

VILLAGE OF NEWBERRY

VILLAGE COUNCIL

MEMBER	ELECTED	ADDRESS	EMAIL	PHONE	CURRENT TERM/EXP
John DeWitt III <i>Village President</i>	2016	111 W John Street	president@newberry.mi.gov	906-291-0578	2YR/11'2018
Sharon Brown <i>Pro-Temp</i>	2016	411 Handy Street	sbrown@newberry.mi.gov	293-5332 H	4 YR/11'2020
Dan Hardenbrook	APPOINTED 8/17	224 Newberry Ave Apt. 2	dhardenbrook@newberry.mi.gov		4YR/11'2018
Kelsey Auterson	APPOINTED 1/18		kauterson@newberry.mi.gov		4YR/11'2020
A.J. Downey	APPOINTED 8/17	210 E. McMillan Ave	ajdowney@newberry.mi.gov	906-291-1239	4YR/11'2018
Charles Medelis	2016	218 E. McMillan Ave	cmedelis@newberry.mi.gov	293-8693 H	4YR/11'2020
Dennis Hendrickson	2014	418 E. Harrie Street	dhendrickson@newberry.mi.gov	293-7000 H	4YR/11'2018

NEWBERRY WATER & LIGHT BOARD

Charles Medelis, <i>Chairman</i>	218 E. McMillan Ave	cmedelis@newberry.mi.gov	293-8693 H	Council Appt.
Jim Johnson	415 W. Avenue A	jjohnson@newberry.mi.gov	293-5087 H	Exp. October 2019
Sharon Brown	411 Handy Street	sbrown@newberry.mi.gov	293-5332 H	Council Appt.
Larry Vincent	807 Newberry Ave	lvincent@newberry.mi.gov	293-1952 H 906 322-6996 C	Exp. October 2018
Eric Feldhusen, <i>Customer, not elector</i>	13806 Shell Road	efeldhusen@newberry.mi.gov	293-1909 H	Exp. October 2020 Apt. in 11/17

President makes necessary appointments; ratified by Council @ Oct Council Meeting Council Appointments may need to be made after elections, if Council changes.

ADMINISTRATION

					TERM/ EXP
Dr. Jennifer James-Mesloh <i>Village Manager</i>	HIRED 1.2017	25 Lakeview Dr Marquette, MI 49866	manager@newberry.mi.gov	293-3433 W	N/A
Terese Schummer, <i>Village Clerk</i>	ELECTED 2016	214 W. Truman Blvd	clerk@newberry.mi.gov	293-3884 H 293-8805 W	2YR/11 '2018
Rodney Kisro, <i>Village Treasurer</i>	ELECTED 2016	413 W. John St 413 W. John St	treasurer@newberry.mi.gov	291-1631	2YR/11 '2018
Buck Vallad, <i>Assistant Village Manager</i>	HIRED 6.2015	13903 Turnbull St	assistantmanager@newberry.mi.gov	906-291-0606 C	N/A
John Wendt, <i>Fire Chief</i>	APPOINTED	211 W John Street	fire@newberry.mi.gov	293-8344 H 906 450-0491 C	N/A

Revised 2.2018

NEWBERRY WATER AND LIGHT FEE SCHEDULE — as of 11.20.17

All fees or estimates set forth shall be paid in advance.
Updates approved by the Village Council on November 20, 2017

FEE DESCRIPTION All fees or estimates set forth shall be paid in advance.	FEE
NEW ACCOUNT - SERVICE FEE	\$ 30.00
RESIDENTIAL WATER – FLAT RATE PER MONTH	\$ 75.00
*SEASONAL RESIDENTIAL MONTHLY WATER SERVICE FEE *In addition to seasonal shut off & turn on fees	\$34.11
COMMERCIAL WATER – PER MONTH 1 REU = 3,000 gallons	\$ 75.00 per REU
RESIDENTIAL SEWER – FLAT RATE PER MONTH	\$ 35.00
SEASONAL RESIDENTIAL MONTHLY SEWER SERVICE FEE	\$10.30
COMMERCIAL SEWER – PER MONTH 1 REU = 3,000 gallons	\$ 35.00 per REU
COMMUNITY OUTREACH PROGRAMS – WATER & SEWER RATES Seasonal operations providing enrichment and outreach to the community, such as community gardens and museums, will only be required to pay fees for the months they are in operation. Programs may apply for Community Outreach Status by submitting a completed request form to the Village of Newberry.	See commercial rates
*RENTAL & LAND CONTRACT DEPOSITS *A copy of the lease or contract must be provided to place utilities in the tenant's name. *Landlord must submit a letter stating that they will keep the utilities in their name. If this occurs, no deposit is required.	\$250.00
COMMERCIAL ACCOUNTS DEPOSITS WATER, SEWER, & ELECTRIC WATER & SEWER ELECTRIC & SEWER WATER ELECTRIC SEWER	\$500.00 \$300.00 \$350.00 \$250.00 \$250.00 \$100.00

FEE DESCRIPTION All fees or estimates set forth shall be paid in advance.	FEE
Up to 100 Feet: ABOVE GROUND ELECTRIC - NEW SERVICE BELOW GROUND ELECTRIC - NEW SERVICE Over 150 Feet:	\$ 50.00 \$ 50.00 plus time & materials Time plus materials
TURN ON/ TURN OFF FEE *per occurrence	\$ 50.00
DUSK TO DAWN LIGHT INSTALLATION POLE (\$7.00 PLUS TAX EACH MONTHLY BILL)	Cost of light \$100.00
TEMPORARY POLE One year time limit then must re-apply	\$ 100.00
METER TESTING	\$ 20.00
DISCONNECT PENALTY (PLUS BALANCE OF UNPAID ACCT)	\$ 75.00
NEW WATER SERVICE - 3/4" 1" 2" & bigger NEW WATER; Out of town	\$500.00 \$600.00 Time plus materials \$250.00 plus time & materials
NEW SEWER SERVICE	\$500.00
*CAP OFF WATER SERVICE *RECONNECT WATER TO MAIN *Account must be current with no outstanding charges.	\$250.00 \$250.00
CAP OFF SEWER SERVICE (MUST BE INSPECTED)	\$ 00.00
DISCONNECT ELECTRIC	\$ 75.00
RECONNECT ELECTRIC AFTER LINE IS DROPPED/DISCONNECTED	\$ 50.00
REPLACEMENT OF WATER METER	\$ 125.00
BULK WATER USE (must provide own backflow) Hook-up (non-refundable) Per 10,000 gallons	\$100.00 \$75.00
POOL FILL UP Hook-up (non-refundable)	\$100.00

Revised 11.20.17

MICHIGAN RURAL WATER ASSOCIATION RATE EVALUATION PROGRAM

Village of Newberry						2017
FINAL RATE ANALYSIS						
ANNUAL BUDGET	PERCENT BASE RATE	BASE FIXED	COST PER 3/4" METER	CONSUMPTION PORTION	COST / UNIT OF WATER	
LABOR & BENEFITS	100%	\$182,167	\$13.80	\$0	\$0.00	
OPERATIONAL EXPENSES	100%	\$88,300	\$6.69	\$0	\$0.00	
LOANS, BONDS, INTEREST, ANNUAL PAYMENT	100%	\$362,000	\$27.42	\$0	\$0.00	
EQUIPMENT REPLACEMENT, LIFT STATIONS, or WELLS	100%	\$0	\$0.00	\$0	\$0.00	
EQUIPMENT REPLACEMENT, TREATMENT	100%	\$0	\$0.00	\$0	\$0.00	
EQUIPMENT REPLACEMENT, TOWER, STORAGE	100%	\$0	\$0.00	\$0	\$0.00	
EQUIPMENT REPLACEMENT, GENERAL	100%	\$21,000	\$1.59	\$0	\$0.00	
CAPITAL IMPROVEMENT PROJECTS	100%	\$188,243	\$14.26	\$0	\$0.00	
LAGOON CLEANING RESERVE		\$0	\$0.00	\$0	\$0.00	
DEPRECIATION FUND	100%	\$60,000	\$4.55	\$0	\$0.00	
USDA RURAL DEVELOPMENT RESERVE REQUIREMENTS	100%	\$88,300	\$6.69	\$0	\$0.00	
TOTALS		\$990,009	\$75.00	\$0	\$0.00	
PERCENT OF REVENUE						0%
NON OPERATING INCOME REDUCTION						
CALCULATED RATE - FOR 3/4" METER / REU PER MONTH						1,000 GAL. \$ -
TOTAL ANNUAL REU'S 13,200						
ANTICIPATED WATER / SEWER SOLD 38,412,000						
RESERVE PORTION OF BUDGET 38%						
THE COST PER "UNIT" / WATER DOES INCLUDE INCLUDING OR DECLINING RATES						
ARE ANY GALLONS INCLUDED WITH THIS CALCULATED BASE RATE ?						
IS BASE RATE PER REU. - OR PER METER SIZE?						
CURRENT RATES \$7.50						\$9.25
INCREASE OF \$67.50						(\$9.25)
RATE ADJUSTMENT GENERATES ADDITIONAL						
\$535,698						
\$1.00 INCREASE GENERATES						
\$13,200						
\$38,412						

[illegible]Water Rate Study 2017_8-21-2017.xlsm

CAPITAL IMPROVEMENT FUND

Supplemental Customer Information

(This is required in addition to your audit or the income and expense information)

Borrower Name: Village of Newberry
Fiscal Year Ending: 2017

Definition of Single Family Customer – a line going to a home that houses only one family. Does not include duplexes, apartments, etc.

Water Purchased or Produced (gal. or cu ft):
Water Sold (gal. or cu ft):

Annual Amounts

59,776,000
44,227,000

NUMBER OF WATER CUSTOMERS

Water: Total Customers	<u>878</u>	
Number of Single Family Residential:	<u>730</u>	#1
Number of All Other Customers:	<u>148</u>	
**REU's or EDU's of Other Customers:	<u>222</u>	#2
Total REU's or EDU's (total of 1 + 2):	<u>1,100</u>	

Sewage Treated (gal or cu ft): _____

NUMBER OF SEWER CUSTOMERS

Sewer: Total Customers	_____	
Number of Single Family Residential:	_____	#1
Number of All Other Customers:	_____	
**REU's or EDU's of Other Customers:	_____	#2
Total REU's or EDU's (total of 1 + 2):	_____	

** REU = Residential Equivalent Unit
EDU = Equivalent Dwelling Unit

** An example of this is: If the typical single family residential user uses 5,000 gallons of water per month, and you have an "Other" user using 20,000 gallons per month, that "Other" user is 4 EDU. If you do not have a metered water system, then you will estimate usage based on your best knowledge or according to your REU table with your rate ordinance.



United States
Department of
Agriculture

United States Department of Agriculture
Rural Development
Community Programs – Michigan State Office

TRANSMITTAL LETTER

To: Mike Pond, PE
AECOM, Inc.
1050 Wilson Street
Marquette, MI 49855

August 19, 2013

Project: Village of Newberry Water
Improvements Project

LADIES AND GENTLEMEN:

WE ARE SENDING YOU:

☒ A/E Agreement
☐ Plans
☐ Specifications

☐ Contract Documents
☐ Change Order
☐ Partial Payment Estimate

☐ Michigan Guide
☐ Approval Sheets
☐ Other

Quantity	Description
2	Signed Engineering Agreements

THESE ARE TRANSMITTED AS CHECKED BELOW:

☒ Approved
☐ As requested
☐ For your use

☐ For review and comment
☐ Rejected
☐ Resubmit for approval

☐ Returned
☐ For information
☐ For signature & return

COMMENTS:

Keep one of each and give the other to the owner.



Andrew H. Granskog
ANDREW H. GRANSKOG, P.E.
State Engineer

3001 Coolidge Road • Suite 200 • East Lansing, MI 48823
Phone: (517) 324-5156 • Fax: (517) 324-5225 • TDD: (517) 324-5169 • Web: <http://www.rurdev.usda.gov/mi>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights
1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

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



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	2
1.01 Scope	2
ARTICLE 2 – OWNER'S RESPONSIBILITIES	2
2.01 General	2
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES	2
3.01 Commencement	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS	3
4.01 Invoices	3
4.02 Payments	3
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost	3
5.02 Designing to Construction Cost Limit	4
5.03 Opinions of Total Project Costs	4
ARTICLE 6 – GENERAL CONSIDERATIONS	4
6.01 Standards of Performance	4
6.02 Design Without Construction Phase Services	5
6.03 Use of Documents	6
6.04 Insurance	7
6.05 Suspension and Termination	8
6.06 Controlling Law	9
6.07 Successors, Assigns, and Beneficiaries	9
6.08 Dispute Resolution	10
6.09 Environmental Condition of Site	10
6.10 Indemnification and Mutual Waiver	11
6.11 Miscellaneous Provisions	12
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**

THIS IS AN AGREEMENT effective as of Aug 6, 2013 ("Effective Date") between

Village of Newberry, Michigan ("Owner") and

AECOM Technical Services of Michigan, Inc. ("Engineer").

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

Village of Newberry Water Distribution System Improvements ("Project").

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

Engineering design, preparation of bidding documents, bidding services, construction engineering, project administration and additional services as described in Article 1.01 and Exhibit A.

Project Description:

The Village of Newberry Water Distribution System Improvements are generally described in the Preliminary Engineering Report prepared by AECOM, (Engineer). Engineering services are in connection with portion of the project funded by USDA Rural Development. Engineering services for MDOT and Owner funded project improvements are not included in this agreement.

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 (summarized immediately below) and in Exhibit A:

1. Water System Improvements at various locations within the four quadrants of the Village of Newberry to eliminate undersized pipe as well as eliminate cast iron pipe specified in the Preliminary Engineering Report (PER).
- ~~2. Onsite inspection of the water distribution system improvements at the project locations specified in the PER.~~
3. Administrative requirements associated with the water distribution system improvements project.

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 in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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

Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner 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 – Not Applicable*

- 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, provided however, that Owner agrees to provide written notice to Engineer about any deficiencies that are or become known to the Owner. Following such written notice, 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 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, 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.
- 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 or reuse for purpose other than anticipated herein, 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~~. Engineer will provide such notice to the Owner 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 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, the Amendment to Owner Engineer Agreement form located in the attached Michigan Attachment C, 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 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.

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. **(Not Included)**~~
- ~~I. Exhibit I, Limitations of Liability. **(Not Included)**~~
- J. Exhibit J, Special Provisions.
- ~~K. Exhibit K, Amendment to Owner Engineer Agreement. **(Not Included)**~~

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.

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

Owner:
Village of Newberry

By: Carol Anderson

Title: Village of Newberry President

Date

Signed: Carol H. Anderson

Aug. 6, 2013

Engineer:
AECOM Technical Services of Michigan, Inc.

By: Ivan Martysz, P.E.

Title: Office Manager

Date

Signed: Ivan Martysz August 12, 2013

Engineer License or Firm's
Certificate No. 6201022371

State of: Michigan

Agency

By: _____

Title: _____

Date

Signed: _____

Address for giving notices:

Village of Newberry

307 East McMillan Avenue

Newberry, MI 49868

Designated Representative (Paragraph 8.03.A):

Beverly Holmes

Title: Village Manager

Phone Number: 906.293.3433 x1

Facsimile Number: 906.293.8569

E-Mail Address: vilnby@sbcglobal.net

Address for giving notices:

AECOM

1050 Wilson Street

Marquette, MI 49855

Designated Representative (Paragraph 8.03.A):

Michael J. Pond, P.E.

Title: Project Engineer

Phone Number: 906.226.4972

Facsimile Number: 906.226.8371

E-Mail Address: mike.pond@aecom.com

Engineer's Services

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

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

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project 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. Complete Environmental Report in accordance with USDA Rural Development requirements.
 - b. Provide engineering information and supporting documents for USDA Rural Development grant and loan application in connection with the project.

7. Furnish 1 review copies of the Report and any other deliverables to Owner within 180 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 1 copies of the revised Report and any other deliverables to the Owner within 30 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 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: **Other information as required by USDA Rural Development and MDEQ prior to proceeding with final design documents.**
 6. Furnish 3 review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 120 calendar days of authorization to proceed with this phase, and review them with Owner. Within 14 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 3 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 14 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: **Engineering Items presented in the USDA-Rural Development Docket and the "Letter of Conditions" from USDA- Rural Development to the Village of Newberry.**
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. **Furnish 3 review copies of the Final Design Phase documents and any other deliverables to Owner within 240 calendar days of authorization to proceed with this phase, and review them with Owner.** Within **14** days of receipt, Owner shall submit to Engineer any comments 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 **3** final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within **14** 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:~~
- 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 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 to 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. **Copies of Change Orders and Work Change Directives shall be provided to the Owner.**
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:~~

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:~~

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 two (2) sets 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.

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.

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:

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated Aug 6, 2013.

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 Aug 6, 2013.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Village of Newberry Water Distribution System Improvements

OWNER: Village of Newberry

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: AECOM Technical Services of Michigan, Inc.

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 Aug 6, 2013.

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>\$500,000</u> |
| 2) Disease, Policy Limit: | <u>\$100,000</u> |
| 3) Disease, Each Employee: | <u>\$100,000</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>\$ 2,000,000</u> |
| 2) General Aggregate: | <u>\$ 2,000,000</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>\$ 2,000,000</u> |
| g. Other (specify): | <u>N/A</u> |

2. ~~By Owner:~~

a. ~~Workers' Compensation:~~ _____ Statutory

b. ~~Employer's Liability~~ _____

1) ~~Each Accident~~ _____ \$ _____
2) ~~Disease, Policy Limit~~ _____ \$ _____
3) ~~Disease, Each Employee~~ _____ \$ _____

c. ~~General Liability~~ _____

1) ~~General Aggregate:~~ _____ \$ _____
2) ~~Each Occurrence (Bodily Injury and Property Damage):~~ _____ \$ _____

d. ~~Excess Umbrella Liability~~ _____

1) ~~Each Occurrence:~~ _____ \$ _____
2) ~~General Aggregate:~~ _____ \$ _____

e. ~~Automobile Liability Combined Single Limit (Bodily Injury and Property Damage):~~

Each Accident: _____
\$ _____

f. ~~Other (specify):~~ _____ \$ _____

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. _____

b. _____

c. _____

~~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 J**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated Aug 16, 2013.

Special Provisions

Paragraph(s) of the **This** Agreement is/are amended to include the following agreement(s) of the parties:

The USDA Bulletin 1780-26, modifying certain provisions of this Agreement and its exhibits is hereby attached and incorporated into this Agreement by this reference. Upon any conflict between the terms of this Agreement (including Exhibits A-J) and the terms set forth in the said USDA Bulletin 1780-26, the terms contained in the USDA Bulletin 1780-26 shall govern and control.

Consensus DOCS 200.2 Electronic Communications Protocol Addendum as referenced in Article 6.03 B, and as was incorporated from RUS Bulletin 1780-26 "Funding Agency Clauses to Modify E-500, 'Agreement Between Owner and Engineer for Professional Services' is specifically excluded from this agreement between parties.

The parties agree specifically that neither party will be liable for the loss of use of any property arising out of, resulting from or in any way related to the Project or the Agreement, from any cause or causes, including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty.

Funding Agency Clauses to Modify E-500, "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 Agreement.

Article 3 of the Agreement is amended and supplemented to include the following agreement of the parties:

3.02.E. If Engineer fails, through its own fault, to complete the performance required within this agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

4.01.A. Preparation and Submittal of Invoices. Change 30 days to 60 days.

4.02.B. Failure to Pay: Change 30 days to 60 days.

Article 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

6.03 Use of Documents Note the following sections are changed. 6.03.C through F are retained unchanged from E-500

- 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. Note last sentence of E-500, 6.03.A is stricken.
- B. Either party to this Agreement may rely that data or information that the party receives from the other party by mail, hand delivery, facsimile, or electronic media are the items that the other party intended to send. 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. ConsensusDOCS 200.2 Electronic Communications Protocol Addendum may be attached to Exhibit J and become a part of this Agreement. Note: Updated to allow electronic media and communication. Also, use of ConsensusDOCS 200.2 is allowed.

Article 6.05.A.1 By Owner. Owner may suspend the project 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.

Article 7 of the Agreement is amended and supplemented to include the following agreement of the parties:

Article 7.01.A.34 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.

Article 7.01.A.35. Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

Article 8 of the Agreement is amended and supplemented to include the following agreement of the parties:

Article 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.

Funding Agency Clauses to Modify E-500, Exhibit A 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.

Article 1 of Exhibit A of the Agreement is amended and supplemented to include the following agreement of the parties:

Article A.1.01.A.5: The Report mentioned in Article 1.01.A.5 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletins 1780-2, 1780-3, 1780-4, and 1780-5. This document must meet customary professional standards as required by 7 CFR 1780.55.

Article A.1.01.A.6: The Environmental Report defined at 7 CFR 1794 and RUS Bulletin 1794A-602 is required under Article 1.01.A.6 of Exhibit A to the Agreement.

Article A.1.02.A. After the words “acceptance by Owner” insert “and concurrence by Agency.”

Insert the following after Article A.1.03.A.4.a: Article A.1.03.A.4.a: The Engineer shall identify the building codes and accessibility standards used in the design, and certify that the final plans and specifications comply with those standards as well as the planning requirements of this subpart.

Article A.1.03.A.5: After the word “counsel” add “and Agency.”

Article A.1.04.A.7: Upon award of the Construction Contract, the Engineer shall furnish { 4 } executed copies of the Contract Documents.

Article A.1.05.A.4: *Pre-Construction Conference*: Participate in and chair a Pre-Construction Conference prior to commencement of Work at the Site.

Article A.1.05.A.18: The visits described in Article A.1.05.A.7.a shall be at least monthly.

Article A.1.05.A.18.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.

Article A.1.05.A.18.c: Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

Article A.1.05.A.18.d: The Engineer shall prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.

Article A.2.01.A.17: [Deleted].

Funding Agency Clauses to Modify E-500, Exhibit B 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.

Article 2.01.S.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

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

This is EXHIBIT C, consisting of 15 pages, referred to in part of the Agreement between Owner and Engineer For Professional Services dated Aug 6, 2013.

~~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 _____ Dollars (\$ _____) 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 _____ Dollars (\$ _____).~~
- ~~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 30 percent 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 50 percent 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.~~

~~e. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent 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 percent 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 percent 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 _____ months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.~~

~~C.2.03 [Not Used]~~

~~C.2.04 [Not Used]~~

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

This is EXHIBIT C, consisting of 15 pages, referred to in part of the Agreement between Owner and Engineer For Professional Services dated Aug. 2013.

Payments to Engineer for Services and Reimbursable Expenses

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

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 Services) – Standard Hourly Rates 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. 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 services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.

2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.

3. The total compensation for services under paragraph C.2.01 is estimated to be \$ 316,000 based on the following assumed distribution of compensation:

a. Study and Report Phase	\$ <u>27,000</u>
b. Preliminary Design Phase	\$ <u>140,000</u>
c. Final Design Phase	\$ <u>85,000</u>
d. Bidding or Negotiating Phase	\$ <u>6,000</u>
e. Construction Phase	\$ <u>42,000</u>
f. Post Construction	\$ <u>16,000</u>

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

5. The total estimated compensation for Engineer’s services included in the

breakdown by phases as noted in paragraph C.2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultant's charges.

6. The amounts billed for Engineer's services under paragraph C.2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule may be adjusted annually by Amendment to the Agreement (as of January 1st, 2013) to reflect equitable changes in the compensation payable to Engineer.

C.2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. 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.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a Factor of 1.1. External expenses are limited to sub-consultant or subcontracted services.

C.2.03 Other Provisions Concerning Payment

- A. 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 1.1.
- B. 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.
- C. Estimated Compensation Amounts

1. 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.
 2. Engineer is responsible for monitoring charges being generated under this Agreement. When estimated amounts for total compensation or individual phases of the work 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.
- D. 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-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 estimated to be \$ **407,000** based upon Contract Times as set forth herein.

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 1.1. External expenses are limited to sub-consultant or subcontracted services.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st, 2013) 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 1.1.
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 \$ 50,000 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 1.1. External expenses are limited to sub-consultant or subcontract services.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of **January 1st, 2013**) 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 1.1.
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 pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated Aug 6, 2013. The Engineer will develop the Appendix 1 and attach it to the Agreement.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

FAX	\$	/page
8½"x11" Copies/Impression	\$	/page
Blue Print Copies	\$	/sq. ft.
Reproducible Copies (Mylar)	\$	/sq. ft.
Reproducible Copies (Paper)	\$	/sq. ft.
Mileage (auto)	\$	/mile
Field Truck Daily Charge	\$	/day
Mileage (Field Truck)	\$	/mile
Field Survey Equipment	\$	/day
Confined Space Equipment	\$	/day plus expenses
Resident Project Representative		/month
Equipment	\$	
Computer CPU Charge	\$	/hour
Specialized Software	\$	/hour
Personal Computer Charge	\$	/hour
CAD Charge	\$	/hour
CAE Terminal Charge	\$	/hour
VCR and Monitor Charge	\$	/week, or \$ /month
Video Camcorder	\$	/day, plus \$ /tape
Electrical Meters Charge	\$	/week, or \$ /month
Flow Meter Charge	\$	/week, or \$ /month
Rain Gauge	\$	/week, or \$ /month
Sampler Charge	\$	/week, or \$ /month
Dissolved Oxygen Tester Charge	\$	/week
Fluorometer	\$	/week
Laboratory Pilot Testing Charge	\$	/week, or \$ /month
Soil Gas Kit	\$	/day
Submersible Pump	\$	/day
Water Level Meter	\$	/day, or \$ /month
Soil Sampling	\$	/sample
Groundwater Sampling	\$	/sample
Health and Safety Level D	\$	/day
Health and Safety Level C	\$	/day
Electronic Media Charge	\$	/hour
Long Distance Phone Calls		at cost
Mobile Phone	\$	/day
Meals and Lodging		at cost

This is a sample of an **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated Aug 16, 2013. The Engineer will develop the Appendix 1 and attach it to the Agreement.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of **January 1st, 2013**) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of Agreement are: **Attached in Appendix 2 to Exhibit C**

	Senior		
Billing Class 9	Associate	\$	_____/hour
Billing Class 8	Staff Manager	\$	_____/hour
	Professional		
Billing Class 7	VI	\$	_____/hour
	Professional		
Billing Class 6	V	\$	_____/hour
	Professional		
Billing Class 5	IV	\$	_____/hour
	Professional		
Billing Class 4	III	\$	_____/hour
Billing Class 3	Professional II	\$	_____/hour
Billing Class 2	Technician II	\$	_____/hour
Billing Class 1	Technician I	\$	_____/hour
Principal		\$	_____/hour
Support Staff		\$	_____/hour

Summary of Payments to Engineer:

Basic Services \$ 316,000

Resident Project Observation \$ 407,000

Additional Services \$ 50,000

TOTAL: \$ 773,000

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

Engineer: *E. Martys* Date *8/6/2013*

Attest: _____

Type Name: *Ivan Martysz*

Title: *Associate vice president*

Owner: *Carol K Anderson* Date *8/6/13*

Attest: _____

Type Name: *CAROL L ANDERSON*

Title: *President*

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: _____

AGENCY CONCURRENCE:
USDA Rural Development

Andrew H. Granskog
Andrew H. Granskog, PE
Environmental Engineer

8/19/13
Date

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. Background Data

a. Effective Date of Owner-Engineer Agreement:

b. Owner:

c. Engineer:

d. Project:

2. Nature of Amendment *[Check those that are applicable and delete those that are not]*

- ☐ Additional Services to be performed by Engineer
- ☐ Modifications to Services of Engineer
- ☐ Modifications to Responsibilities of Owner
- ☐ Modifications to Payment to Engineer
- ☐ Modifications to Time(s) for rendering Services
- ☐ Modifications to other terms and conditions of the Agreement

3. Modifications to Payment

Description of Service	Current Agreement including all Previous Amendments	Proposed Change	Amended Agreement
Basic Services	\$	\$	\$
Resident Project Representative	\$	\$	\$
Additional Services	\$	\$	\$
Total:	\$	\$	\$

APPENDIX 1 TO EXHIBIT C

2013 REIMBURSABLE EXPENSE SCHEDULE



DESCRIPTION	UNIT	RATE	
Construction Materials Testing			
All Materials Testing	Hour	Technician Hourly Rate	
Nuclear Density Test Meter	Day	\$	65.00
General			
Mileage	Miles	IRS per Diem Rate	
Per Diem / Person	Day	IRS per Diem Rate	
All Expenses to Complete Project	Varies	Cost+10%	
Subcontracted Expenses	Varies	Cost+10%	
Survey			
Total Station	Day	\$	75.00
Dig Level & Bar Code Rod	Day	\$	50.00
GPS Receivers	Day	\$	125.00
Robotic Instrument	Day	\$	175.00
Trimble Pro XR	Day	\$	75.00
Trimble GPS GeoXT	Day	\$	100.00
1/2"x18" Irons	Each	\$	0.82
5/8"x18" Irons	Each	\$	1.10
Field Books	Each	\$	20.00
12" Hubs	Each	\$	0.28
8" Spikes	Each	\$	0.22
4' Lath	Each	\$	0.54
Flagging Roll	Each	\$	2.00
Tree Paint	Each	\$	7.00
Upside Down Paint	Each	\$	4.00
Slope Stakes	Each	\$	0.75

Appendix 1
Exhibit C

4. Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in the document for ease of reference herein and in future correspondence or amendments. For modifications to services, and/or addition of new services, provide justification with a cost breakdown for each.]

1. Engineer shall perform the following Additional Services:
2. 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:
3. The responsibilities of the Owner are modified as follows:
4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
5. The schedule for rendering services is modified as follows:
6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

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

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

AGENCY CONCURRENCE

Agency: USDA Rural Development

By (Signature): _____

Typed Name: _____

Title: _____

Date: _____



2013 Fee Schedule

Village of Newberry, Phase V Water System Improvements

Effective January 1, 2013

APPENDIX 2 TO EXHIBIT C

2013 Hourly Fee Schedule

STAFF CATEGORY	RATE/HOUR
Technician I, Data Administrator I, Project Administrator I	\$55.00
Technician II, Construction Mgmt I	\$70.00
Project Controls I, Scientist I, Technician III, Project Administrator II	\$80.00
Scientist II, Engineer I, Data Administrator II, Construction Mgmt II	\$95.00
Project Controls II, Scientist III, Engineer II, Technician IV, Data Administrator III, Project Administrator III	\$105.00
Project Manager I, Scientist IV, Engineer III, Construction Mgmt III	\$115.00
Scientist V, Engineer IV	\$130.00
Project Director I, Project Manager II, Construction Mgmt IV	\$150.00
Project Director II, Engineer V	\$170.00
Project Director III, Project Director IV	\$195.00

BILLING RATES

STAFF - Charges for all professional, technical and administrative personnel directly charging time to the project will be calculated and billed on the basis of the following staff category hourly "Billing Rates". Billing Rates are in U.S. dollars, net of all applicable taxes, duties, fees and related charges, and include fringe benefits, burden and fee.

AECOM may revise these rates annually. All staff personnel have been classified in the above staff categories based on discipline skills, education and experience level.

All travel, to a maximum of eight hours per day, will be charged at the Billing Rates. Billing Rates are based on a forty-hour work week. Overtime hours for exempt employees (non-hourly) will be charged at the standard Billing Rates. Overtime hours of non-exempt (hourly-non-supervisory) employees are charged at 130% of the Billing Rates.

OTHER DIRECT COSTS - "Other Direct Costs" are all costs and expenses incurred by AECOM directly attributable to the performance of Services together with a ten percent (10%) fee. Other Direct Costs include subcontracts, materials, shipping charges, special fees, permits, special insurance and licenses, outside computer time, and miscellaneous costs.

Law Offices
MOHER & CANNELLO, P.C.

150 Water Street P O Box 538 Sault Ste Marie MI 49783
(906) 632-3397 www.moherandcannellolaw.com Fax (906) 632-0479

Steven J. Cannello
National Board of Trial Advocacy
Certified Civil Trial Practice

ATTORNEY'S OPINION ON ENGINEERING AGREEMENT

I STEVEN J. CANNELLO, being the attorney for THE VILLAGE OF NEWBERRY have examined the Agreement for Engineering Services dated AUGUST 6, 2013 between the VILLAGE OF NEWBERRY (owner) and AECOM Technical Services of Michigan, Inc. (engineer). In my opinion this is a valid contract between the above parties to carry out the professional engineering services as contained in said Agreement.

AUGUST 6, 2013

Attorney at Law



STEVEN J. CANNELLO
(P31592)

First National Bank

Main Office:

P.O. Box 187 * 132 North State Street
St. Ignace, Michigan 49781
Voice: 906-643-6800 Fax: 906-643-6808

Les Cheneaux Branch

P.O. Box 177 - 192 S Meridian St.
Cedarville, MI 49719 * 906-484-2262

Mackinac Island Branch

P.O. Box 534 - 534 Market St.
Mackinac Island, MI 49757 * 906-847-3732

West Mackinac Branch

P.O. Box 142 - W11635 West U.S. 2
Naubinway, MI 49762 * 906-477-6263

Newberry Branch

P.O. Box 466 - 1014 S. Newberry Ave.
Newberry, MI 49868 * 906-293-5160

967233

NEWBERRY WATER & LIGHT BOARD
NEWBERRY SAVE THE BELLS
307 E MCMILLAN AVE
NEWBERRY MI 49868

Date 1/31/18 Page 1 of 1
ACCOUNT NUMBER ~~XXXXXXXXXX~~

MUNICIPAL MONEY MARKET			0
ACCOUNT NUMBER	XXXXXXXXXX	Statement Dates	1/01/18 thru 1/31/18
PREVIOUS BALANCE	16,112.72	DAYS IN STATEMENT PERIOD	31
CREDITS TOTALING	.00	AVERAGE LEDGER BAL	16,112
DEBITS TOTALING	.00	AVERAGE COLLECTED BAL	16,112
SERVICE CHARGE AMOUNT	.00	Interest Earned	4.10
INTEREST PAID	4.10	Annual Percentage Yield Earned	0.30%
CURRENT STMT BALANCE	16,116.82	2018 Interest Paid	4.10

DEPOSITS AND OTHER CREDITS.....		
DATE	DESCRIPTION	AMOUNT
1/31	INTEREST PAID 31 DAYS	4.10

DAILY BALANCE SUMMARY.....			
DATE.....	BALANCE	DATE.....	BALANCE
1/01	16,112.72	1/31	16,116.82

INTEREST RATE SUMMARY.....	
DATE.....	INTEREST RATE
12/31	.30%





AECOM
1230 Wilson Street
Marquette
MI, 49855
USA
aecom.com

January 10, 2018

Ms. Jennifer James-Mesloh
Village of Newberry Manager
302 E. McMillan Avenue
Newberry, Michigan 49868

Dear Ms. James-Mesloh:

RE: Proposal for Water System Inventory; AECOM Proposal No. 756752

AECOM Technical Services of Michigan, Inc. (AECOM) is submitting this proposal to provide you with an updated water system map and index of water system appurtenances to assist the Village in their submission of the Michigan Department of Environmental Quality (MDEQ) required Asset Management Plan.

Project Understanding and Purpose

The requirements of the MDEQ Asset Management Program function to achieve goals of performance, funding, and operator staffing and training by forming an Asset Management Plan. A portion of the Asset Management Plan consists of cataloging all existing water system mains, valves, and hydrants by location, type, and size. AECOM has met with Amy Douville, District Engineer of the MDEQ, and discussed what is required by the Village for an Asset Management Plan submission.

The Village currently has a system map detailing water main and valves that was issued by STS Consultants Ltd. (date of issue +/- 2002) that predates many system upgrades over the last two decades. AECOM (STS Consultants Ltd. prior to acquisition by AECOM in 2007) has worked with the Village through five phases of water system improvements since 2002 that has replaced approximately 80% of the Village's water main as well as reconditioning of the current water tower, replacing the well motor and electrical controls in well # 4, a new well house and two new wells in McMillan Township just south of the Village. The Village has as-constructed drawings for these system improvements; however, they have not been gathered wholly into one catalog to submit as part of the Asset Management Plan.

Scope of Services

AECOM proposes to perform the following tasks:

Task 1: Water Main Inventory

AECOM currently has an up-to-date water main map detailing mains by type, diameter, and the year installed. For a complete understanding of the asset and to meet MDEQ requirements, AECOM proposes to formulate a list of the mains which will include location, lengths, diameter, type, and year installed to accompany the updated map.

This document includes proprietary data that shall not be duplicated, used or disclosed outside the Village of Newberry for any purpose other than to evaluate this document. This restriction does not limit the Village of Newberry's right to use information contained in this document if it is obtained from another source without restriction.

Task 2: Hydrant and Valve Inventory

AECOM provided a map of hydrants in 2014 to the Water and Light Superintendent at that time, Eric Buckler, to be used by the Village Fire Department. This map included work to be performed in 2015; however, it did not include additional work added at the end of phase five going into late 2015 and 2016. In speaking with Buck Vallad, Village Assistant Manager, AECOM understands that no effort to gather hydrant information by size, type, and location is required by AECOM for submission of the Asset Management Plan and this effort is not included in the proposed fee.

Prior to 2013, AECOM had surveyed location coordinates for the majority of existing valves in the Village. AECOM and the Village now have this information along with as-constructed drawings for work-to-date detailing the 188 new valves since 2013. A listing of valves with a corresponding tagged valve map, however, has not been produced since the early 2000's. Amy Douville of the MDEQ has requested a listing of all valves, approximately three-hundred and fifty (350) valves in total, by the location, size, type, and installation date to be submitted with the Asset Management Plan. AECOM understands the Village also desires an updated valve map with valve tags to accompany this list. To produce this list of valves and valve map, AECOM will gather the existing valve information from a compilation of past project as-built drawings and create an identification tag for each valve. AECOM does not anticipate field reconnaissance for this valve information and it is not included in the proposed fee.

Estimated Fee

The services to be performed upon acceptance of this proposal are described in the preceding scope of services section and are based on our understanding of the project. AECOM proposes to complete the scope of services described above on a time-and-expense basis in accordance with the attached Commercial Terms. **Our estimated fees to complete the Scope of Services are \$6,220.**

Summary of Costs

Work Item	Cost
Task 1 – Water Main Inventory List and Map	\$2,020
Task 2 – Water Valve List and Map	\$4,200
Total:	\$6,220

Authorization

AECOM proposes to perform these services in accordance with the attached Commercial Terms and General Conditions. Upon approval by the Village Council and Water & Light Board please sign as indicated on the outlined scope of work and acknowledgement of our terms and conditions by having an authorized representative sign the attached authorization page. Please return the signed copy of the authorization form to Kevin Nancarrow in our Marquette, Michigan office. A signed authorization of this proposal must be returned before work can begin.

We appreciate this opportunity to assist you with this project. If you have any questions regarding this proposal or if you need additional assistance, please call Mike Pond at (906) 250-3791 or Kevin Nancarrow at (906) 226-4497.



Yours sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Pond".

Michael J. Pond, P.E.
Principal Engineer
mike.pond@aecom.com

A handwritten signature in cursive script, appearing to read "Kevin Nancarrow".

Kevin Nancarrow, E.I.T.
Project Engineer
kevin.nancarrow@aecom.com

A handwritten signature in cursive script, appearing to read "Ivan Martysz".

Ivan Martysz, P.E.
Vice President
ivan.martysz@aecom.com

© AECOM 2018, ALL RIGHTS RESERVED

KN/cec

Attachments:
Authorization
Terms and Conditions

cc:
Mr. Buck Vallad, Assistant Village Manager
Matt Perry, Water & Light Superintendent



AECOM
1230 Wilson Street
Marquette, MI 49855

906.226.4820 tel
906.226.8371 fax

AUTHORIZATION

I hereby authorize AECOM to proceed with the scope of work for the **Water System Inventory** as described in AECOM's proposal no. **756752** dated **January 10, 2018**, with a budget authorization of **\$6,220** under the general terms and conditions specified in the proposal.

Signature

Date

Print Name

Title/Organization

I agree to accept invoices from AECOM via e-mail and not postal mail:

☐ Yes

Signature: _____
E-mail address: _____
Recipient Mr/Ms: _____

Return to:

Name: Kevin Nancarrow
AECOM
1230 Wilson Street
Address: Marquette, MI 49855
Fax: 906-226-8371
Phone: 906-226-4497

This document includes proprietary data that shall not be duplicated, used or disclosed outside the Village of Newberry for any purpose other than to evaluate this document. This restriction does not limit the Village of Newberry's right to use information contained in this document if it is obtained from another source without restriction.

Confirmation and Agreement Terms and Conditions

AECOM Technical Services of Michigan, Inc. ("AECOM")



Billings and Payments

AECOM shall submit invoices monthly for services performed and expenses incurred and not previously billed. Payment is due upon Client's receipt of invoice. For all amounts unpaid after 30 days from the invoice date, as set forth on AECOM's invoice form, the Client agrees to pay a finance charge of one and one-half percent (1 1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement.

The Client's obligation to pay for the services performed by AECOM under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reasons, or contingency.

Right of Access

If the scope of services includes, or is amended to include, the performance of exploratory borings or test pit excavations, Client will furnish to AECOM all diagrams and other information in their possession or reasonably attainable by Client, indicating the location and boundaries of the site and subsurface structures (pipes, tanks, cables, sewers, other utilities, etc.) in such detail as to permit identifying, in the field, boring/test pit locations, which will avoid interferences with any subsurface structures. Client shall indemnify and hold AECOM harmless from liability on account of damage to subsurface structures, the locations of which are not indicated or are incorrectly indicated by the information provided by the Client.

AECOM reserves the right to deviate a reasonable distance from prescribed or selected exploratory boring or test pit locations. AECOM shall take reasonable precautions to minimize damage to the site due to its operations, but AECOM has not included in its fee, and is not responsible for, the cost of restoration for any damage resulting from its operations. At the Client's request and for an additional fee, AECOM will, to the extent reasonably practicable, restore the site to conditions substantially similar to those existing prior to AECOM operations.

Acceptance

If AECOM is given verbal or written notification to proceed, without first receiving a signed copy of this Confirmation and Agreement, it will be mutually understood that Client and AECOM will, nonetheless, be contractually bound by this Confirmation and Agreement, even in the absence of written acceptance by Client. A signed copy of this Confirmation and Agreement must be returned to AECOM before a written report can be submitted.

Safety

It is understood and agreed that, with respect to Project site health and safety, AECOM is responsible solely for the safe performance by its field personnel of their activities in performance of the required services. It is expressly agreed that AECOM's services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project nor is AECOM to review the adequacy of job safety on the Project. It is further understood and agreed, and not in limitation of the foregoing, that AECOM shall not be in charge of, and shall have no control or responsibility over any aspect of the erection, construction, or use of any scaffolds, hoists, cranes, stays, ladders, supports, or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation, or ordinance relating in any way to Project safety.

Client shall provide, at its expense, facilities and labor necessary to afford AECOM field personnel access to sampling, testing, or observation locations in conformance with federal, state, and local laws ordinances, and regulation specifically, including, but not limited to regulations set forth in OSHA 29 CFR 1926.

Samples

AECOM reserves the right to discard samples immediately after testing. Upon request, the samples will be shipped, (shipping charges collected) or stored at the rate indicated in the Fee Schedule.

Standard of Care

AECOM represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the professional engineering community performing the same or similar services, practicing under similar conditions, at the same time in the same or similar locality.

NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING SERVICES OR BY FURNISHING ORAL OR WRITTEN REPORTS OF THE FINDINGS MADE.

AECOM is not responsible for supervising, directing, controlling, or otherwise being in charge of the construction activities at the Project site; or supervising, directing, controlling, or otherwise being in charge of the actual work of the contractor, its subcontractors, or other materialmen or service providers not engaged by AECOM.

Hazardous Substances

It shall be the duty of the Client to notify AECOM of any known or suspected hazardous substances or constituents which are or may be present at or contiguous to the Project site or which may otherwise affect the services to be provided. Such hazardous substances shall include, but not be limited to, any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample and whether it exists in a solid, liquid, semi-solid, or gaseous form. The

Client shall notify AECOM of all such hazardous substances of which it has knowledge or which it reasonably suspects exist upon entering into this agreement. Thereafter, disclosure and notification to AECOM shall be required as soon as practicable upon discovery of any other hazardous substances or upon discovery of increased concentrations of previously disclosed hazardous substances.

Following disclosure as set forth in the preceding paragraph, or if any hazardous substances or conditions are discovered or reasonably suspected by AECOM after its services are undertaken, AECOM may, at its discretion, suspend its services until reasonable measures have been taken at the Client's expense to protect AECOM's employees from such hazardous substances or conditions. Whether or not AECOM suspends its services in whole or in part, the Client and AECOM agree that the scope of services, terms and conditions schedule, and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, or AECOM may, at its discretion, terminate the Agreement. In the event that this Agreement is terminated pursuant to this Section, the Client shall pay AECOM for all services rendered prior to termination and all termination expenses.

Allocation of Risk

It is agreed that the Client's maximum recovery against AECOM for any and all claims, damages and/or liabilities under this agreement, whether in contract, tort, or otherwise, is the amount of AECOM's fee. It is expressly agreed that the Client's sole and exclusive remedy against AECOM for any claims under this agreement, whether based in contract, tort, or otherwise, is the award of damages not to exceed the amount of AECOM's fee. In no event shall AECOM be liable, whether in contract, tort, or otherwise, for Client's loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

Dispute Resolution

Either party may initiate a dispute resolution by providing written notice to the other party setting forth the subject of the claim, dispute or controversy (collectively "disputes") and the requested relief. The recipient of such notice shall respond within 5 business days with a written statement of its position and a recommended solution to the dispute.

If the parties cannot resolve the dispute through negotiation, either party may refer the dispute to a panel ("Panel") consisting of a designated senior representative from each party, who shall have the authority to resolve such dispute. The representatives shall not have been directly involved in the services covered hereunder and shall negotiate in good faith. No written or verbal representation made by either party in the course of any Panel proceeding or other settlement negotiations shall be deemed to be a party's admission. If the representatives are unable to resolve the dispute within 3 weeks, either party may pursue its respective legal and equitable remedies.

Severability

In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

Survival

All obligations arising prior to the termination of this agreement and all provisions of this agreement allocating responsibility or liability between the Client and AECOM shall survive the completion of services and the termination of this agreement.

Assigns

Neither the Client nor AECOM may delegate, assign, sublet, or transfer its duties, responsibilities, or interests in this Agreement without the written consent of the other party.

Choice of Law

This Agreement shall be governed by the law of the State of Michigan.

**VILLAGE OF NEWBERRY
VILLAGE COUNCIL RULES
RESOLUTION _____ - 2018**

WHEREAS the Village Council shall adopt Rules that govern its proceedings pursuant to MCL 65.65(1); and

WHEREAS the Village Council wishes to fulfill this requirement and provide for Rules that govern its proceedings in the most orderly, efficient, and open manner; now, therefore, be it

RESOLVED that the following Rules of the Village Council are in the best interest of the public health, safety, and welfare and are hereby adopted:

Rule 1. Regular Meetings. The regular Village Council meetings shall be held on the third Monday of each month in the Village Hall. Meetings shall begin at 6:00 pm.

Rule 2. Order of Business and Agenda for Regular Meetings. The order of business and agenda for Regular Meetings of the Village Council shall be as follows:

- (a) Roll Call
- (b) Consent Calendar
- (c) Items Removed from the Consent Calendar.
- (d) Old Business
- (e) New Business
 - (1) From the Village Manager
 - (2) From other Village officials, boards and committees
- (f) Appointments
- (g) Reports, Announcements and Correspondence
 - (1) Reports, Announcements and Correspondence from the Village Manager
 - (2) Announcements from the Village Clerk
 - (3) Reports, Announcements and Correspondence from the President and Village Council members
 - (4) Reports and Correspondence from other Village officials, boards and committees
 - (5) Reports and Correspondence from non-Village officials
- (h) Public Comment
 - (1) Reserved (if any)
 - (2) General
 - (3) President and Village Council members

A written agenda shall be prepared by the Village Manager for every Regular Meeting, and shall be completed and made available to the news media, and released for delivery to the members of the Village Council and public not later than 11:59 PM on the Friday immediately preceding the date of said Regular Meeting.

Rule 3. Consent Calendar. When the Village Manager determines that any item of business requires action by the Village Council but is of a routine and non-controversial nature, the Village Manager may cause such item to be presented at a Regular Meeting of the Village Council as part of a Consent Calendar, subject to the following procedure:

- (a) On objection by any Village Council member or any member of the public who is present to inclusion of any item on the Consent Calendar, that item shall be removed from the Consent Calendar forthwith. Such objection may be recorded at any time prior to the taking of a vote on the motion to approve the Consent Calendar. All such items shall be considered individually at a place on the agenda determined by the presiding officer.
- (b) The Consent Calendar shall be introduced by a motion to approve the Consent Calendar and shall be considered by the Village Council as a single item.
- (c) There shall be no debate or discussion by any member of the Village Council regarding any item on the Consent Calendar, beyond asking questions for simple clarification. A Council member may abstain from any item on the Consent Calendar by identifying the agenda item number and subject, stating the reason for the abstention, and that the Council member abstains from voting on that item. The abstention for that item shall be noted in the minutes.
- (d) Approval of the motion to approve the Consent Calendar shall be fully equivalent to approval, adoption, or enactment of each motion, resolution, ordinance, or other item of business thereon, exactly as if each had been acted upon individually.

Rule 4. Order of Business and Agenda at Special Meetings. Special Meetings shall consider only such matters as are specified in the notice of the meeting, unless all members of the Village Council are present and consent, or unless there is an emergency pursuant to these rules.

Rule 5. Presiding Officer. The Village President shall preside at all meetings and in the absence of the President, the President Pro Tem shall preside, and if both the President and the President Pro Tem are absent the Village Clerk shall call the Village Council to order and shall preside until a presiding officer is chosen. The presiding officer may express an opinion on any subject under debate without substitution of another presiding officer.

Rule 6. Rules of Order. The conduct of Village Council business shall be generally governed by the current edition of Robert's Rules of Order unless otherwise modified by law, ordinance, or these rules of the Village Council. The presiding officer shall decide all questions arising under these rules and general parliamentary practice subject to appeal, which appeal shall be determined by a majority of the members present. In the event an appeal is taken by any member from the ruling of the presiding officer, the Council Member desiring to appeal shall state that a claim of appeal is being taken and shall state briefly what in that Council Member's opinion the ruling should have been. If this appeal is seconded, the presiding officer shall state

clearly the question at issue, and then shall call for the vote of the Council on the question: "Shall the decision of the presiding officer be sustained?" The presiding officer shall preserve order and decorum and may speak to points of order in preference to other questions.

Rule 7. Motions. Every Motion or Resolution shall require a second before being put to a vote, and it shall not be debated until it shall be reduced to writing if requested by the presiding officer or any Council Member, but it may be withdrawn by the Council Members moving and seconding the motion at anytime before decision or amendment. No motion to reconsider shall be entertained unless made by a member voting with the majority.

Rule 8. Agenda modification. The presiding officer may modify the order of the agenda at any Regular or Special Meeting of the Village Council to expedite the business of the Village Council. Such modification may be challenged by a Village Council member in the same manner as appeals from rulings of the presiding officer.

Rule 9. Consideration of referred matters at Regular Meetings. At a Regular Meeting as the first item after Roll Call, any Village Council member, may ask orally or in writing that a certain matter be added to the agenda for consideration by the Council at that meeting. By motion made that the matter in question be added to the agenda of that meeting, passed by the concurring vote of a majority of the Council Members present, any such matter may be added to the agenda under the appropriate order of business and may be considered at that Regular Meeting.

Rule 10. Procedure for calling Special Meetings. Special Meetings shall be called by the Village Manager on the written request of the President or Manager or any three (3) Council Members. When the request to call a Special Meeting is initiated by a Council Member, the initiating Council Member shall submit a written request to the Village Manager requesting the Special Meeting; the request shall contain the item(s) to be considered. The Village Manager shall then forward the request to the Village Council and request if there are two (2) additional Council Members who would like to call the Special Meeting; and any Council Member who would like to join in making the request shall respond directly to the Village Clerk.

Rule 11. Consideration of referred matters at Special Meetings.

- (a) Notice. Except as provided in the following subsection, the Village Council shall not consider at a Special Meeting any matter referred or submitted to it unless by a Village Council member which appears on the written notice of said Special Meeting as posted and released for delivery to the members of the Village Council.
- (b) Emergency items. At a Special Meeting as the first item of business after taking the roll, any Village Council member may ask orally or in writing that a certain matter not appearing in the notice of that Special Meeting as posted and released for delivery to the members of the Village Council be considered at the Special Meeting. Any such matter may be considered at that Special Meeting if all Council Members elected and serving are present and if a motion is adopted by vote of not less than five Council Members that the matter in question is an

emergency and that it should be considered at the meeting.

Rule 12. Procedure for calling Emergency Meetings.

As required by Michigan Law, emergency meetings of the Village Council may be held only with the approval of two-thirds (2/3) of the members of the Village Council, which approval shall be coordinated by the Village Manager; and only if delay would be detrimental in the Village's efforts to lessen the impact of a severe and imminent threat to the health, safety and welfare of the public. A meeting is defined as an emergency meeting only if it must be held before an eighteen hour prior notice of the meeting can be given.

A written agenda shall be prepared by the Village Manager for every Emergency Meeting and shall be completed and made available to the news media, released for delivery to the members of the Village Council, posted on the website and at the physical location of the meeting.

Rule 13. Reconsideration of Matters. The Village Council shall not consider substantially the same matter upon which it has voted for a period of 180 days from date of said vote, unless two Council Members, at least one of whom voted on the prevailing side in the prior vote, shall submit a written request to the Village Manager for such matter to be placed on the agenda of a specific regular or special meeting. An email request is considered a written request for purposes of this rule. This rule does not apply to motions which resulted in a tie vote, or which failed but received a majority of votes from those Council Members actually voting. The Village Manager shall determine whether a matter is substantially the same as a prior matter and that determination is final and not reviewable by the Village Council or Village Manager.

Rule 14. Public Comment at Regular Meetings. The Village Council welcomes public comment and has prescribed the following to facilitate the conduct of public business.

- (a) **Public Comment during Agenda Items.** A person may address the Village Council during discussion of an agenda item prior to action recognized by the presiding officer or upon request of any Council Member. All persons are encouraged to identify themselves and their address and shall direct their comments to the Council. The comment of any member of the public or any special interest group may be limited in time to three minutes except as provided in subsection (e). As part of its deliberation, the Village Council may clarify, answer questions and ask questions as a result of public comment.
- (b) **Public Comment during the designated Public Comment Section - Reserved.** Any interested person or any special interest group wishing to address the Village Council for a reserved time shall submit a written request to the Village Manager no later than 5:00 p.m. of the Monday immediately preceding the date of said Regular Meeting. The communication must (1) identify the writer's name and address and (2) identify with reasonable specificity the subject matter. The same shall appear on the written agenda under the designated "Public Comment" section for said Regular Meeting as made available to the news media and released for delivery to the members of the Village Council. All persons are

encouraged must direct their comments to the Commission. The comment of any member of the public or special interest group may be limited in time to 7 minutes except as provided in subsection (e). If the Village Council deems it necessary or appropriate, questions posed may be answered at the meeting or may be referred to staff for response at a later time.

Such requests shall be limited to one (1) per meeting and shall appear on the written agenda. A Village resident request shall take precedence over a non-Village resident request. In such case, the non-Village resident request shall be postponed and placed on the written agenda of a future meeting. In no case shall the non-Village resident request be postponed more than one time.

- (c) **Public Comment during the designated Public Comment Section - General.** Any interested person wishing to address the Village Council regarding other matters may do so under the designated Public Comment section. All persons are encouraged to identify themselves and their address and direct their comments to the Commission. The comment of any member of the public or any special interest group may be limited in time to three minutes except as provided in subsection (e). If the Village Council deems it necessary or appropriate, questions posed may be answered at the meeting or may be referred to staff for response at a later time.
- (d) **Public Comment during the designated Public Comment Section – President and Village Council members.** The President and Village Council members interested in making a public comment may do so under the designated Public Comment section. Further, the President and Village Council members may briefly respond for clarification purposes as a result of public comment.
- (e) **Order and Duration of any Public Comment.** The presiding officer shall control the order and duration of any public comment subject to appeal. The presiding officer shall have the authority to limit and terminate any public comment that becomes disruptive, unduly repetitive, or impedes the orderly progress of the meeting. Items not appearing on the agenda will not be acted upon by the Village Council except in accordance with these rules.

Rule 15. Organizational Meeting. For purposes of these Rules, the Organizational meeting of the Village Council shall be considered a special meeting.

Rule 16. Procedure for calling Study Sessions. Study Sessions may be called by the Village Clerk on the request of the President, the Village Manager, or any three Council Members. Study Sessions starting times shall be established in the notice of the meeting.

Notice of Study Sessions shall be delivered to all Council Members and to the Village Manager and posted in compliance with the Open Meetings Act at least 18 hours prior to the study session. Such notice shall include the time and place of the Study Session. Village Council members and the Village Manager shall also be given notice of the intended purpose of the Study Session. Additional matters may be considered at the Study Session in the discretion of the Village

Council.

Rule 17. Public Comment at Study Sessions and Special Meetings. A person may address the Village Council during discussion of an agenda item if recognized by the presiding officer or upon request of any Council Member or during the designated Public Comment Section. The comment of any member of the public or any special interest group may be limited in time to three minutes. As part of its deliberation, the Village Council may clarify, answer questions and ask questions as a result of public comment. The presiding officer shall control the order and duration of any public comment. The presiding officer shall have the authority to limit and terminate any public comment that becomes disruptive, unduly repetitive, or impedes the orderly progress of the meeting. All persons addressing the Village Council are encouraged to identify themselves and their address.

Rule 18. Suspension of Rules. Unless otherwise provided by these rules, the rules may be suspended upon the vote of five Council Members. However, the following rules may be suspended only upon the vote of six Council Members:

- Rule 9. Consideration of referred matters at Regular Meetings.
- Rule 11. Consideration of referred matters at Special Meetings.
- Rule 18. Suspension of Rules.

Village Council Rule 12 cannot be suspended as it is required by Michigan Law.

Rule 19. Amendment of Rules. These Rules may be amended upon concurring vote of not less than that required for their suspension.

BE IT FURTHER RESOLVED that these Rules shall be effective immediately and shall supersede all rules to the contrary.

Ayes:

Nays:

Absent:

RESOLUTION DECLARED ADOPTED.

By: John Dewitt, Village President

By: Terese Schummer, Clerk

Date: _____, 2018

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Village Council of the Village of Newberry, County of Luce, State of Michigan, at a regular meeting held on _____, 2018 that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Terese Schummer, Clerk