

**AGREEMENT FOR PROFESSIONAL SERVICES**

~~of August, 2020~~ <sup>October</sup> THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made this 9th day of ~~August, 2020~~ ("Effective Date"), by and between **BOROUGH OF ALPHA**, ("CLIENT"), having offices at 1000 East Boulevard, Alpha, New Jersey 08865 and **MOTT MACDONALD, LLC** ("ENGINEER"), a Delaware limited liability company, having principal offices at 111 Wood Avenue South, Iselin, New Jersey 08830. CLIENT and ENGINEER are collectively referred to as the "Parties" or individually as a "Party".

WHEREAS, CLIENT desires to retain ENGINEER for the purposes of proceeding with professional services; and

WHEREAS, CLIENT and the ENGINEER wish to enter into an Agreement to set forth the terms and conditions under which ENGINEER will provide professional services to CLIENT on the Project (as defined herein);

NOW, THEREFORE, in consideration of the covenants herein contained, the Parties hereto agree as follows:

**1. DEFINITIONS**

For purposes of this Agreement, the following defined terms shall have the meanings set forth in this Article 1.

- (a) "Agreement" means this Agreement together with all other addenda attached hereto from time to time constitute the Agreement. All article and section numbers used herein refer to articles and sections of this Agreement unless otherwise specifically stated.
- (b) "Scope of Work" or "Services" or "Work" means those services described in the Exhibit A.
- (c) "CLIENT" means the entity noted in the opening paragraph to this Agreement.
- (d) "Project" means Preparation of a Water Sewer System Model.

**2. SCOPE OF WORK**

(a) Subject to the terms and conditions of this Agreement, CLIENT engages ENGINEER to perform, and ENGINEER agrees to perform, the Services to be described in Exhibit A, attached to this Agreement, and made a part hereof. Services not expressly provided for in the Scope of Work are excluded from the scope of work and ENGINEER assumes no duty to perform such services. **ENGINEER'S SERVICES SHALL NOT BE SUBJECT TO ANY EXPRESS OR IMPLIED WARRANTIES WHATSOEVER NOR SHALL IT BE SUBJECT TO ANY FITNESS FOR PURPOSE WARRANTIES, PERFORMANCE STANDARDS OR GUARANTEES OF ANY KIND.**

(b) The Services performed by ENGINEER be in a manner consistent with that level of care and skill ordinarily exercised by other professional consulting firms providing similar services under similar circumstances at the time, and in the general vicinity where, the services are performed (the "Standard of Care").

3. COMMENCEMENT OF AND CHANGES IN THE WORK

- (a) ENGINEER will initiate the tasks as set forth in the Exhibit A upon receipt of a fully executed Agreement from the Client. ENGINEER and the Client may at any time, by mutual written agreement, make changes within the general scope of this Agreement by additions, alterations, deviations, or omissions from this Agreement.
- (b) If such changes cause an increase or decrease in ENGINEER's cost of or time required for the performance of this Agreement, or if ENGINEER, in the performance of the services, encounters conditions differing materially from those anticipated under this Agreement or beyond what could reasonably have been anticipated by an experienced professional in work of the nature involved, ENGINEER shall be entitled to an equitable adjustment in the compensation and performance time of this Agreement.
- (c) If, in the performance of its services, ENGINEER encounters hazardous materials, or pollutants that pose unanticipated risks, the Scope of Work and ENGINEER's compensation and time of performance will be reconsidered and this Agreement shall immediately become subject to renegotiation or termination, at ENGINEER's option. In the event that this Agreement is so terminated, ENGINEER shall be paid for its fees and charges incurred to the date of such termination, including, if applicable, any additional fees or charges incurred in demobilizing.
- (d) It is recognized that other contractors may be retained separately by the CLIENT for the Project (including but not limited to geological, drilling and laboratory contractors) who may provide inputs to the Project to be utilized by ENGINEER. ENGINEER shall have the right to rely upon the timely receipt, correctness and completeness of said inputs. ENGINEER shall not be responsible for the acts, errors or omissions of any remediation action contractors or other contractors working for the CLIENT on the Project.
- (e) ENGINEER shall not have the authority to control the work of contractors retained by the CLIENT and ENGINEER shall not have any responsibility for the means, methods, sequences, procedures or techniques used on the Project, for site safety, or for the use of safe construction practices by such contractors, such responsibilities resting solely with Client's other contractors or parties other than ENGINEER.
- (f) ENGINEER shall not be held responsible for damages or delays in performance (and the direct or indirect costs or consequences arising from such delays) caused or arising in whole or in part from force majeure or other events beyond ENGINEER's reasonable control and to the extent ENGINEER is impacted by the same, then ENGINEER shall be entitled to an equitable adjustment of this Agreement. For purposes of this Agreement force majeure shall include, but not be limited to, adverse weather conditions, changes in law, floods, epidemics, war, riot, strikes, lockouts and other industrial disturbances, accidents, sabotage, fire, terrorist acts, loss of permits, breakdown of machinery, failure to obtain permits, court orders, acts of God, acts, orders, laws or regulations of any government agency and unavoidable delays in the receipt of laboratory testing results.

4. PAYMENT OF ENGINEER'S FEES

- (a) ENGINEER shall be compensated for its services on a time and materials or lump sum basis, as more particularly set forth in Exhibit A.
- (b) On or before the 30th day of each month in which the ENGINEER is performing the Services, ENGINEER shall invoice CLIENT for the Services performed through the last day of the preceding month. ENGINEER'S Invoices shall be due and payable within thirty (30) days following CLIENT's receipt of the invoice.

- (c) For Services performed on a time and materials basis, invoices shall be submitted monthly by ENGINEER to the Client and shall indicate the charges due from the Hourly Rate Schedule (including, without limitation, reimbursable expenses), attached hereto as Exhibit B.
- (d) For Services performed on a lump sum basis, invoices shall be submitted monthly by ENGINEER to Client and shall indicate the tasks performed and completed, on a percent completed basis (including, without limitation, reimbursable expenses), and shall include the charges due based on the percentage of completion of the services, or in accordance with a payment schedule as otherwise mutually agreed to in Exhibit A.
- (e) The CLIENT shall promptly review ENGINEER's invoices and if the CLIENT disputes any amounts invoiced the CLIENT shall give prompt written notice thereof, including the item or items disputed and the basis for the dispute. The CLIENT shall in any event pay all amounts invoiced that the CLIENT does not dispute as provided for herein. Invoiced amounts not paid within forty-five (45) days of their receipt shall bear interest at the maximum amount permissible by law.
- (f) The compensation for ENGINEER's services has been agreed to in anticipation of the orderly and continuous progress of the Project through completion. If there are material modifications or changes in the extent of the Project or in the time required for ENGINEER's services, its compensation and time of performance shall be equitably adjusted.

#### 5. RESPONSIBILITIES OF THE CLIENT

The CLIENT, at its own expense, will:

- (a) Provide all criteria and full information as to the CLIENT's requirements for the Project and will make available to ENGINEER all information, documents and assistance necessary or reasonably requested by ENGINEER in order to enable it to perform the Services in a timely manner, all of which ENGINEER shall be entitled to rely upon without independent verification.
- (b) Make decisions, provide approvals and obtain all necessary authorizations, licenses and permits required in order to permit the timely performance of the Services, notify ENGINEER if it becomes aware of any matter that may change the scope, timing, order or complexity of the Services, and act reasonably, professionally and in good faith in all respects in connection with the Agreement.
- (c) Upon request by ENGINEER, furnish ENGINEER with copies of all existing data, reports, surveys, plans and other materials and information, within the possession of the CLIENT, required for the Project, all of which ENGINEER may use and rely upon in performing its services under this Agreement.
- (d) Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services.
- (e) Be responsible for locating existing underground or covered site utilities, pipelines, tanks and other structures prior to the installation of borings, wells or excavations and be responsible for all claims, liabilities and damages resulting from the failure to accurately locate same. CLIENT shall review all boring, well and excavation locations prior to installation and shall direct that they be relocated if any conflict exists with any underground utilities, tanks or other structures.
- (f) Provide a description of activities which were conducted at the site at any time by the CLIENT or by any person or entity which would relate to the services and identify by name, quantity, location and date any releases of hazardous substances or pollutants.

(g) Give prompt written notice to ENGINEER whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services or any alleged defect in ENGINEER's services.

(h) Designate an individual or individuals to act as the CLIENT's representative(s) with respect to the services to be rendered under this Agreement. Said individual(s) shall each have complete authority to transmit instructions, receive information and interpret and define the Client's requirements, decisions, policies, drawings, plans, surveys, data and reports.

(i) To the extent required by law, promptly report all regulated conditions, including, without limitation, the discovery of releases of hazardous substances at the site to the appropriate authorities in accordance with applicable law.

(j) Assume responsibility for unavoidable damage or alteration to the site caused by ENGINEER's services.

(k) Assume responsibility for personal injuries and property damage caused by ENGINEER's interference with subterranean structures such as pipes, tanks and utility lines that are not disclosed to or are not accurately disclosed to ENGINEER by the Client in advance.

(l) CLIENT shall be solely responsible for the health, safety and welfare of its employees and agents and others with regard to the Work, and shall strictly comply with all health and safety rules, including but not limited to ENGINEER's Injury, Illness and Prevention Program or applicable guidance which may be provided by ENGINEER, and all other applicable rules, regulations and guidance required by ENGINEER, CLIENT or applicable government agencies relating to the Work. CLIENT is solely responsible for establishing and enforcing any additional requirements that CLIENT deems necessary to protect its employees, ENGINEER's employees, and any other persons entering the site for purposes relating to Client's operations

## 6. INSURANCE

In connection with any Work Order issued hereunder, and so long as ENGINEER is performing Services under this Agreement, ENGINEER shall maintain insurance coverages in forms and limits as set forth below:

- a. Statutory Worker's Compensation and Employer's Liability Insurance, with limits of \$1,000,000.
- b. Commercial General Liability Insurance in the amount of \$1,000,000 bodily injury and property damage, combined aggregate limit, with "XCU" exclusions removed.
- c. Comprehensive Automobile Liability Insurance for owned, hired and non-owned motor vehicles with limits of \$1,000,000 bodily injury and property damage, combined aggregate limit.
- d. Professional Liability insurance in an amount of \$1,000,000 per claim and annual aggregate.

## 7. INDEMNIFICATION

(a) ENGINEER agrees to indemnify, save and hold harmless CLIENT from and against all claims, demands, suits, judgments, liabilities, costs and reasonable attorney fees, to the extent caused by the negligent errors or omissions in the performance of the Services provided hereunder.

(b) CLIENT agrees to indemnify, save and hold harmless ENGINEER from and against all claims, demands, suits, judgments, liabilities, costs and reasonably attorney fees, to the extent caused by the negligent acts, errors or omissions of the Client, in the performance of their services and obligations under this Agreement.

(c) In addition to (b) above, CLIENT shall indemnify, defend and hold harmless ENGINEER from and against all losses, claims, expenses and damages in whole or in part arising or resulting from or in connection with substances or wastes found or identified at work sites (including, without limitation claims and liabilities arising from statutes such as RCRA, CERCLA, SARA, or any other federal or state statutes) and including but not limited to losses, claims, expenses and damages which arise in whole or in part out of or are related to, or are based upon, the actual, alleged or threatened dispersal, discharge, escape, release or saturation of smoke, vapor, soot, fumes, acids, alkalis, toxic chemicals, wastes, solids, liquids, gases, thermal irritants or contaminants, hazardous, toxic residual or special wastes, materials or substances nuclear material, asbestos material, or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon in or into the surface or subsurface (a) soils, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether sudden or not.

#### 8. WAIVER OF CONSEQUENTIAL DAMAGES

The Parties waive their rights to any and all claims against each other for incidental, special, indirect or consequential damages of any nature whatsoever, including but not limited to loss of use, lost profits, economic loss, delay, liquated damages or business interruption type damages arising out of or in any way related to the Services or Work, from any cause or causes, including but not limited to joint and several liability or strict liability and whether arising in contract, warranty, tort, negligence (including strict liability) or otherwise and no matter how claimed, computed or characterized.

#### 9. DEFAULT/TERMINATION

In the event of a material breach of this Agreement by either Party and provided that the non-breaching Party is not in material breach hereunder and has given written notice to the other Party specifying (i) its material breach and (ii) the non-breaching Party's intent to terminate this Agreement, all at least ten (10) calendar days before the proposed date of termination, and the breaching Party has failed to correct the material breach within said ten (10) calendar days, or prepared a plan reasonably designed to cure the default if said cure is not possible within said ten (10) day period, then this Agreement shall be terminated on the date set forth in such notice. If the breaching Party cures its breach at any time prior to the proposed date of the termination, the termination notice shall be deemed withdrawn and be of no force or effect. Notwithstanding anything herein to the contrary, CLIENT may terminate this Agreement at any time, for any or no reason, upon written notice to ENGINEER; provided however that any such termination by CLIENT shall not relieve CLIENT of its obligation to pay for services or materials provided by ENGINEER in accordance with the terms of the Agreement prior to termination.

#### 10. TIME FOR PERFORMANCE

Subject to the Standard of Care, ENGINEER shall complete its performance of the Services in conformity with the time limitations, if any, set forth in Exhibit A.

#### 11. NOTICES

(a) All Notices, instructions and other communications, other than a formal notice of default, required or permitted to be given hereunder shall be in writing and shall be delivered via facsimile transmission or mailed by first class mail, as follows:

If to ENGINEER:

MOTT MacDONALD, LLC  
111 Wood Avenue South  
Iselin, New Jersey 08830-4112  
Attention: John Ruschke  
Phone: 908-238-5000  
Email: [John.ruschke@mottmac.com](mailto:John.ruschke@mottmac.com)

If to CLIENT:

CLERK, BOROUGH OF ALPHA  
1000 East Boulevard  
Alpha, New Jersey 08865  
Attention:  
Phone: 908-454-0088  
Email: [alphaclerk@alphaboronj.org](mailto:alphaclerk@alphaboronj.org)

(b) Either CLIENT or ENGINEER may change the address to which communications to it are to be directed, by giving written notice to the other in the manner provided in this Section 12(a).

## 12. GENERAL

- (a) Executed Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but the several counterparts shall constitute but one and the same instrument.
- (b) Entire Agreement. This Agreement sets forth the entire agreement and understanding of CLIENT and ENGINEER in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings relating thereto. No representation, promise, inducement or statement of intention has been made by either CLIENT or ENGINEER which is not embodied in this Agreement or in such Work Orders.
- (c) Governing Law. This Agreement will be interpreted and construed in accordance with the internal laws of the State where the Project is located without regard to choice-of-law principles that would require the application of the laws of a jurisdiction other than such State. Unless otherwise prohibited by law CLIENT and ENGINEER waive their right to a trial by jury in any litigation resulting from this Agreement.
- (d) Third Parties. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Client and ENGINEER. ENGINEER's work product may not be used or relied upon by any other person without ENGINEER's express written consent.
- (e) Ownership of Documents. All design documents, intellectual property, materials or other work product resulting from the Services, including drawings, specifications, calculations, maps, reports, photographs, samples and other documents (hereinafter "Documents") are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed. Client may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. ENGINEER grants Client a limited license to use the Documents only on the Project for which they were prepared, subject to receipt by ENGINEER of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Client 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 Client 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 the Client's sole risk and without liability or legal exposure to ENGINEER or to its officers, directors, members, partners, agents, employees, and ENGINEER; and (3) such limited license to Client shall not create any rights in third parties. While ownership of the documents shall rest with the ENGINEER, the ENGINEER shall promptly provide certified copies to the CLIENT upon request and if mandated by law shall provide the originals to the

CLIENT. Also, the CLIENT shall be provided electronic copies of all work product in a format that is acceptable to CLIENT.

(f) Severability. The invalidity of any provision or unenforceability thereof shall not affect the validity or enforceability of any other provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers thereunto duly authorized on the day and year first above written.

ATTEST:

Christine Jennings

MOTT MacDONALD, LLC

By Cathleen Marcell  
Cathleen Marcelli, Senior Vice President

Dated October 9, 2020

ATTEST:

[Signature]

BOROUGH OF ALPHA

By Craig S. Dunwell  
Craig S. Dunwell, Mayor

Type or Print Name and Title

Dated \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES & COMPENSATION**

**SCOPE OF SERVICES:**

ENGINEER will perform the following services.

Water System Sewer Model as outlined in our proposal dated July 9, 2020 (copy attached)

**COMPENSATION:**

Fixed Price. ENGINEER's compensation shall be a fixed price (lump sum) of \$22,500.00.



**EXHIBIT B**  
**TO AGREEMENT BETWEEN**  
**CLIENT and MOTT MacDONALD ("ENGINEER")**

**ENGINEER'S RATE SCHEDULE**

# BOROUGH OF ALPHA

1001 East Blvd  
Alpha, NJ 08865  
TEL (908)454-0088 FAX (908)454-4210

## PURCHASE ORDER

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKING LISTS, CORRESPONDENCE, ETC.

NO. 20-00531

ORDER DATE: 08/20/20  
REQUISITION NO:  
DELIVERY DATE:  
STATE CONTRACT:  
F.O.B. TERMS:


<b>S H I P T O</b>	BOROUGH OF ALPHA 1001 EAST BLVD ALPHA, NJ 08865
<b>V E N D O R</b>	VENDOR #: MOTT MOTT MACDONALD, LLC 412 MOUNT KEMBLE AVENUE SUITE G22 MORRISTOWN, NJ 07960 Phone: (908)730-6000 Fax: (973)267-2890

## PAYMENT RECORD

CHECK NO.  
DATE PAID

NOTICE: TAX ID #22-6001634 - TAX EXEMPT

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	PROFESSIONAL ENGINEERING SERVICES PREPARATION OF WATER SYSTEM MODEL RESOLUTION 2020-123	C-08-55-020-001	22,500.0000	22,500.00
			TOTAL	22,500.00

<b>CLAIMANT'S CERTIFICATION &amp; DECLARATION</b> I do solemnly declare and certify under penalties of the law that the within bill is correct in all its particulars; that the articles have been furnished or services rendered as stated therein; that no bonus has been given or received by any person or persons within the knowledge of this claimant in connection with the above claim; that the amount therein stated is justly due and owing; and that the amount charged is a reasonable one.	<b>OFFICER'S CERTIFICATION</b> I, having knowledge of the facts, certify that the materials and supplies have been received or the services rendered; said certification being based on signed delivery slips or other reasonable procedures.  DEPT. HEAD _____ DATE _____ VENDOR MUST SIGN CERTIFICATION STATEMENT ON THIS VOUCHER, MAIL VOUCHER & ITEMIZED BILLS TO: BOROUGH OF ALPHA 1001 East Blvd Alpha, NJ 08865	<b>APPROVAL TO PURCHASE</b> DO NOT ACCEPT THIS ORDER UNLESS IT IS SIGNED BELOW.   MELISSA YULE FUNDS AVAILABLE  COUNCIL PERSON/DIRECTOR _____ CFO _____
<b>X</b> VENDOR SIGN HERE	OFFICIAL POSITION _____ DATE _____	
TAX ID NO. OR SOCIAL SECURITY NO.		



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

**Professional Engineering Services  
Preparation of a Water Sewer System Model  
Alpha, New Jersey**

July 9, 2020

Dear Mr. Dunwell:

Mott MacDonald is pleased to offer the following proposal to assist the Borough of Alpha (Borough) with professional engineering services as it relates to the preparation of a water sewer model.

**Project Understanding**

Both of the Borough's standpipes are in need of costly upgrades and painting including a new replacement tank at Pursel Street. Due to the costs associated with these major projects, the Borough is asking proposals to evaluate the possibility of eliminating one or both of the standpipes, and replacement with a new, higher elevation hydro-pillar. The elimination of a tank will not be considered without proper modeling of the system.

The system model will depict the entire system and allow for various scenarios to be run via the computer model. The model will be utilized to evaluate the Pursel Street tank elimination and/or the Industrial Drive tank elimination as well as installation of a new improvements to the system to move water under the railroad in an efficient manner.

In addition, the Borough has pipes that were installed many years ago. Although they met the standards of the time that they were constructed, today the water mains may be undersized. The proposed model, once developed, may be used routinely by the Borough to evaluate the system and the impact that proposed changes will have on the system flows and pressure.

**Scope of Work**

Mott MacDonald proposes the following scope of work:

1. Alpha Borough currently has its water system mapped in GIS. Mott MacDonald will perform quality control and topology on the resulting GIS layers to ensure continuity and identify missing information. Topology is a key GIS requirement for data management and integrity. A topological data model manages spatial relationships by representing spatial objects (point, line, and area features) as an underlying graph of topological primitives—nodes, faces, and edges. Mott

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Suite G22  
Morristown NJ 07960  
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MacDonald will utilize ArcGIS Standard software application on the topology layers to perform a "map clean-up" to display and correct these topological relationships, errors, and exceptions.

2. Mott MacDonald will develop the Base Model for the existing system and calibrate the model using the flow data. This phase will review the need for improvements to undersized mains in the Borough and will allow proper investigation of the hydraulic connection between the east and west side of the water system (separated by the railroad tracks).
3. Mott MacDonald will provide one day of flow testing to calibrate the model and will coordinate with the Boro during the testing to minimize impacts on the Water System and residents.
4. Mott MacDonald will model tank options with at least five scenarios.
  - a. Keep existing tanks in place;
  - b. Install new larger elevated tank at Pursell Street with Industrial Drive Standpipe intact;
  - c. Install new larger elevated tank at Industrial Drive with Pursell Street Standpipe intact;
  - d. Rerun the above b and c scenarios with new tank higher elevation which will hydraulically lock the standpipes flow in the tank;
  - e. Install a new elevated tank at Industrial Drive and remove the standpipe at Pursell Street.
5. A brief letter report will be developed to outline the model finding.

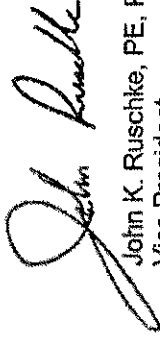
#### Compensation

We propose to undertake the Scope of Services outlined above on a lump sum basis with a "not-to-exceed" fee of \$22,500.00. If the proposal is acceptable, Mott MacDonald will forward our standard contract for execution.

Mott MacDonald appreciates this opportunity to provide professional services to the Borough. If you have any questions or need to discuss this proposal, please do not hesitate to contact me.

Very truly yours,

MOTT MACDONALD, LLC



John K. Ruschke, PE, PMP  
Vice President  
Municipal & County Services  
T 908.238.5000 F 973.267.2890  
[john.ruschke@mottmac.com](mailto:john.ruschke@mottmac.com)