.00	2,611.75
Interest Income - Micro Prog.	7,650.00	2,948.55	908.57	749.47	4,701.45
Late Payment Penalty - Micro	0.00	101.20	7.46	0.00	(101.20)
Miscellaneous Income	1,500.00	20,358.31	0.00	0.00	(18,858.31)
Total Revenues	966,935.00	382,645.33	5,324.42	112,047.99	584,289.67
Operations					
Office Expense	1,500.00	736.44	200.00	127.21	763.56
Admin Services Exp	549,215.00	183,072.00	45,768.00	45,768.00	366,143.00
Depreciation Expense - Siding	0.00	5,431.84	1,357.96	1,357.96	(5,431.84)
D&O Insurance	15,000.00	5,042.32	1,260.58	1,260.58	9,957.68
Commercial Insurance	0.00	9,848.12	2,462.03	2,462.03	(9,848.12)
FTZ Expense	1,250.00	1,250.00	0.00	1,250.00	0.00
Legal- Retainer	0.00	3,000.00	0.00	0.00	(3,000.00)
Legal - Unrestricted	50,000.00	20,529.29	139.64	3,350.00	29,470.71
Legal YMCA	10,000.00	325.00	0.00	325.00	9,675.00
Accounting & Auditing	12,000.00	11,400.00	0.00	0.00	600.00
Coffeen Park Taxes	1,800.00	1,743.44	1,743.44	0.00	56.56
Airport Park Taxes	1,200.00	1,056.39	1,056.39	0.00	143.61
Fees Expense	3,000.00	110.00	0.00	110.00	2,890.00
Bad Debt--RLF	190,000.00	0.00	0.00	0.00	190,000.00
Bad Debt--Micro	31,000.00	0.00	0.00	0.00	31,000.00
RLF Program Expense	10,000.00	10,855.68	0.00	3,618.56	(855.68)
Microenterprise Program Exp	5,000.00	6,291.84	0.00	2,097.28	(1,291.84)
RLF Audit Expense	800.00	0.00	0.00	0.00	800.00
146 Arsenal Bldg Maintenance	0.00	890.75	750.00	0.00	(890.75)
IDA 146 Arsenal Bldg Expense	43,372.00	17,068.34	0.00	104.01	26,303.66
Building Depreciation	0.00	9,773.88	2,443.47	2,443.47	(9,773.88)
146 Arsenal Gas	0.00	206.76	0.00	27.22	(206.76)
146 Arsenal Electric	0.00	10,306.39	0.00	3,724.15	(10,306.39)
146 Arsenal Water	0.00	893.43	0.00	312.27	(893.43)
Miscellaneous - Unrestricted	200.00	103.23	103.23	0.00	96.77
Total Operations	925,337.00	299,935.14	57,284.74	68,337.74	625,401.86
Total Revenue	966,935.00	382,645.33	5,324.42	112,047.99	584,289.67
Total Expenses	925,337.00	299,935.14	57,284.74	68,337.74	625,401.86
Net Income Over Expenditures	\$ 41,598.00	82,710.19	\$ (51,960.32)	43,710.25	(41,112.19)

For Internal-Use Only

JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY
146 Arsenal Expenses for the Four Month Period Ending January 31, 2022
Prepared by Lyle Eaton

	Current Year Budget	Year-to-Da te Total	Current Month	Previous Month	% YTD of Budget
Expenses					
146 Arsenal Bldg Maintenanc	\$ 0.00	890.75	\$ 750.00	0.00	0.00
IDA 146 Arsenal Bldg Expens	43,372.00	17,068.34	0.00	104.01	39.35
Building Depreciation	0.00	9,773.88	2,443.47	2,443.47	0.00
146 Arsenal Gas	0.00	206.76	0.00	27.22	0.00
146 Arsenal Electric	0.00	10,306.39	0.00	3,724.15	0.00
146 Arsenal Water	0.00	893.43	0.00	312.27	0.00
Total Expenses	\$ 43,372.00	39,139.55	\$ 3,193.47	6,611.12	90.24

Jeff Co Industrial Development Agency
Balance Sheet
January 31, 2022

ASSETS

Current Assets		
General Checking	\$	277,238.62
Savings Account		1,414,032.57
PILOT Checking Account		177,939.40
Microenterprise Account		100,302.31
City Loan Account		208,534.63
Revolving Loan Fund Account		1,927,202.49
PILOT Monies Receivable		85,033.03
Miscellaneous Receivable		215,452.14
Acct Receivable - Rogers		17,519.31
RLF Loans Receivable		2,514,858.46
Microenterprise Loans Rec.		204,542.23
Watn. Economic Growth Fund Rec		78,378.37
Allowance for Bad Debt-RLF		(190,000.00)
Allow. for Bad Debts-MICRO		(30,641.75)
Prepaid Expense		30,231.02
		<hr/>
Total Current Assets		7,030,622.83
Property and Equipment		
Accum Depr - Building		(1,025,480.94)
Accum Depr. Equipment		(52,269.66)
Accumulated Depreciation Sidin		(12,221.64)
		<hr/>
Total Property and Equipment		(1,089,972.24)
Other Assets		
IT Server		6,050.00
Galaxy Tablets		13,366.00
146 Arsenal WIP Remediation		1,669,255.74
Corp. Park Improvements		209,995.14
Airport Property		884,326.02
Intangible Asset		53,195.00
WIP Airport		198,578.60
WIP Intersection		244,973.52
Woolworth Building		505,000.00
Rail Siding CCIP		244,434.00
146 Ars Building Improvements		730,948.56
WIP Arsenal Deck & Sidewalks		1,495.00
		<hr/>
Total Other Assets		4,761,617.58
Total Assets	\$	<u><u>10,702,268.17</u></u>

LIABILITIES AND CAPITAL

Current Liabilities		
Accounts Payable - Unrestrict	\$	204,615.02
PILOT Monies Payable		262,972.43
RLF Loan Payable		2,000,000.00
Due To JCIDA		0.02
Maintenance Reserve Convergys		14,445.48
Maintenance Expense Convergys		25,927.57
Car Freshner Signage		11,000.00
		<hr/>
Total Current Liabilities		2,518,960.52

Unaudited - For Management Purposes Only

Jeff Co Industrial Development Agency
Balance Sheet
January 31, 2022

Long-Term Liabilities		
Due NYS/IAP L.T.	180,159.78	
Deferred Revenue - Rogers	18,000.51	
	<hr/>	
Total Long-Term Liabilities		198,160.29
		<hr/>
Total Liabilities		2,717,120.81
Capital		
General Fund Bal - Unrestrict.	1,826,227.59	
Fund Bal - RLF Restricted	4,419,309.27	
Fund Bal - Micro Restricted	414,850.76	
Fund Bal - City Restricted	262,489.22	
Cap. Impr. Convergys	979,560.33	
Net Income	82,710.19	
	<hr/>	
Total Capital		7,985,147.36
		<hr/>
Total Liabilities & Capital	\$	10,702,268.17
		<hr/>

Jeff Co Industrial Development Agency
General Checking Cash Receipts Journal
For the Period From Jan 1, 2022 to Jan 31, 2022

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction	Line Description	Debit Amnt	Credit Amnt
1/7/22	125001 100001	ACH-1/22	Invoice: 3626 ReEnergy Black River, LLC	3,000.00	3,000.00
1/13/22	207005 205602 100001	1419	DUE MICRO DUE SHLDC MAIN STREET CRAFTS & DRAFTS	269.86	134.93 134.93
1/20/22	207005 205602 100001	19399	DUE MICRO DUE SHLDC PAINFULL ACRES	989.39	565.37 424.02
				<u>4,259.25</u>	<u>4,259.25</u>

Jeff Co Industrial Development Agency
Microenterprise Cash Receipts Journal
For the Period From Jan 1, 2022 to Jan 31, 2022

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction	Line Description	Debit Amnt	Credit Amnt
1/6/22	127003	1394	Invoice: 3394		659.56
	416003		1/22 INTEREST		90.74
	103003		R.L.GOULD & SON, LLC	750.30	
1/6/22	127003	0063176250	Invoice: 1354		207.45
	416003		11/21 INTEREST		70.09
	416103		11/21 LATE FEE-PARTIAL		7.46
	103003		TASTE OF DESIGN	285.00	
1/6/22	127003	3692	Invoice: 3282		1,392.13
	416003		12/21 & 1/22 INTEREST		117.57
	103003		THOUSAND ISLANDS AREA HABITAT FOR HUMAN	1,509.70	
1/6/22	416003	19369	10/21 PARTIAL INTEREST		113.40
	103003		COLLEEN'S CHERRY TREE INN	113.40	
1/13/22	127003	6426	Invoice: 3281		328.03
	416003		1/22 INTEREST		24.03
	103003		THE SCRUB HUB	352.06	
1/13/22	127003	7684	Invoice: 3274		470.84
	416003		12/21 INTEREST		94.51
	103003		PAINFULL ACRES	565.35	
1/20/22	127003	7689	Invoice: 3329		121.65
	416003		1/22 INTEREST		13.28
	103003		MAIN STREET CRAFTS & DRAFTS	134.93	
1/20/22	127003	1041	Invoice: 3670		584.56
	416003		1/22 INTEREST		165.44
	103003		STANDARD MACHINE AND FABRICATION	750.00	
1/27/22	127003	7696	Invoice: 3274		472.82
	416003		1/22 INTEREST		92.55
	103003		PAINFULL ACRES	565.37	
1/27/22	127003	998	Invoice: 3621		151.67
	416003		1/22 INTEREST		38.97
	103003		THERARTPY	190.64	
1/27/22	127003	1404	Invoice: 3394		662.31
	416003		2/22 INTEREST		87.99
	103003		R.L.GOULD & SON, LLC	750.30	
				<u>5,967.05</u>	<u>5,967.05</u>

Jeff Co Industrial Development Agency**RLF Cash Receipts Journal****For the Period From Jan 1, 2022 to Jan 31, 2022**

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction	Line Description	Debit Amnt	Credit Amnt
1/6/22	126002	6238	Invoice: 3540		6,187.48
	415002		12/21 INTEREST		991.00
	120102		RBM MANUFACTURING CORP	7,178.48	
1/13/22	126002	2112	Invoice: 1405		1,218.44
	415002		1/22 INTEREST		89.39
	120102		MLR,LLC	1,307.83	
				<u>8,486.31</u>	<u>8,486.31</u>

Jeff Co Industrial Development Agency**City Loan Fund Cash Receipts Journal****For the Period From Jan 1, 2022 to Jan 31, 2022**

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction	Line Description	Debit Amnt	Credit Amnt
1/6/22	127204	3696	Invoice: 2943		341.21
	415504		12/21 INTEREST		328.00
	104004		CURRENT APPLICATIONS	669.21	
				<u>669.21</u>	<u>669.21</u>

Jeff Co Industrial Development Agency
Miscellaneous Receivables
As of Jan 31, 2022

Filter Criteria includes: 1) Includes Drop Shipments. Report order is by ID. Report is printed in Detail Format.

Customer ID Customer Bill To Contact Telephone 1	Invoice/CM	0 - 30	31 - 60	61 - 90	Over 90 days	Amount Due
CIDC CARTHAGE INDUSTRIAL DEV. COR JOHN MCHUGH 493-4429	PR 3-23-12				-338.38	-338.38
CIDC CARTHAGE INDUSTRIAL DEV. COR					-338.38	-338.38
CONVALT CONVALT ENERGY. LLC	3669				27,486.30	27,486.30
CONVALT CONVALT ENERGY. LLC					27,486.30	27,486.30
JCIDA JEFFERSON COUNTY INDUSTRIAL 315-782-5865				3,618.56 2,097.28		3,618.56 2,097.28
JCIDA JEFFERSON COUNTY INDUSTRIAL				5,715.84		5,715.84
MLR,LLC MLR,LLC	3660			182,450.00		182,450.00
MLR,LLC MLR,LLC				182,450.00		182,450.00
Report Total				188,165.84	27,147.92	215,313.76

Jefferson County Industrial Development Agency
Revolving Loan Fund Receivables
January 31, 2022

	Recipient	Date Issued	Original Amount	Current Balance	Current Status	Purpose of Loan
1	RBM Manufacturing	November-19	200,000.00	393,812.52	Current	Working Capital Additional 11/2020
2	Meadowbrook Terrace	August-12	250,000.00	36,361.54	Current	Working Cap During Construction
3	MLR, LLC	July-07	250,000.00	84,594.40	Current	Expand Warehouse
4	JCIDA	August-21	2,000,000.00	2,000,000.00	Current	146 Arsenal Remediation
Total RLF Receivables			2,700,000.00	2,514,768.46	-	

Jefferson County Industrial Development Agency

MICRO Loan Fund Receivables

January 31, 2022

	Recipient	Date Issued	Original Amount	Current Balance	Current Status	Purpose of Loan
	Colleens Cherry Tree Inn	May-19	40,000.00	28,519.41	3 Delinquent	Expand Restaurant - Ice Ceram Shop
	R. L. Gould & Son, LLC	March-19	40,000.00	20,455.28	Current	Open UPS Store
	Tl Area Habitat For Humanity	April-18	40,000.00	13,064.02	Current	Open ReStore
	Main Street Crafts & Drafts	Sep-18	7,150.00	3,061.80	Current	Craft Shop & Bar
	Painfull Acres	Mar-18	40,000.00	21,736.26	Current	Amish Furniture Store
	Sarah's Barber Shop	Mar-20	18,656.00	7,571.02	5 Delinquent	Barber Shop
	The Scrub Hub	Apr-18	18,656.00	5,418.33	Current	Scrubs Clothing
	Standard Machine	Aug-21	20,000.00	39,121.01	New Loan	Fabrication
	Therartpy	Jul-21	10,102.00	9,201.37	Current	Art Therapy
	Taste of Design	Apr-07	40,000.00	16,303.73	2 Delinquent	Coffee Shop
	Willowbrook	Jul-21	40,000.00	40,000.00	Current	Purchase Gole Club
	Total MICRO Receivables		314,564.00	204,452.23	-	

Jefferson County Industrial Development Agency
City Loan Fund Receivables
January 31, 2022

	Recipient	Date Issued	Original Amount	Current Balance	Current Status	Purpose of Loan
1	Current Applications	Apr-15	101,403.00	78,378.37	Current	Manufacturing Plant Expansion
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
	Total CITY FUNDReceivables		101,403.00	78,378.37	-	

Jeff Co Industrial Development Agency**Unrestricted Aged Payables****As of Jan 31, 2022**

Filter Criteria includes: 1) Includes Drop Shipments. Report order is by ID. Report is printed in Detail Format.

Vendor	Invoice/CM #	Date	Net To Pay
PARADIGM ENVIRONMENTAL, LLC	21.1231.6	12/31/21	147,915.00
PARADIGM ENVIRONMENTAL, LLC			147,915.00
PURCELL CONSTRUCTION	1	9/25/21	17,213.63
	RETAINAGE #2	10/25/21	26,738.47
	REQ. #3	11/25/21	12,747.92
PURCELL CONSTRUCTION			56,700.02
			204,615.02

Jeff Co Industrial Development Agency

Cash Disbursements Journal

For the Period From Jan 1, 2022 to Jan 31, 2022

Filter Criteria includes: Report order is by Date. Report is printed in Detail Format.

Date	Check #	Account ID	Line Description	Debit Amount	Credit Amount
1/6/22	7681	200001 100001	Invoice: 21-1370 BERNIER, CARR & ASSOCIATES, P.C.	6,481.25	6,481.25
1/6/22	7682	200001 100001	Invoice: 7-602-00392 FEDERAL EXPRESS CORP.	45.75	45.75
1/6/22	7683	200001 200001 200001 200001 200001 200001 200001 100001	Invoice: 382351 Invoice: 382357 Invoice: 382354 Invoice: 382353 Invoice: 382358 Invoice: 382359 TOWN OF HOUNSFIELD	265.93 265.31 259.44 259.77 4.12 1.82	1,056.39
1/6/22	7684	200001 100001	Invoice: 12/21 PAINFULL JEFFERSON COUNTY INDUSTRIAL	565.35	565.35
1/6/22	7685	200001 100001	Invoice: 12/21 PAINFULL SACKETS HARBOR LDC	424.02	424.02
1/6/22	7686	200001 200001 200001 100001	Invoice: 1913 Invoice: 1914 Invoice: 1915 JOHN VESPA, INC.	430.28 3,789.02 1,076.86	5,296.16
1/6/22	7687	200001 200001 200001 200001 200001 200001 100001	Invoice: 582096 Invoice: 582098 Invoice: 582097 Invoice: 582102 Invoice: 582092 TOWN OF WATERTOWN	764.29 20.97 501.46 11.98 444.74	1,743.44
1/13/22	7688	200001 100001	Invoice: 21-1380 BERNIER, CARR & ASSOCIATES, P.C.	5,263.76	5,263.76
1/13/22	7689	200001 100001	Invoice: 1/22 MAIN ST JEFFERSON COUNTY INDUSTRIAL	134.93	134.93
1/13/22	7690	200001 100001	Invoice: 2355 JEFF COUNTY LDC	45,768.00	45,768.00
1/13/22	7691	200001 200001 200001 200001 100001	Invoice: 45150-12/21 Invoice: 451157-12/21 Invoice: 45147-12/21 Invoice: 17024-12/21 NATIONAL GRID	527.03 427.81 27.22 2,769.31	3,751.37
1/13/22	7692	200001 100001	Invoice: 1/22 MAIN ST SACKETS HARBOR LDC	134.93	134.93
1/13/22	7693	200001 200001 100001	Invoice: 1851-12/21 Invoice: 11-12/21 CITY OF WATERTOWN COMPTROLLER	43.38 268.89	312.27
1/27/22	7694	200001 100001	Invoice: 21-1391 BERNIER, CARR & ASSOCIATES, P.C.	3,294.80	3,294.80
1/27/22	7695	200001 100001	Invoice: 526525 NYSDEC	110.00	110.00
1/27/22	7696	200001 100001	Invoice: 1/22 PAINFULL JEFFERSON COUNTY INDUSTRIAL	565.37	565.37
1/27/22	7697	200001 100001	Invoice: 32f2e5f8 JOHNSON NEWSPAPER CORP	139.64	139.64
1/27/22	7698	200001 100001	Invoice: 2907 P & M CONSTRUCTION	750.00	750.00
1/27/22	7699	200001	Invoice: 1/22 PAINFULL	424.02	

Jeff Co Industrial Development Agency
Cash Disbursements Journal
For the Period From Jan 1, 2022 to Jan 31, 2022

Filter Criteria includes: Report order is by Date. Report is printed in Detail Format.

Date	Check #	Account ID	Line Description	Debit Amount	Credit Amount
		100001	SACKETS HARBOR LDC		424.02
1/27/22	7700	200001 100001	Invoice: 3377275-0448-8 WASTE MANAGEMENT	104.01	104.01
1/27/22	7701	200001 100001	Invoice: 0006635 CITY OF WATERTOWN COMPTROLLER	103.23	103.23
	Total			76,468.69	76,468.69

	A	B	C	D	E	F	G	H	I
1	JCIDA WIP 146 ARSENAL ABATEMENT								Revised
2	GL# 150200								Board
3									Allocation
4	Vendor Payments			Amount					1/6/2022
5	Date	Vendor	Invoice#	Paid	Paid Date	Check#	Balance	Retainage	2,600,000
6	07/02/21	SES	1272	13,150.00	7/15/2021	7558	13,150.00		2,586,850.00
7	06/30/21	PARADIGM	21.0630.45	6,035.00	7/15/2021	7563	19,185.00		2,580,815.00
8	06/30/21	Harris Beach	8811903	6,325.00	7/22/2021	7565	25,510.00		2,574,490.00
9	07/16/21	Bernier Carr	21-641	48,695.00	7/25/2021	7570	74,205.00		2,525,795.00
10	07/14/21	PARADIGM	21.0714.5	7,250.00	7/29/2021	7573	81,455.00		2,518,545.00
11	7/xx/21	Thomas Trash Service	7-INVOICES	1,600.00	7/29/2021	7572	83,055.00		2,516,945.00
12	08/08/21	PARADIGM	21.0806.03	12,500.00	8/12/2021	7582	95,555.00		2,504,445.00
13	07/30/21	Harris Beach	8815480	4,325.00	8/12/2021	7583	99,880.00		2,500,120.00
14	07/31/21	Bernier Carr	21-787	898.07	8/24/2021	7587	100,778.07		2,499,221.93
15	08/31/21	DANC--Tipping Fees	Aug-21	1,071.32	9/9/2021	7599	101,849.39		2,498,150.61
16	08/30/21	PARADIGM	21-0621-5	5,300.00	9/16/2021	7605	107,149.39		2,492,850.61
17	09/07/21	Thomas Trash Service	19700005	200.00	9/16/2021	7606	107,349.39		2,492,650.61
18	08/31/21	Harris Beach	8821006	4,900.00	9/23/2021	7615	112,249.39		2,487,750.61
19	08/31/21	Bernier Carr	21-889	4,055.00	9/23/2021	7607	116,304.39		2,483,695.61
20	09/07/21	DANC--Tipping Fees	472959	30.24	9/23/2021	7608	116,334.63		2,483,665.37
21	09/30/21	Bernier Carr	21-1012	4,942.20	10/21/2021	7633	121,276.83		2,478,723.17
22	09/25/21	Purcell	1	327,058.87	10/28/2021	7639	448,335.70	17,213.63	2,151,664.30
23	10/25/21	Pufcell	2	508,031.02	10/28/2021	7641	956,366.72	26,738.47	1,643,633.28
24	10/31/21	PARADIGM	21.1021.10	26,708.92	11/16/2021	7656	983,075.64		1,616,924.36
25	10/31/21	Bernier Carr	21-1149	3,294.80	11/18/2021	7653	986,370.44		1,613,629.56
26	11/16/21	PARADIGM	21.1116.10	69,565.00	12/1/2021	7665	1,055,935.44		1,544,064.56
27	11/25/21	Purcell	#3	254,958.42	12/1/2021	7666	1,310,893.86	12,747.92	1,289,106.14
28	11/30/21	PARADIGM	21.1130.7	163,230.00	12/16/2021	7674	1,474,123.86		1,125,876.14
29	12/31/21	PARADIGM	21.1231.6	147,915.00			1,622,038.86		977,961.14
30	12/31/21	Bernier Carr	21-1391	3,294.80			1,625,333.66		974,666.34
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									
52									

	A	B	C	D	E	F	G	H	I
1	JCIDA WIP 146 ARSENAL ABATEMENT								
2	GL# 150200								
3									
4	Vendor Payments PURCELL			Amount					Contract
5	Date		Invoice#	Billed	Paid Date	Check#	Balance	Retainage	1,700,378.00
6	09/25/21		1	344,272.50			344,272.50	17,213.63	1,356,105.50
7	10/25/21		2	534,769.50			879,042.00	26,738.47	821,336.00
8	11/25/21		3	254,958.40			1,134,000.40	12,747.92	566,377.60
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									
52									

	A	B	C	D	E	F	G	H	I
1	JCIDA WIP 146 ARSENAL ABATEMENT								
2	GL# 150200								Board
3									approved 71/2%
4	Vendor Payments-BCA			Amount					7/9/2021
5	Date	Vendor	Invoice#	Paid	Paid Date	Check#	Balance	Retainage	127,528.00
6	07/16/21		21-641	48,695.00			48,695.00		78,833.00
7	07/31/21		21-787	898.07			49,593.07		77,934.93
8	08/31/21		21-889	4,055.00			53,648.07		73,879.93
9	09/30/21		21-1012	4,942.20			58,590.27		68,937.73
10	10/31/21		21-1194	3,294.80			61,885.07		65,642.93
11	12/31/21		21-1391	3,294.80			65,179.87		62,348.13
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									

	A	B	C	D	E	F	G	H	I
1	JCIDA WIP 146 ARSENAL ABATEMENT								
2	GL# 150200								Board
3									Allocation
4	Vendor Payments- PARADIGM			Amount					7/9/2021
5	Date	Vendor	Invoice#	Paid	Paid Date	Check#	Balance	Retainage	249,500
6	06/30/21		21.0630.45	6,035.00			6,035.00		243,465.00
7	07/14/21		21.0714.5	7,250.00			13,285.00		236,215.00
8	08/08/21		21.0806.03	12,500.00			25,785.00		223,715.00
9	08/30/21		21.0621.5	5,300.00			31,085.00		218,415.00
10	10/31/21		21.1021.10	26,708.92			57,793.92		191,706.08
11	11/16/21		21.1116.10	69,565.00			127,358.92		122,141.08
12	11/30/21		21.1130.7	163,230.00			290,588.92		-41,088.92
13	12/31/21		21.1231.6	147,915.00			438,503.92		-189,003.92
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									

	A	B	C	D	E	F	G	H	I
1	JCIDA WIP 146 ARSENAL ABATEMENT								
2	GL# 150200								
3									
4	Vendor Payments- SES			Amount					Quote
5	Date	Vendor	Invoice#	Paid	Paid Date	Check#	Balance	Retainage	8,750
6	07/02/21	SES	1272	13,150.00	7/15/2021	7558	13,150.00		-4,400.00
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									

**Jefferson County Industrial Development Agency
Building and Grounds Ad hoc Committee Meeting Minutes
January 19, 2022**

Present: Kent Burto, Chair

Zoom: Greg Gardner, Rob Aiken, Lisa L'Huillier

Excused: David Converse, John Jennings

Also Present: David Zembiec, Marshall Weir, Peggy Sampson

Zoom: Rob Aliasso, Bill Johnson, Paul Warneck

I. Call to Order: Chair Burto called the meeting to order at 1:00 p.m.

II. Ground Leases at 146 Arsenal Street – Mr. Zembiec mentioned the ground lease the IDA has with the YMCA and with Washington Street Properties at 146 Arsenal Street.

Executive Session

At 1:01 p.m., a motion was made by Mr. Aiken to enter into executive session to discuss the potential acquisition and/or disposition of real property, seconded by Mr. Gardner. All in favor. Committee Members, Board Members, and Staff remained.

Ms. L'Huillier joined the meeting at 1:13 p.m.

At 1:32 p.m., Ms. L'Huillier motioned to leave executive session, seconded by Mr. Aiken. All in favor. No action was taken.

Mr. Zembiec said that he will schedule another meeting in a few weeks.

III. Other/Unfinished Business: None.

IV. Adjournment: With no further business before the committee, Ms. L'Huillier made a motion to adjourn the meeting, seconded by Mr. Aiken. The meeting adjourned at 1:32 p.m.

Respectfully submitted,

Peggy Sampson

**Jefferson County Industrial Development Agency
Loan Review Committee Meeting Minutes
January 27, 2022**

Present: David Converse, Chair

Zoom: John Jennings, Rob Aliasso, Christine Powers

Excused: Kent Burto

Also Present: David Zembiec, Marshall Weir, Lyle Eaton, Peggy Sampson, Joy Nuffer, April Miralles

Zoom: Bill Johnson

- I. Call to Order:** Chair Converse called the meeting to order at 8:00 a.m.
- II. Pledge of Allegiance**
- III. April C. Miralles d/b/a Pink Kettle, LLC** – A request for a \$24,800 MICRO loan to be used to purchase equipment to open a bubble tea business in the Salmon Run Mall. Staff reviewed the request and recommended approval of a \$24,800 for a 5-year amortization with a rate of 5%. There will be six employees in year one followed by four in year two and four in year three for a total of 14. Collateral will be a first position lien on all business assets of the business and a personal guarantee of April C. Miralles.

Ms. Miralles said that she will be using milk tea with bubble tea and will also sell refreshing fruit drinks. The shop will be located near Billy Bee's which is located on the opposite side of the mall from the food court. Ms. Miralles noted that she has already started renovations.

Mr. Jennings asked about the numbers listed in the business plan since the actual request is less. Ms. Nuffer said the first set of numbers that were given to us last summer were a bit skewed and indicated that the higher amount was risky. She said that she and Mr. Eaton were more comfortable with a lower request. Ms. Nuffer said that Ms. Miralles made some adjustments and even purchased equipment with her own money. Mr. Eaton said that Ms. Miralles increased her equity and felt that today's request of \$24,800 is what Ms. Miralles can handle to service the debt.

Mr. Jennings asked if we can fund over 50% of a project. Mr. Eaton said that we can for a MICRO loan.

Ms. Powers asked if Ms. Miralles has taken the minimum wage increase into consideration since it is now at \$13.20. Ms. Nuffer said the Small Business Development Center updated the projections in December, and believes that they factored it in.

Mr. Aliasso asked Ms. Miralles if she will be able to replenish her inventory. Ms. Miralles said that she has two companies to order from and doesn't anticipate any difficulties.

**Jefferson County Industrial Development Agency
Loan Review Committee Meeting Minutes
January 27, 2022**

Ms. Powers asked if Ms. Miralles is already making mall lease payments. Ms. Miralles said that she plans to open in February and will start making the payments then.

Ms. Miralles left the meeting at 8:15 a.m.

Ms. Powers asked if we will get a landlord waiver. Mr. Eaton said yes.

A motion was made by Mr. Aliasso to move the request to the full board of directors, seconded by Ms. Powers. All in favor.

IV. Other/Unfinished Business: None.

- V. Adjournment:** With no further business before the committee, Mr. Aliasso made a motion to adjourn the meeting, seconded by Ms. Powers. The meeting adjourned at 8:23 a.m.

Respectfully submitted,

Peggy Sampson

**Jefferson County Industrial Development Agency
Loan Review Committee**

Date: 1/27/2022

Borrower: April Miralles d/b/a Pink Kettle, LLC

Amount: \$24,800.00

Project: Purchase equipment and establish a bubble tea business

Personnel:

Employees created year one	6
Employees created year two	4
Employees created year three	4
Total	14

Sources and Uses:

Personal Cash	\$17,249	Equipment/renovations	\$35,749
JCIDA MICRO Loan	\$24,800	Inventory and Expenses	\$6,300
Total Project	\$42,049		\$42,049

Terms:

5 year loan, 5 % interest, contingent on mall lease, requiring liability insurance certificate listing the JCIDA as loss payee

Financials: Projected financials from the SBDC show sufficient income, client's credit score is very risky, we feel uncomfortable with the original request of \$35,000, and client confirmed she would be willing to go for a lower loan amount of \$24,800.

Collateral:

UCC filing, first position lien on all assets of the organization and personal guarantee of April Miralles

Proforma-Pink Kettle, LLC

Proforma Sales	Year 1	Year 2	Year 3
Sales	\$216,000	\$270,000	\$337,490
Cost of Goods Sold	\$75,600	\$94,500	\$118,125
Gross Profit	\$140,400	\$175,500	\$219,365
Expenses	\$93,299	\$106,339	\$112,681
Net Profit	\$47,101	\$69,161	\$106,684
Depreciation	\$0	\$0	\$0
Cash Flow	\$47,101	\$69,161	\$106,684
Debt Service Requirem	\$6,319	\$6,643	\$6,983
Excess Cash	\$40,782	\$62,518	\$99,701

DRAFT

JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Resolution Number 02.03.2022.01

RESOLUTION FOR AUTHORIZING A MICRO ENTERPRISE LOAN TO
Pink Kettle, LLC

WHEREAS, April Miralles, owner of Pink Kettle, LLC requested by application to this Agency a Micro Enterprise Loan in the amount of Twenty-Four Thousand Eight Hundred Dollars (\$24,800.00) to purchase equipment to establish a bubble tea business to be located in the Salmon Run Mall, Watertown, and

WHEREAS, Staff reviewed this request and recommends approval of a loan in the amount of \$24,800 for a five-year amortization with a rate of 5%. There will be 6 employees in year one followed by four in year two and four in year three for a total of 14. Collateral will be a first position lien on all assets of the organization and a personal guarantee of April Miralles. The loan will be contingent upon mall lease, and

WHEREAS, on January 27, 2022, the Loan Review Committee of the Jefferson County Industrial Development Agency reviewed this request and recommended approval of the loan and terms to the full Board of Directors, and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Jefferson County Industrial Development Agency that it herein approved the request for a Twenty-Four Thousand Eight Hundred Dollar (\$24,800.00) loan to Pink Kettle, LLC with all terms and conditions as set forth in this Resolution, and be it further,

RESOLVED, that the Chairman, Vice Chairman, Secretary and/or Chief Executive Officer are authorized and directed to execute any and all documents necessary to carry out the purposes of this Resolution.

This resolution shall take effect immediately.

W. Edward Walldroff
Secretary



BCA ARCHITECTS & ENGINEERS

March 7, 2019

**Mr. Donald Alexander, CEO
Jefferson County Industrial Development Agency
800 Starbuck Avenue
Watertown, NY 13601**

**Re: Business Complex at Watertown International
BCA Project No. 2018-118**

Dear Mr. Alexander:

Thank you for selecting Bernier, Carr & Associates (BCA) to assist you on the above referenced project. We propose to render professional Engineering Services to the Jefferson County Industrial Development Agency in conjunction with the Business Complex at Watertown International project (hereinafter called the "Project"). The project scope involves the construction of a new access road and storm water facilities for the business complex.

Our services at this time shall consist of Basic Services and Additional Services all as set forth in the attached *Standard Form of Agreement Between Owner and Engineer* for Professional Services Funding Agency Edition as supplemented in Exhibits A, B, C, D, E, G, H, and K, thereto; all of which are attached to and made part of this Agreement, and such additional services as you may request. We will bill you monthly for our services. We will need from you, full information and directions as to your requirements, including any special considerations for the project or special services needed.

This agreement assumes that Jefferson County Highway Department will be responsible for the construction of the new access road based on the design completed by BCA. Construction phase services have not been included in this agreement. Construction phase services, including Resident Project Representative Services, can be provided on an hourly fee basis as needed during construction of the access road and stormwater facilities.

The additional services, including Subsurface Investigation, Record Drawings, and Utility Coordination are not anticipated to be needed for the current scope of work. If those services are needed, they can be provided on hourly fee basis.

If this proposal satisfactorily sets forth your understanding of the arrangement between us, we would appreciate your signing the three (3) enclosed originals of the *Standard Form of Agreement between Owner / Engineer* attached and return two (2) copies to our office.



BCA ARCHITECTS & ENGINEERS

Mr. Donald Alexander, CEO
Jefferson County Industrial Development Agency
March 7, 2019
Page 2 of 2

Again, thank you for selecting our firm for this project. We look forward to continuing to work with you. If you should have any questions, please feel free to contact me directly.

Very truly yours,

Bernier, Carr & Associates, Engineers, Architects & Land Surveyors, P.C.

A handwritten signature in black ink that reads 'Gregor K. Smith'.

Gregor K. Smith, P.E.
Principal / Engineer
GKS:dlh

Enclosures: (3) Standard Form of Agreement between Owner / Engineer

I:\Projects\2018-000\2018-118_JCIDA\Agreement\Owner-Architect\Revised Agreement Letter.Alexander.030719.doc

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

EJCDC

ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 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 User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

Copyright © 2008 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

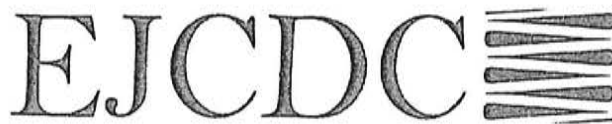
American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER.....	1
1.01 Scope.....	1
ARTICLE 2 – OWNER'S RESPONSIBILITIES	1
2.01 General	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES	2
3.01 Commencement.....	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS.....	2
4.01 Invoices	2
4.02 Payments	2
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit.....	3
5.03 Opinions of Total Project Costs	3
ARTICLE 6 – GENERAL CONSIDERATIONS	3
6.01 Standards of Performance.....	3
6.02 Design Without Construction Phase Services.....	5
6.03 Use of Documents.....	5
6.04 Insurance	6
6.05 Suspension and Termination	7
6.06 Controlling Law	9
6.07 Successors, Assigns, and Beneficiaries	9
6.08 Dispute Resolution.....	9
6.09 Environmental Condition of Site.....	10
6.10 Indemnification and Mutual Waiver	10
6.11 Miscellaneous Provisions	11
ARTICLE 7 – DEFINITIONS	12
7.01 Defined Terms	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS.....	15
8.01 Exhibits Included	15
8.02 Total Agreement	16
8.03 Designated Representatives	16
8.04 Engineer's Certifications	16



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
BCA PROJECT NO. 2018-118**

THIS IS AN AGREEMENT effective as of March 7, 2019 ("Effective Date") between
Jefferson County Industrial Development Agency; 800 Starbuck Avenue, Watertown NY 13601 ("Owner") and
Bernier, Carr & Associates, Engineers, Architects, and Land Surveyors, P.C.; 327 Mullin Street, Watertown, New York 13601 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Access Road, Drainage & Stormwater System Improvements to serve the Business Complex at Watertown International ("Project")

Engineer's services under this Agreement are generally identified as follows:

Engineering Services associated with a new access road and Stormwater facilities.

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 Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement.

Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – 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 are set forth 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, 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 ~~within 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 ~~60~~ 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within ~~60~~ 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 contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
 - D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit 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, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and

in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner **shall provide** ~~provided to~~ Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. ~~provided to Engineer in writing.~~ Engineer shall comply with such policies and procedures, 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. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in 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 documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a

contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

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 Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. ~~Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.~~
- B. Either party to this Agreement may rely that data or information ~~set forth on paper (also known as hard copies)~~ that the party receives from the other party by mail, hand delivery, ~~or facsimile or electronic media~~, are the items that the other party intended to send. ~~Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a~~

discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J. Consensus DOCS 200.2 Electronic Communications Protocol Addendum may be attached to Exhibit J and become a part of this Agreement.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. 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 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.
- F. 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 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance 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, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by 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 shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. 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.

6.05 *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. **If the project is suspended by the Owner for more than 30 days and is then resumed, the Engineer's compensation may be equitably adjusted, as mutually agreed, using Exhibit K, Amendment to Owner Engineer Agreement, to provide for expenses incurred in the interruption and resumption of Engineer's services.**
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

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.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete 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 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

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

6.07 *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 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. 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.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 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 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.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to 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 Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (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. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

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 provisions:
1. *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.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *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.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or

imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *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.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *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.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil

- refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
 21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
 22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely 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.
 23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
 24. *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 **Resident Inspector**, assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
 25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
 26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
 27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
 28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
 29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
 30. *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 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.

- 31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
- 32. *Total Project Costs* – The sum of the Construction Cost, 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 pursuant to Exhibit B of this Agreement.
- 33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
- 34. ~~*Agency* – The Rural Utilities Service or any designated representative of Rural Utility Service, including USDA Rural Development.~~

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 Included**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. ~~Exhibit I, Limitations of Liability.~~ **Not Included**

J. ~~Exhibit J, Special Provisions.~~ **Not Included**

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

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format 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 the Project 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 any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements:*

- A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. *Audit and Access to Records.* Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions" to the Owner who will forward it the USDA, Rural Development processing office.

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

Owner:

Jefferson County Industrial Development Agency

By: 

Title: CEO

Date

Signed: 4/12/19

Engineer:

Bernier, Carr & Associates, Engineers, Architects & Land Surveyors, P.C.

By: 

Title: Principal / Engineer

Date

Signed: 3/8/19

Engineer License or Firm's

Certificate No. 087170

State of: New York

Address for giving notices:

80 Starbuck Avenue

Watertown, New York 13601

Address for giving notices:

327 Mullin Street

Watertown, New York 13601

Designated Representative (Paragraph 8.03.A):

Donald Alexander

Title: CEO

Phone Number: (315) 782-5865

Facsimile Number: (315) 782-7915

E-Mail Address: _____

Designated Representative (Paragraph 8.03.A):

Gregor K. Smith, P.E.

Title: Principal / Engineer

Phone Number: (315) 782-8130

Facsimile Number: (315) 782-7192

E-Mail Address: gsmith@thebcgroup.com

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency: _____

By: _____

Date: _____

Title: _____

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 and available data.~~
- ~~2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate **all reasonable** alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. 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 summary of allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables:
 - ~~a. **Environment Report in accordance with Funding Agency requirements.**~~
 - ~~b. **Provide engineering information for applications and supporting documents for private or governmental grants, loans, or advances in connection with the Project.**~~~~

~~c. Prepare feasibility studies and preliminary ranges of rate schedules if required for the Project.~~

- ~~7. Furnish _____ review copies of the Report and any other deliverables to Owner within 30 calendar days of the Effective Date and review it with Owner. Within 30 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~
- ~~8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish _____ copies of the revised Report and any other deliverables to the Owner within _____ calendar 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 the revised Report and any other deliverables have been delivered to Owner.~~

A1.02 Preliminary Design Phase

- A. After acceptance by Owner and concurrence by Agency of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and 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. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.~~
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
 6. Furnish 5 review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 90 calendar days of authorization to proceed with this phase and review them with Owner. Within 30 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
 7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner 8 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of Owner's comments.

- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

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 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. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables:
 5. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 30 days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
 6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit 5 final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 120 calendar 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 the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
- 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 1. 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 bidding 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 and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.~~
- ~~2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.~~
- ~~3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.~~
- ~~4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.~~
- ~~5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~
- ~~6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.~~
- ~~7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:~~
- ~~8. Upon award of the construction contract, the Engineer shall furnish 5 executed copies 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 as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. 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. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.~~
- ~~4. *Pre-Construction Conference:* Participate in and chair a Pre-Construction Conference prior to commencement of Work at the Site.~~
- ~~5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~
- ~~6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.~~
- ~~7. *Visits to Site and Observation of Construction:* In connection with observations of 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 Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the~~~~

~~Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.~~

~~b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.~~

~~8. **Defective Work: Recommend to Owner that Contractor's work be rejected while it is in progress** Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.~~

~~9. **Clarifications and Interpretations; Field Orders:** Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.~~

~~10. **Change Orders and Work Change Directives:** Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.~~

~~11. **Shop Drawings and Samples:** Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to~~

~~safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.~~

~~12. Substitutes and "or equal": Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~

~~13. Inspections and Tests: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.~~

~~14. Disagreements between Owner and Contractor: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.~~

~~15. Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

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

~~b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of 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 and the Contract Documents. 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 Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~

- ~~16. Contractor's Completion Documents:~~ Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
- ~~17. Substantial Completion:~~ Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
- ~~18. Additional Tasks:~~ Perform or provide the following additional Construction Phase tasks or deliverables:
- ~~a. — The visits described in Article A.1.05.A.7.a shall be at least monthly.~~
 - ~~b. — The Engineer shall document visit to the project site in writing on standard inspection report forms approved by the Agency with copies furnished to the Owner, Agency, and Contractor.~~
 - ~~c. — Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.~~
- ~~19. Final Notice of Acceptability of the Work:~~ Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the

"Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

~~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. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. 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.~~

~~C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.~~

~~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, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.~~
- ~~2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.~~
- ~~3. Perform or provide the following additional Post Construction Phase tasks or deliverables:
N/A~~

~~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 furnish or obtain from others Additional Services of the types listed below.

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 or to investigate 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 its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in 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 identified in Paragraph A1.01.A.4.
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.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. 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 constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
26. Providing necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

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

- A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
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 during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
 6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
 7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
 8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
 9. 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.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 7, 2019.

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; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available 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 contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the 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. 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, 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 moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth 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.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, 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.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services:

~~a. The Owner shall pay the contractor any amounts due under the Construction Contract but must obtain Agency concurrence prior to issuing such payment.~~

Funding Agency Clauses to Modify E-500, Exhibit C to “Agreement between Owner and Engineer for Professional Services”

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

The following clauses replace, modify or supplement existing clauses in the subject Exhibit C.

The following “Compensation Packets” should be used in place of the E-500 Exhibit C Compensation Packets provided by EJCDC. The Compensation Packets in E-500, Exhibit C should not be used for RUS projects. Only the Exhibits here should be used.

Each packet below provides additional clauses to be added to the Agreement between Owner and Engineer for Professional Services. One packet must be selected for Basic Services. Packets RUS-3 and RUS-4 are for Resident Project Representative Services and Additional Services.

The Packets presented are as follows:

COMPENSATION PACKET RUS-1: Basic Services – Lump Sum

COMPENSATION PACKET RUS-2: Basic Services – Standard Hourly Rates

COMPENSATION PACKET RUS-3: Resident Project Representative Services – Standard
Hourly Rates

COMPENSATION PACKET RUS-4: Additional Services – Standard Hourly Rates

This is EXHIBIT C, consisting of 10 pages, referred to in part of the Agreement between Owner and Engineer for Professional Services dated March 7, 2019.

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

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 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. ~~For services performed or furnished under paragraph A.1.01, the Lump Sum amount of _____ (\$ _____), after the Study and Report Phase Services are considered complete as defined in Exhibit A.~~
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative) the Lump Sum amount of **One Hundred Seventy-Eight Thousand Five-Hundred Dollars and Zero Cents (\$ 178,500.00)**.
 3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.0.6 shall be payable as follows:
 - a. A sum which equals 50% of the Lump Sum compensation payable under C.2.01.A.2, above, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency if required).
 - b. A sum which, together with the compensation payable under paragraph C.2.01.A.3.a, equals 80% of the Lump Sum compensation payable under paragraph C.2.01.A.2 after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 100% of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.

- d. ~~A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80% of the Lump Sum payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.~~
 - e. ~~A sum equal to 15% of the Lump Sum compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor's Work during the construction period on percentage ratios identical with those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph will be in an amount such that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the Lump Sum amount stipulated in paragraph C.2.01.A.2.~~
 - f. ~~A final payment which together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e equals 100 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.~~
4. 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, overhead, profit, and Reimbursable Expenses.
- B. Period of Service. The compensation amount stipulated in paragraph C.2.01.A.2 is conditioned on a period of service not exceeding 12 months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C.2.02 [Not Used]

C.2.03 [Not Used]

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

Payments to Engineer for Services and Reimbursable Expenses

COMPENSATION PACKET RUS-3: Resident Project Representative Services – Standard Hourly Rates

*C.2.04 Compensation for Resident Project Representative Services – Standard Hourly Rates
Method of Payment*

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

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees 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. The total compensation under this paragraph is to be estimated as Hourly (as needed). This service shall be Hourly and will be provided as needed during the construction of the Access Road and Stormwater System.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01, and are directly related to the provision of Resident Project Representative Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other 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 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 1.15. External expenses are limited to sub-consultant or subcontracted services.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.

C. Other Provisions Concerning Payment Under this Paragraph C.2.04

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 1.15.
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. Engineer is responsible for monitoring charges generated under this Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. Modifications to fees shall be made by Amendment only.
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.

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET RUS-4: Additional Services

C.2.05 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 employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees 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 **Seventy-One Thousand Two Hundred Dollars and Zero Cents (\$ 71,200.00)** and this amount shall not be exceeded without written approval of Owner and concurrence of Agency. An itemized estimate of this amount shall be attached 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 C.2.01 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.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other 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 1.15.

External expenses are limited to sub-consultant or subcontract services.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.

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 1.15.
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 a sample of an **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 March 7, 2019.

C. 4.08 Summary of Payments to ENGINEER

A. The compensation provisions of this Exhibit C are summarized as follows:

<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Payment</u>
1. Basic Services		
a. Preliminary Design	\$ 76,500	Lump Sum
b. Final Design Phase Documents Completed & Submitted to OWNER & AGENCY	\$ 51,000	Lump Sum
c. Final Design Phase Complete	\$ 51,000	Lump Sum
TOTAL (Basic Services)	\$ 178,500	
2. Resident Project Representative	Hourly as needed	Hourly/Expenses
3. Additional Services:		
a. Base Mapping/Topographic Survey	\$ 12,000	Hourly/Expenses
b. Verification of Existing Conditions	\$ 8,000	Hourly/Expenses
c. SWPPP	\$ 20,000	Hourly/Expenses
d. Subsurface Investigation	\$ TBD	Hourly/Expenses
e. NYS DOT Permit	\$ 10,000	Hourly/Expenses
f. Construction Stakeout	\$ 16,000	Hourly/Expenses
g. Record Drawings	\$ TBD	Hourly/Expenses
h. Expenses	\$ 5,200	Hourly/Expenses
i. Utility Coordination	\$ TBD	Hourly/Expenses
j. Construction Phase Coordination	\$ TBD	Hourly/Expenses
TOTAL (Additional Services)	\$ 71,200	
TOTAL ESTIMATED CONTRACT AMOUNT	\$ 249,700	

This is a sample of an **Appendix 2 to EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated March 7, 2019.

Senior Principal	\$ 170.00 per hour
Principal	\$ 150.00 per hour
Associate Principal	\$ 130.00 per hour
Senior Engineer / Associate	\$ 120.00 per hour
Engineer	\$ 100.00 per hour
Senior Project Manager	\$ 110.00 per hour
Project Manager	\$ 100.00 per hour
Junior Engineer 3	\$ 95.00 per hour
Junior Engineer 2	\$ 90.00 per hour
Junior Engineer 1	\$ 85.00 per hour
Sr. Design Drafter	\$ 85.00 per hour
Drafter	\$ 75.00 per hour
Project Assistant	\$ 70.00 per hour
Senior Field Representative	\$ 105.00 per hour
Field Representative	\$ 85.00 per hour
Intern	\$ 50.00 per hour
Field Survey Crew (2-man, NYS prevailing rate)	\$ 210.00 per hour
Field Survey Crew (2-man, regular rate)	\$ 140.00 per hour
UAV Pilot	\$ 150.00 per hour
Sr. Geospatial Technician	\$ 110.00 per hour
Survey / Geospatial / GPS Technician	\$ 85.00 per hour
Geospatial Field Assistant	\$ 80.00 per hour
Administration	\$ 70.00 per hour

In addition to the above-stipulated fees, reimbursement for travel and incidental expenses are as follows:

Travel by auto (per mile)	per IRS Rate
Travel by Field Truck/Survey Vehicle (per mile)	per IRS Rate x 1.25
Travel by Air	Actual Cost
Expenses	Direct Cost + 15%

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500 detailed above.

Engineer: Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C.

Date: 3/8/19

Attest: Greg K. Smith

Type Name: Gregor K. Smith, P.E.

Title: Principal / Engineer

Owner: Jefferson County Industrial Development Agency

Date: 4/12/19

Attest: D. C. Alexander

Type Name: Donald Alexander

Title: CEO

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: _____ Date: _____

Type Name: _____

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 7, 2019.

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:

D1.01 Resident Project Representative

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

4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

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

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.

- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* 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.
14. *Completion:*
- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.

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 _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: _____

OWNER: _____

CONTRACTOR: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: _____

ENGINEER: _____

NOTICE DATE: _____

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

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 professional judgment of Engineer.~~
- ~~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 under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.~~
- ~~5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.~~

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 7, 2019.

Insurance

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

G6.04 Insurance

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

1. By Engineer:

- | | |
|--|--------------------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | \$ <u>1,000,000</u> |
| 2) Disease, Policy Limit: | \$ <u>1,000,000</u> |
| 3) Disease, Each Employee: | \$ <u>1,000,000</u> |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$ <u>1,000,000</u> |
| 2) General Aggregate: | \$ <u>2,000,000</u> |
| d. Excess or Umbrella Liability -- | |
| 1) Each Occurrence: | \$ <u>5,000,000</u> |
| 2) General Aggregate: | \$ <u>5,000,000</u> |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident | \$ <u>1,000,000</u> |
| f. Professional Liability -- | |
| 1) Each Claim Made | \$ <u>2,000,000</u> |
| 2) Annual Aggregate | \$ <u> </u> |
| g. Other (specify): | \$ <u>N/A</u> |

2. By Owner:

- | | |
|--|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident | <u>\$1,000,000</u> |
| 2) Disease, Policy Limit | <u>\$1,000,000</u> |
| 3) Disease, Each Employee | <u>\$1,000,000</u> |
| c. General Liability -- | |
| 1) General Aggregate: | <u>\$2,000,000</u> |
| 2) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000</u> |
| d. Excess Umbrella Liability -- | |
| 1) Each Occurrence: | <u>\$5,000,000</u> |
| 2) General Aggregate: | <u>\$5,000,000</u> |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident: | <u>\$1,000,000</u> |
| f. Other (specify): | <u>\$ N/A</u> |

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

- a. Bernier, Carr & Associates, Engineers, Architects & Land Surveyors, P.C.
Engineer
 - b. N/A
Engineer's Consultant
 - c. N/A
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 7, 2019.

Dispute Resolution

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

H6.08 Dispute Resolution

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by **the American Arbitration Association**. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 7, 2019.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: March 7, 2019
- b. Owner: Jefferson County Industrial Development Agency
- c. Engineer: Bernier, Carr & Associates, Engineers, Architects and Land Surveyor's, P.C.
- d. Project: Business Complex at Watertown International

2. Description of Modifications:

- a. Engineer shall perform or furnish the following Additional Services: _____
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows: _____
- c. The responsibilities of Owner are modified as follows: _____
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: _____
- e. The schedule for rendering services is modified as follows: _____
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows: _____

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

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. The Effective Date of this Amendment is _____.

OWNER:

**Jefferson County Industrial Development
Agency**

By: _____

Title: CEO

Date Signed: _____

ENGINEER:

**Bernier, Carr & Associates, Engineers,
Architects, and Land Surveyors, P.C.**

By: _____

Title: Principal / Engineer

Date Signed: _____

STIPULATION AGREEMENT

IT IS HEREBY STIPULATED AND AGREED this ____ day of February, 2022, by and between **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 800 Starbuck Avenue, Watertown, New York 13601 (hereinafter the "Agency") and **MDD, LLC**, a limited liability corporation organized and existing under the laws of the State, having an office for the transaction of business located at 2043 County Route 25, Oswego, New York (the "Company") entered into a Project Agreement made as of January 23, 2020.

WITNESSETH:

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 369 of the Laws of 1971 of the State of New York, (the "Act"), the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research, and recreational facilities as authorized by the Act, and in connection therewith to issue its revenue bonds, and/or enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, , by resolutions adopted on December 4, 2019 and January 9, 2020 (the "Approving Resolution"), and pursuant to a certain Project Agreement, dated as of January 23, 2020 (the "Project Agreement") , the Agency appointed the Company as agent of the Agency to undertake a certain project (the "Project") consisting of (A) (1) the acquisition of an interest in a parcel of land located at 19970 County Route 3 in the Town of Watertown, Jefferson County, New York (a portion of Tax Map No. 82.00-2-1) (the "Land"); (2) the construction of a building (the "Facility") located on the Land; (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Project Facility"), such Project Facility to be utilized as a warehouse, distribution and redemption facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act), with respect to the foregoing, including potential exceptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations) (collectively the "Financial Assistance"); and (C)(1) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and (2) the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in furtherance of the project and as outlined within the Project Agreement, Agency has conferred certain financial assistance consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, renovation, construction,

reconstruction or equipping of the Project Facility; (b) an abatement from real property taxes through a 15-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (the "Taxing Jurisdictions"); and (c) an exemption from mortgage recording taxes (subject to certain statutory limitations) (collectively, the sales and use tax exemption benefit, the abatement from real property taxes benefit and the mortgage recording tax exemption benefit) (subject to certain statutory limitations) are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, pursuant to the Approving Resolution, Project Agreement, Sales Tax Exemption Letter (also dated as of January 23, 2020, and herein the Sales Tax Letter"), and related Form ST-60 filed by the Agency (the "ST-60"), the Agency's appointment of the Company as agent extended through December 31, 2020 and the purchase of goods and services relating to the Project as agent of the Agency and subject to New York State and local sales and use taxes were capped in an amount up to \$481,000.00, with the corresponding cap on allowable the sales and use tax exemption benefits authorized and approved by the Agency of \$38,400.00; and

WHEREAS, the ST-60 was dated December 13, 2019 and filed the State of New York Department of Taxation and Finance on or about January 10, 2020; and

WHEREAS, the Company has reported to and advised the Agency in the Company's Annual Project Verification Reports that notwithstanding the foregoing limits and timeframes, the Company utilized the following sales tax exemption amounts: (i) \$35,000 in 2020, and (ii) \$20,000.00 in 2021 (through and including September 30, 2021); and

WHEREAS, the Company has agreed that the overage use of \$16,600.00 shall be remitted to the Agency, and pursuant to and in accordance with Section 875 of the Act, the Project Agreement and the Agency's Recapture Policy, the Agency is required to recapture any overages of financial assistance utilized by the Company (collectively, the "Recapture"); and

WHEREAS, as an accommodation, the Agency has agreed to extend the Sales Tax Exemption use period and agent status of the to the Company September 30, 2021, and shall file an extended ST-60 in connection with same; and

WHEREAS, the Agency and Company desire to memorialize the terms of the Recapture and confirm that no other events of default are occurring with respect to the Project.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties as follows:

Section 1. That the Company shall immediately remit to the sum of \$16,600.00 to the Agency in connection with the Recapture, plus all costs and fees of the Agency incurred in connection therewith.

Section 2. That upon receipt of such funds, the Agency shall immediately remit same to the New York State Department of Taxation and Finance, along with applicable filings of Form ST-62 when due for the applicable Agency fiscal year.

Section 3. That no other events of default are known to exist and upon satisfaction of the foregoing, the Project Agreement and related documents associated with the Project shall remain in full force and effect.

Section 4. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 5. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6. Amendments, Changes and Modifications. Neither this Agreement nor any of the Project Documents may be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 7. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8. Applicable Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

[THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation Agreement as of the day and year first above written.

**JEFFERSON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: David J. Zembiec
Title: Chief Executive Officer

MDD, LLC, as Company

By: _____
Name:
Title:

[Acknowledgment Page to Stipulation Agreement]

State of New York)
County of Jefferson) ss.:

On the __ day of February, 2022, before me, the undersigned, personally appeared DAVID ZEMBIEC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)
County of) ss.:

On the __ day of February in the year 2022, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**JCIDA Committee Structure
2022**

Executive Committee:

Chairman – Robert E. Aliasso, Jr.
Vice Chairman – John Jennings
Treasurer – Paul Warneck
Secretary – W. Edward Walldroff
Immediate Past Chairman – David Converse

Audit/Finance Committee:

John Jennings, Chair
David Converse
Paul Warneck
Rob Aiken

Governance Committee:

W. Edward Walldroff, Chair
Paul Warneck
Bill Johnson

Nominating Committee:

Lisa L'Huillier, Chair
Bill Johnson
John Jennings

Loan Review Committee:

David Converse, Chair
Robert E. Aliasso, Jr.
John Jennings
Christine Powers
Kent Burto

Corporate Park (ad hoc):

David Converse
Paul Warneck
John Jennings
Rob Aiken

Alternative Energy (ad hoc):

Paul Warneck, Chair
Bill Johnson
John Jennings
Christine Powers
Staff – David Zembiec

Building and Grounds (ad hoc):

Kent Burto, Chair
David Converse
Lisa L'Huillier
Greg Gardner
John Jennings
Rob Aiken
Staff – David Zembiec

DRAFT

JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**Resolution Number 02.03.2022.02
for Cancellation of Service Agreement with Waste Management for Dumpster
at 146 Arsenal Street**

WHEREAS, Staff is seeking approval to cancel the Service Agreement with Waste Management for the dumpster located at 146 Arsenal Street since it is no longer needed, and

NOW, THEREFORE, BE IT RESOLVED, by the board of Directors of the Jefferson County Industrial Agency that it hereby approves the request, and be it further

RESOLVED, that the Chief Executive Officer or his designee are authorized and directed to execute any and all documents necessary to carry out the purposes of this Resolution.

This resolution shall take effect immediately.

W. Edward Walldroff
Secretary

Jefferson County Industrial Development Agency
 800 Starbuck Avenue, Suite 800
 Watertown, NY 13601
 (315) 782-5865

2022 Board Attendance

Name	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Aliasso, Robert	P											
Converse, David	P											
Jennings, John	P											
Johnson, William	P											
L'Huillier, Lisa	P											
Walldroff, W. Edward	P											
Warneck, Paul	P											
Totals:	7											
P - Present												
- Excused												
- Absent												