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April 23, 2019

Craig S. Dunwell, Mayor
Borough of Alpha
1001 East Blvd.
Alpha, NJ 08865

Re: Proposal for Expert Review and Report Preparation
Water and Sewer Consulting Services
Alpha, New Jersey

CP Proposal No. 19-098

Dear Mayor Dunwell:

Pursuant to your request, CP Engineers, LLC. (CP) is pleased to submit this Proposal to review the billings of a prior consultant to the Borough and provide an Expert Report as to the appropriateness of that billing. We greatly appreciate the opportunity to propose on this work and have endeavored to present a cost effective proposal which is responsive to your needs.

Project Description and Understanding

It is our understanding that the Borough is involved in litigation with its former water and sewer engineer regarding unpaid invoices. The Borough has not paid some of the invoices submitted by the consultant because it feels that the overall billing (over the six year period of service) was excessive and inappropriate. As part of the litigation, an independent expert review of the engineering services provided and the associated billings, and a report memorializing the findings, is needed.

Scope of Services

The proposed Scope of Services is as follows:

- Attend project kickoff meeting with Borough officials and the Borough Attorney.
- Review all relevant files provided by the Borough, including contracts and billing, as to determine the appropriateness of tasks and activities and their associated billing by the former engineer.
- Review all relevant files provided by the Borough to ascertain any potential malpractice by the former engineer.
- Provide an Expert Report.
- Attend a meeting with Borough officials and professionals to discuss the Expert Report.

Schedule

It is our understanding that the final schedule for the Expert Report has not been agreed upon by both parties, but has been proposed as July 1, 2019. We are prepared to proceed with the work immediately upon your authorization and will endeavor to provide the deliverables within the required timeframe.

Cost Proposal

CP is prepared to provide the above services on a time and expense basis, in accordance with the enclosed Schedule of Fees and Charges, with a not-to-exceed cost of \$19,200. As we discussed, this budget was prepared based on a man hour estimate of the necessary review and report writing time. Billing will be monthly, based upon the total number of hours expended.

Authorization

If this proposal meets with your approval, kindly return a signed copy of this proposal, or a resolution (incorporating this Proposal by reference), as your notice to proceed. We greatly appreciate the opportunity to serve the Borough of Alpha. Should you have any questions concerning our Proposal, please do not hesitate to contact us.

Sincerely,
CP ENGINEERS, LLC



Stephen E. Donati, P.E.
Vice President

Encl:

1. Standard Terms and Conditions
2. 2019 Schedule of Fees and Charges

Accepted this 23rd day of April 2019
By: Craig S. Dunwell
Name: Craig S. Dunwell
Title: Mayor

CP ENGINEERS, LLC
STANDARD TERMS AND CONDITIONS

The following clauses constitute the standard terms and conditions under which CP Engineers, LLC, hereinafter CP Engineers, agrees to perform services under this proposal. Should the parties agree to modify same, it must be accomplished by the parties by written instrument. On acceptance of the proposal and/or commencement of the work, these standard terms and conditions shall constitute the agreement between client and CP Engineers.

1. **SCOPE OF WORK AND SERVICES:** CP Engineers agrees to perform and Client agrees to pay for those Services described in this Agreement, constituting these Standard Terms and Conditions and the companion Proposal or Statement of Work. The parties further agree that these Standard Terms and Conditions shall apply to any additions or modifications of the Proposal, Statement of Work or the Agreement. These terms and conditions and the Proposal, Statement of Work or the Agreement represents the entire and integrated agreement between Client and CP Engineers and supersedes all prior negotiations, representations, or agreements, either written or oral. The parties agree that the use of standard business forms (such as purchase orders and acknowledgments) shall be solely for the convenience of the party providing such forms, whether or not such document is signed. None of the provisions, terms, and conditions contained on such forms shall apply or modify these Standard Terms and Conditions.

2. **CLIENT'S RESPONSIBILITIES:**

2.1 Designate in writing a person authorized to act as Client's representative. Client or his representative shall receive and examine documents submitted by CP Engineers, interpret and define Client's policies and render decisions and authorization in writing promptly to prevent unreasonable delay in the progress of CP Engineers services.

2.2 Provide all information as to Client's requirements for the Project, including objectives and constraints, performance requirements, and any budgetary limitations. Furnish all available information pertinent to the Project including, but not limited to, previous reports and any other data relative to the Project. CP Engineers shall be entitled to rely upon the accuracy and completeness of this information.

2.3 Furnish soils data including but not limited to reports, test borings, test pits, probings, subsurface exploration, soil bearing values, percolation tests, ground corrosion and resistivity tests, all with appropriate professional interpretation, as may be required.

2.4 Guarantee full and free access for CP Engineers to enter upon all property required for the performance of CP Engineers services under this agreement.

2.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CP Engineers; obtain advice of legal counsel, insurance/risk management professional and other professionals as the client deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CP Engineers.

2.6 Hold all required special meetings, serve all required public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the contracts and pay all costs incident thereto, including special application fees for review of project documents.

2.7 Provide CP Engineers with standard bid documents required and advertise for proposals from bidders, open the proposals at the appointed time and place and pay costs incident thereto.

3. **CP ENGINEERS' RESPONSIBILITIES:**

3.1 **COOPERATION WITH CLIENT:** CP Engineers will advise Client of the status of the project and will make reasonable efforts to coordinate its activities with other activities of Client, its agents, and other contractors at the site(s) at which work shall take place under this Agreement. CP Engineers shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

3.2 **CONSTRUCTION AND REMEDIATION PROJECTS:** Client acknowledges that this Agreement is only for those Services specified in the Proposal or Statement of Work. If the Client requests CP Engineers to perform work related to construction or remediation, CP Engineers shall act as an agent of the Client. For all services performed by CP Engineers that relate to construction or remediation, Client further acknowledges that CP Engineers shall not have control of or be responsible for the acts or omissions of other parties engaged by the Client nor for the construction means, methods, techniques, sequences, and procedures of Client's contractors or subcontractors. CP Engineers shall not be responsible for site safety.

3.3 **CONSTRUCTION COSTS:** Any opinion of the construction cost prepared by CP Engineers represents its judgment as a design professional and is supplied for the general guidance of the Client. Since CP Engineers has no control over the cost of labor and materials, competitive bidding or market conditions, CP Engineers does not guarantee the accuracy of such opinions as compared to contractor bids or actual costs to client.

3.4. **NOMINAL/RESIDENT CONSTRUCTION REVIEW SERVICES:**

3.4.1 If requested by Client, or recommended by CP Engineers and approved in writing by Client, CP Engineers shall provide one or more full time resident project representatives to assist CP Engineers in order to render more extensive representation at the project site during the construction phase. Such resident construction review services shall be paid for by Client as Additional Services as defined within this agreement. The limits of the authority, duties and responsibilities of a resident project representative shall be described by written instrument before such services begin.

3.4.2 By means of the more extensive on-site observations of the work in progress, CP Engineers will endeavor to provide further protection for Client against defects and deficiencies in the Contractor's work, but the furnishing of such services shall not include construction review of the Contractor's construction means, methods, techniques, sequences or procedures, or of any safety precautions and programs in connection with the work, and CP Engineers shall not be responsible for the Contractor's failure to carry out the work in accordance with the Construction Contract.

3.4.3 On projects where CP Engineers has been engaged to provide nominal (periodic) or resident construction observation services, CP Engineers will provide these services based on an agreed upon construction observation schedule. If the schedule is extended due to changes/actions of the client, contractor or another party other than CP Engineers, then the

fee paid to CP Engineers shall be increased to cover the additional costs incurred or the services under construction observation will be terminated as of that date.

4. **CONFIDENTIALITY:** The Client shall consider as confidential all information and data furnished to it by CP Engineers that relate to technologies, formulas, procedures, processes, methods, trade secrets, ideas, improvements, inventions, and/or computer programs that are designated in writing by CP Engineers as confidential at the time of transmission and are obtained or acquired by the Client in connection with this Agreement, and shall not disclose such information to any third party.

5. **STANDARD OF CARE:**

5.1 CP Engineers is employed to render a professional service only, and any payments made to CP Engineers are compensation solely for such services rendered and recommendations made in carrying out the work. CP Engineers shall perform its services in accordance with generally accepted engineering and other applicable professional practices in effect at the time and in the locality that CP Engineers' services are rendered, and under similar circumstances. Professional services are not subject to, and CP Engineers cannot provide, any warranty or guarantee, express or implied.

5.2 CP Engineers intends to render its services under this agreement in accordance with generally accepted professional practices for the intended use of the project and makes no warranty expressed or implied.

6. **OWNERSHIP OF DOCUMENTS:** All drawings, specifications and other work product of CP Engineers for the project are instruments of service for this project only and shall remain the property of CP Engineers whether the project is completed or not. Reuse of any of the instruments of service of CP Engineers by Client on extensions of this project or on any other project without the written permission of CP Engineers shall be at Client's risk and Client agrees to defend, indemnify and hold harmless CP Engineers from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of CP Engineers instruments of service by Client or by others acting through Client. Any reuse or adaptation of CP Engineers instruments of service shall entitle CP Engineers to further compensation in amounts to be agreed upon by Client and CP Engineers.

7. **CODE AND REGULATORY COMPLIANCE:** The CP Engineers shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this agreement.

8. **INSURANCE, INDEMNITY AND LIABILITY:**

8.1 **CP ENGINEERS INSURANCE:** During the period of performance of this Agreement, CP Engineers shall maintain insurance coverage for statutory workers compensation insurance coverage, employer's liability, comprehensive general liability insurance coverage and professional liability insurance coverage in amounts that are in accordance with CP Engineers' business requirements. Certificates evidencing such coverage will be provided to Client upon request. If Client desires additional coverage, CP Engineers will endeavor to obtain such additional coverage, and such additional coverage will be at Client's expense.

8.2 **LIMITATION OF PROFESSIONAL LIABILITY:** The Client agrees to limit CP Engineers liability to the Client on the project, due to CP Engineers' professional negligent acts, errors or omissions such that the total aggregate liability of CP Engineers shall not exceed fifty thousand (\$50,000) dollars or CP Engineers' total fee for services rendered on this project, whichever is greater.

8.3 **HAZARDOUS WASTE CLAIM (Definition):** "Hazardous Waste Claim" shall mean any claim arising out of, or based upon, the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other materials, irritant, contaminant or pollutant, whether such discharge is sudden or gradual.

8.4 **LIMITATION OF LIABILITY:** Client agrees to bring no claim against CP Engineers either directly or by means of impleader, third party claim or cross claim, in any action relating in whole or in part to any hazardous waste claim as defined in 7.3.

8.5 **CLAIM INDEMNIFICATION:** In the event CP Engineers is a party to any action arising out of a hazardous waste claim, Client agrees to indemnify CP Engineers to the maximum extent permitted by law, award, judgment or settlement against CP Engineers provided that such indemnification shall not apply to such portion of the award judgment or settlement unrelated to the hazardous waste claim.

8.6 **DEFENSE COST INDEMNIFICATION-CLIENT'S OPTION TO DEFEND:**

8.6.1 In the event CP Engineers is a party to any action arising in whole or part out of a hazardous waste claim, Client agrees to indemnify CP Engineers for all costs (including attorneys' fees) incurred by CP Engineers in defending such action.

8.6.2 Client may, at its option, elect to defend CP Engineers in any action described in 8.6.1 provided that Client indemnifies CP Engineers for any judgment, settlement or other payment to any claimant whether or not attributable to the hazardous waste claim portion of such action.

8.7 **CONTRACTOR'S INSURANCE:** The Client shall require all Contractors and any Subcontractors, prior to the commencement of their work, to submit evidence that they have obtained for the period of the Construction Contract and guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a limit of not less than \$1 million for all damages arising out of bodily injury, sickness or death of one person and an aggregate of \$3 million for damages arising out of bodily injury, sickness and death of two or more persons in any one occurrence. The property damage portion will

provide for a limit of not less than \$500,000 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground exposures. Included in such coverage will be contractual coverage sufficiently broad to insure the provision of 7.8 "Indemnity." The comprehensive general liability insurance will include as additional named insureds: Client; CP Engineers and each of its officers, agents and employees.

8.8 INDEMNITY: Client will require that any Contractor or Subcontractors performing work in connection with Drawings and Specifications produced under this agreement to hold harmless, indemnify and defend, Client and CP Engineers, its consultants, and each of its officers, agents and employees from any and all liability claims, losses or damage arising out of, or alleged to arise from, the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract documents, but not including liability that may be due to the sole negligence of Client, CP Engineers, its consultants or officers, agents and employees.

9. INDEMNIFICATION:

9.1 To the fullest extent permitted by law, CP Engineers shall indemnify and save harmless Client, its agents, employees & representatives, from and against loss, liability, and damages sustained by Client, employees, and representatives by reason of injury or death to persons or damage to tangible property or other losses to the extent caused directly by the negligent acts, errors and omissions by CP Engineers, its agents or employees in the performance of Professional Services.

9.2 To the fullest extent permitted by law, Client shall indemnify, and save harmless CP Engineers, its agents, employees, and representatives from and against loss, liability, and damages arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses, caused by Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or any one for whom the Client is legally liable.

9.3 In no event shall CP Engineers or Client be liable to the other for any special, indirect, incidental, economic, or consequential damages whatsoever, regardless of the legal theory under which such damages are incurred.

10. SITE SAFETY:

10.1 CP Engineers has established procedures for the safety of its employees and subcontractors. Unless specifically set forth in this Agreement, CP Engineers disclaims any authority or responsibility for general job site safety and the safety of persons who are not the employees of CP Engineers or its subcontractors.

10.2 CP Engineers has not been retained or compensated to provide design and construction review services relating to Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work, but not relating to the final or completed structure. Omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retention of excavations and any erection methods and temporary bracing.

11. PROJECT DELAYS AND CHANGES:

11.1 Neither party shall hold the other responsible for damages or delay in performance caused by Acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees or agents.

11.2 If events beyond the control of Client or CP Engineers, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God, or the public enemy, changes required by new or revised laws, rules, regulations, or code requirements, or new or amended orders of any public authority, or act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds ninety (90) days, CP Engineers shall be entitled to an equitable adjustment in compensation.

11.3 In the event CP Engineers is delayed by Client, including CP Engineers encountering conditions or circumstances during performance of the Services that are materially different than those described or represented in the information provided by Client, and such delay exceeds thirty (30) days, CP Engineers shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

11.4 Client or CP Engineers may request changes in the Services within the general scope of this Agreement, due to factors not considered or addressed above in paragraphs 10.2 and 10.3. In the event that changes in the Services result in increased work, Client will, after review and approval of any change orders or other changes in scope and/or schedule, pay CP Engineers for hours worked, equipment used, and materials expended in accordance with CP Engineers' rate schedule or such other basis as the parties may agree upon and will provide for an equitable adjustment in the fee schedule under the Agreement.

12. BILLING AND PAYMENTS:

12.1. HOURLY RATES OF COMPENSATION: Where hourly rates of compensation are proposed as the method of payment and a rate schedule has not been provided, hourly rates shall be computed as: TOTAL PAYROLL COST plus 1.5 times TOTAL PAYROLL COST as an allowance for overhead and profit for the number of hours that employees are directly employed on the project including travel. TOTAL PAYROLL COST is calculated as the sum of: 1) direct salary charged to the project; and 2) the ratio of the latest fiscal year benefits of all employees (vacations, sick leave, holidays, insurance, taxes, pensions, and other benefits) to all direct salaries; multiplied by direct salary charged to the project. Additional services, when required, will be invoiced at hourly rates of compensation plus reimbursable expenses.

12.2. REIMBURSABLE EXPENSES: Reimbursable expenses are in addition to compensation to CP Engineers for basic and additional services and include expenditures made by CP Engineers, its employees or consultants in the interest of the project. Reimbursable expenses include but are not limited to: (a) expenses of transportation, subsistence and lodging when traveling in connection with the project; (b) expenses of long distance, toll telephone calls, telegrams, messenger service, faxes, express charges, computer charges, reproduction, and fees paid for securing approval of authorities having jurisdiction over the project; (c) sub-contractor expenses, plus a 10 percent mark-up to cover CP Engineers

handling and administration costs; and, (d) when authorized in advance by Client, expense of overtime work requiring higher than normal rates, and expense of preparing perspectives, renderings or models.

13.3. PAYMENTS TO CP ENGINEERS:

13.3.1 Progress payments shall be made in proportion to services rendered and shall be due and owing within thirty (30) days of CP Engineers' submittal of its invoice. Past due amounts owed shall incur a charge of one and one half percent (1 ½%) interest per month from the thirtieth (30th) day.

13.3.2 If Client fails to make payments due CP Engineers, CP Engineers may, after giving seven (7) days written notice to Client, suspend services under this agreement and seek full payment plus interest and all reasonable attorney fees incurred for collection of said fees. If CP Engineers suspends work due to non-payment, CP Engineers will not be responsible for any delays or associated costs incurred by the Client.

13.3.3 The amount of any sales, excise, value added, gross receipts or any other type of tax that may be imposed by any taxing entity or authority shall be in addition to fees and costs described in the proposal and proposal statement.

13.3.4 Payment of invoices for services shall not be subject to or contingent upon receipt of payment from third parties, unless otherwise agreed in writing.

13.3.5 A Cost of Living adjustment shall be made to lump sum or unit price fees, and maximum fees, wherever they appear, if the Consumer Price Index (CPI-U), U.S. City Average, exceeds six (6) percent in any 12-month period commencing with the first day of the month of the date of the proposal. The adjustment shall be calculated based on the percentage increase in CPI-U, from the inception date of the proposal, for the effort completed each month. The adjustment shall be added to the lump sum or unit costs, or to the maximum fee.

14. PROPOSAL EXPIRATION: The offer to perform the proposed services described in the companion proposal or statement of work is extended for ninety (90) days from the date thereof. Extensions shall be in writing only.

15. GOVERNING LAWS: This Agreement shall be governed by the law of the principal place of business of CP Engineers.

16. DISPUTE RESOLUTION:

16.1 If a dispute arises out of any of the provisions contained herein, CP Engineers and the Client agree to exercise good faith efforts to resolve the matter fairly, amicably and in a timely manner. If the dispute cannot be settled through discussion, each party agrees to endeavor to settle the dispute through non-binding mediation. The mediation shall be conducted under the auspices of the American Arbitration Association (AAA) and in accordance with the construction industry mediation rules of the AAA. The parties agree to resort to arbitration, litigation or other court proceedings, only in the event mediation efforts fail to resolve the dispute. Regardless of the outcome of the mediation, the costs associated with mediation, exclusive of attorney's fee, expert fees and other costs not related to the actual cost of administering the mediation, shall be borne equally by the parties.

16.2 Notwithstanding the above, mediation shall not apply to delinquent accounts on which no specific reason for non-payment has been provided to CP Engineers in writing by the Client within forty (40) days of the Invoice date, setting forth facts which constitute a legal defense or genuine dispute.

17. TERMINATION: This agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms of this agreement by the other party through no fault of the terminating party. If this agreement is terminated, CP Engineers shall be paid for services performed to the termination notice date plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination plus 15 percent of the total compensation unearned at the time of termination to account for CP Engineers' rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

18. MERGER AND SEVERABILITY:

18.1 This Agreement represents the entire and integrated agreement between Client and CP Engineers and supersedes all prior negotiations, representations, proposals, agreements, or communications whether written or oral. This Agreement may be amended only by written instrument signed by both Client and CP Engineers.

18.2 If any term or condition of this Agreement shall, to any extent, be found invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect to the extent allowed by applicable law. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

19. DELEGATION OF DUTIES: Neither Client nor CP Engineers shall delegate his duties under this agreement without the written consent of the other.

20. AUTHORITY TO BIND: Both the Client and CP Engineers certify that the individual that has executed this agreement on their behalf is empowered to execute and bind their respective party to the terms and conditions of this agreement.

21. NON SOLICITATION: Both parties agree that, without prior written approval of the other party, it will not solicit, or offer to employ, any employee of the other party under this Agreement. If during the term of this Agreement, or within one year following its termination, either party hires or contracts for the services of the other parties' employees other than through that party, the hiring party agrees to pay the other party, within ten days after written request therefore, a commission equal to the greater of (i) six months base salary of such employee or (ii) the sum of \$35,000.