

**AGREEMENT BETWEEN TOWN OF SHANDAKEN AND CATSKILL
WATERSHED CORPORATION FOR ASSISTANCE IN THE PROPOSED HAMLET
OF PHOENICIA WASTEWATER TREATMENT PROJECT**

THIS AGREEMENT is made and entered into this _____ day of _____, 2010, by and between the **CATSKILL WATERSHED CORPORATION** (“CWC”), a not for profit corporation organized under the laws of the State of New York with a principal place of business at 905 Main Street, Margaretville, New York, and the **TOWN OF SHANDAKEN**, (“Town”) Ulster County, New York, and a political subdivision of the State of New York, acting by and through its Supervisor, having its principal office at Route 28, Allaben, New York (together the “Parties).

WHEREAS, under the 1997 New York City Watershed Memorandum of Agreement (“Watershed MOA”) Paragraph 122, the City of New York agreed to provide funding for wastewater treatment projects under the New Infrastructure Program (“NIP”); and

WHEREAS, the Town has agreed to participate in the NIP pursuant to its Agreement and Amended Identified Community Agreement with the New York State Environmental Facilities Corporation (“EFC”) to construct a wastewater treatment project in the hamlet of Phoenicia; and

WHEREAS, the NIP Amended and Restated Identified Community Agreement fully executed on March 21, 2005 and the First Amendment to said Agreement, effective on August 26, 2009, (together the “Amended Agreement”) provides a Block Grant Amount of \$17,211,00.00 for a wastewater treatment project in the hamlet of Phoenicia; and

WHEREAS, the CWC is the administrator of the Community Wastewater Management Program (“CWMP”) for fifteen other hamlets listed in Watershed MOA Paragraph 122 and successfully completed wastewater treatment projects in four of those hamlets; and

WHEREAS, the Town has determined that the CWC is a responsible consultant for the work to be performed under the Amended Agreement based upon CWC’s successes with the CWMP, a continuation of the NIP; and

WHEREAS, the Town has terminated its prior NIP consultant and contractor agreements with its prior engineers, lawyers and other services previously entered into before this time in accordance with the termination clauses provided in those prior agreements and pursuant to all other applicable agreements under the NIP; and

WHEREAS, by Resolution 76 of 2010, the Town Board of the Town of Shandaken requested CWC to assist the Town in the hamlet of Phoenicia wastewater treatment project (the “Project”); and

WHEREAS, by Resolution 1761, CWC’s Board of Directors agreed to enter this Agreement with the Town (“CWC-Phoenicia Agreement”); and

NOW THEREFORE, in consideration of the premises and respective representations and agreements hereinafter contained, the Parties hereto agree as follows:

**ARTICLE I
GENERAL TERMS AND CONDITIONS**

Section 1.01 Overview of Services

The intent of this Agreement is to outline the services to be performed and the rights and duties of the respective Parties, the Catskill Watershed Corporation (“CWC”) and the Town of Shandaken (“Town”). CWC shall furnish such consulting and contracting services as described herein to the Town. CWC shall perform such services in accordance with the terms of this Agreement, the Watershed MOA and the Amended Agreement. The Town shall fully cooperate with CWC in accordance with the terms of this Agreement. For the purposes of this Agreement cooperate and cooperation shall include but not be limited to promptly providing information regarding the Project to CWC, promptly processing invoices for payment, maintain civil decorum at any Town Board meetings, public information sessions or the like where CWC is asked to attend at the Town’s request, and any statements made by Town, its officials or employees, regarding the Project during the term of this agreement must be truthful and accurate. The Town’s cooperation with CWC is a material term of this Agreement.

Section 1.02 Term of Agreement

A. Effective Date of Agreement

This Agreement shall be effective when fully executed by CWC and the Town (the “Effective Date”).

B. Termination Date

This Agreement shall expire the sooner of:

1. Completion of the wastewater treatment project selected by the Town and approved by New York City Department of Environmental Protection (the “Project”) including completion of all Design and Construction Phases tasks; or
2. Termination pursuant to Sections 2.03(E), 2.05 (A) or (B), or Article 9 of this Agreement; or
3. Upon CWC’s completion of work under the Construction Phase as defined in this agreement or five (5) years after the Effective Date. In the event all work required herein, including the Design and Construction Phases, is not completed prior to the end of the fifth year after the Effective Date, this Agreement may be extended once

upon mutual written agreement of the Parties, by resolutions of the CWC Board of Directors and the Town Board, upon the same terms and conditions of this Agreement, and any amendments thereto.

ARTICLE II PROGRAM WORK AND PHASES

Section 2.01 Program Work

A. Upon the Effective Date, CWC and the Town, respectively, shall begin all Program Work hereinafter specified and pursue all Program Work to completion consistent with the terms hereof. CWC shall select and retain a qualified engineering firm (“CWC Engineer”) of its choosing and at its sole discretion to assist and advise CWC with regard to the tasks set forth in this Agreement. CWC and the CWC Engineer shall perform the services in connection with the Program as set forth herein.

B. The Town shall cooperate with the CWC, the CWC Engineer, and any CWC sub-contractors, with respect to all work and tasks described in this Agreement.

C. Tasks of CWC and CWC Engineer - The CWC and CWC Engineer shall perform the following tasks:

1. Direct and complete the Design Phase Review, as defined herein in Section 2.03, in consultation with the Town, and manage the Design Phase and the Construction Phase, as defined in Section 2.04 and 2.06 respectively, for the Town; and
2. Estimate costs of all phases of the Town’s Project; and
3. Review and Assist the Town in establishing a sewer use ordinance, as required pursuant to the Amended Identified Community Agreement, and sewer or wastewater district(s); and
4. Obtain all necessary permits and assure compliance with all regulatory requirements for the construction or implementation of each Project, including compliance with the State Environmental Quality Review Act; and
5. Present a Program master plan that identifies a technically and economically feasible Project for the Town which does not exceed the remaining Block Grant Amount, further described in Section 2.02, after design review phase costs.

Section 2.02 Town Block Grant Amount

A. CWC and the Town acknowledge that the Town’s Block Grant Amount was established by New York City Department of Environmental Protection (“DEP”) at \$17,211,000.00 (“Block Grant Amount”) pursuant to the 1997 Watershed MOA Paragraph 122 (b) and (e) and the

Amended Identified Community Agreement between the Town and EFC dated March 21, 2005 and the First Amendment to the Amended and Restated Agreement dated August 26, 2009 (the "Amended Identified Community Agreement" or the "Amended Agreement") for the design and construction of a wastewater treatment project in the hamlet of Phoenicia. The Town and CWC further acknowledge that approximately \$16,066,101.29 of the Block Grant Amount remains available as of the Effective Date.

Section 2.03 - Design Review Phase

A. The Design Review shall include CWC's review of the Town's relevant work under the NIP and other options in accordance with this Agreement. CWC and CWC Engineer shall examine the feasibility, technical, cost, planning and implementation issues related to a wastewater treatment project options available to the Town in accordance with this Agreement. All costs related to the Design Review shall be paid from the Block Grant Amount. The Design Review shall be completed within twelve (12) months commencing with the Effective Date.

B. 1. After the Design Review, CWC shall present a preferred option to the Town regarding the wastewater treatment project that can be designed and constructed within the limit of the remaining Block Grant Amount (the amount available after payment of the Design Review) (the "Preferred Project"). The Preferred Project may include a wastewater treatment plant, a community septic system or system, or a septic maintenance district, or a combination thereof.

2. If the preferred project is a septic maintenance district, upon approval by the Town and DEP, DEP in consultation with CWC, shall determine the new allocation of NIP Funds which may be made in order to fund a septic maintenance district consistent with the requirements of Paragraph 122 of the Watershed MOA. If DEP and the Town agree upon the project and the allocation of NIP Funds, the Town shall proceed to enter into an agreement with CWC, separate and apart from this Agreement, for completion of the septic maintenance district as provided in Section 2.04.1(A) of the Amended Agreement.

C. If the Preferred Project includes a wastewater treatment plant or community septic system or systems, CWC and the CWC Engineer shall perform the following additional tasks if necessary after review of prior work done for the Town under the Amended Agreement including reviewing and modifying as necessary:

1. if the Preferred Project is a community septic system determine the feasibility of a community septic system or systems by investigating available land and performing soil tests, percolation rate tests, and a groundwater mounding analysis;
2. if feasible, identify possible sites for the construction of the wastewater treatment plant or community septic system(s);
3. estimate the design and construction costs for the wastewater treatment plant or each community septic system identified, including costs for the acquisition of necessary property interests, and legal and administrative fees;

4. review and modify, if necessary the service area for the proposed Project, and if the Project includes a community septic system, identify associated existing flow.
5. propose a draft annual operation and maintenance plan so that the community septic system(s) or wastewater treatment plant, and the related sewerage collection system(s), continue to function properly for the useful life of the Preferred Project;
6. should the Preferred Project be a wastewater treatment plant or Community Septic System, project an annual budget for the costs of such operation and maintenance with a proposal for assessing charges to properties (households and others) falling within the proposed service area, to be incorporated into a sewer use law that shall be at least as stringent as the New York State Department of Environmental Conservation Model Sewer Use Law to be developed by the Town, to provide adequate funding to implement such operation and maintenance plan, including the household cap set forth in Watershed MOA Paragraph 122(k);
7. propose a plan for connecting existing houses and other structures within the service area to the Preferred Project and estimate the costs, if any, to be paid by the Block Grant in accordance with Section 2.05(C) herein; and
8. identify any and all necessary permits and regulatory requirements that would need to be obtained or satisfied as a condition precedent to the design, construction, installation, operation and maintenance of such community septic system(s), together with the related sewerage collection systems, including, where applicable, compliance with the State Environmental Quality Review Act.

D. If the preferred Project includes a septic maintenance district CWC and the CWC Engineer shall perform the following additional tasks:

1. determine the feasibility of a septic maintenance district or districts;
2. review and modify, if necessary the service area for the proposed Project;
3. propose a plan and timeline for the formation of the district and for the pump out and inspection of subsurface sewage treatment systems located within the district;
4. estimate the costs to establish, operate and maintain such district, including legal and administrative fees;
5. estimate, to the extent feasible, the number of failing septic systems and substandard systems located within the district, and the costs of rehabilitation, replacement or upgrading of such failing septic systems and substandard systems;
6. propose a draft annual operation and maintenance plan so that subsurface sewage treatment systems located within the district, whether found initially to be functioning properly or rehabilitated, repaired or upgraded by the district following inspection, continue to function properly for the length of their useful life; and

7. project the annual operation and maintenance costs of such plan and propose an amount for the Septic District Maintenance Allocation.

E. 1. At the conclusion of the Design Review, CWC shall present to NYCDEP and the Town Board a report summarizing the results of the relevant tasks set forth in this section and setting forth a Preferred Project for the hamlet of Phoenicia (the "Review Report"). The Design Phase shall commence upon written approval by DEP of the Preferred Project and a written resolution by the Town Board acknowledging its desire to continue with the Design Phase for the Preferred Project provided the resolution is completed within sixty (60) days of receipt of the Review Report or within sixty (60) days of DEP approval of the Preferred Project, whichever is later.

2. This Agreement shall terminate on the sixty-first (61) day after submission of the Review Report or DEP approval of the Preferred Project, whichever is later, if the Town has not adopted a resolution in accordance with the timeframe prescribed in 2.03(E)(1).

Section 2.04 Design Phase

A. CWC shall commence the following Preferred Project design work if and when the Town selects the Preferred Project pursuant to 2.03(E). All costs associated with the Design Phase shall be paid for from the Block Grant Amount. The Design Phase shall be completed by CWC and the CWC Engineer, in cooperation with the Town, within twelve months after Town Board passage of the resolution referenced in Section 2.03(E) and shall consist of the following items (the "Design Work"):

1. A final engineering plan (the "Final Engineering Plan" or "Final Plan") consisting of complete plans and specifications for the Project to be undertaken, including, without limitation, complete final design, final cost estimate, bid documents for construction of the Project, all required regulatory approvals for the Project under the Watershed Regulations, and all other governmental approvals (except those customarily obtained by the construction contractor during the course of construction), including submittal of 65% complete plans to the Town and DEP;

2. Assist the Town with resolutions and all legal steps necessary for the legal formation of a sewer or wastewater district for the purpose of imposing rates and charges, if necessary, on Project users to operate and maintain the Project, including drafting of all necessary documents for Town Board review;

3. Assist the Town in the consideration for its adoption by the Town of a sewer use law, if the Project includes a community septic system or wastewater treatment plant, that is at least as stringent as the model sewer use law then in use by New York State Department of Environmental Conservation, determine eligibility of the Preferred Project for financing under the New York State Revolving Loan Fund Program, and assist the Town in its consideration for adoption any other Community Planning

Measures per Section 2.02(A)(4) of the Amended Identified Community Agreement, including drafting of all necessary documents for Town Board review;

4. Assist the Town in the acquisition of options and/or purchase, for all property interests, including easement interests, necessary for the completion, operation and maintenance of the Project, including drafting of all necessary documents for Town Board review;

5. Management of the bid process on behalf of the Town for the construction of the Projects, including drafting of all necessary documents for Town Board review;

6. Revision of the Final Engineering Plan, subject to Town and NYCDEP approval, if the bid(s) received for the Construction Phase exceed available funds under the Block Grant Amount for the Town as provided in Section 2.05;

7. Revision, if necessary, of the draft annual operation and maintenance plan(s) and budgets developed during the Design Review, and the development of a final annual operation and maintenance plan (“Maintenance Plan”) and budget that would enable the Project to be properly operated and maintained in accordance with the terms of this Agreement. If the Project is or includes a septic maintenance district, the operation and maintenance plan shall be developed pursuant to a separate agreement between CWC and the Town consistent with Section 2.03(B)(2) herein.

Section 2.05 Town Commitments Required Prior to Construction Phase

A. Prior to CWC commencing work under the Construction Phase, the Town shall commit, by resolution of the Shandaken Town Board, to continue the Preferred Project within 90 days of CWC’s completion of the Design Phase, which events shall occur simultaneously. This Agreement shall terminate on the ninety-first (91) day after CWC completion of work under design phase and Town receipt of bids, which events shall occur simultaneously, if the Town has not adopted a resolution in accordance with the timeframe prescribed in this section, unless the bids are greater than the amount reserved for such purpose within the Town’s Block Grant amount as described in Section 2.05(B).

B. In the event that all of the bids received by the Town for the construction of a Project are greater than the amount reserved for such purpose within the Town’s Block Grant Amount, pursuant to Section 2.04(A) of the Amended Identified Community Agreement, the Town and NYCDEP, in consultation with CWC and the CWC Engineer, shall determine whether element(s) of the Final Engineering Plan for the Project, as defined in this Agreement and in the Amended Identified Community Agreement, should be modified, subject to approval by NYCDEP, in order to bring the anticipated cost of the work within the Remaining Block Grant amount in accordance with Section 2.04 of the Amendment Identified Community Agreement.

C. In the event the Town and NYCDEP cannot agree on a Final Engineering Plan modification that reduces the Preferred Project’s costs so that the Preferred Project or modified Preferred Project can be constructed within the remaining Block Grant Amount still available for

such purposes, the Town may terminate this Agreement in accordance with Section 1.02 of this Agreement, or in the alternative, the Town may fund the difference between the remaining Block Grant Amount and the Project's costs from alternative sources outside the remaining Block Grant Amount, if the Town chooses to do so.

Section 2.06 Construction Phase

A. The Construction Phase shall begin only after CWC and NYCDEP have both received a written Town Board resolution committing and authorizing the Town to complete the Construction Phase, in accordance with Section 2.05(A) of this Agreement. In addition, prior to commencement of the Construction Phase, for Projects involving a wastewater treatment plant system or community septic system, the City and the Town shall have entered into a separate Operation and Maintenance Agreement as set forth in this Agreement and the Amended Identified Community Agreement Section 2.06(A).

B. During the Construction Phase, the CWC and the CWC Engineer shall facilitate, in cooperation with the Town, performance of the following work (the "Construction Work"), which shall be completed within twenty-four (24) months of the Town awarding construction bids, subject to mutually agreeable extension, and consent to such extension requested under this section shall not be unreasonably withheld:

1. Assist the Town in awarding contracts based upon bids received and commence and complete the construction of the Project, in conformity with the Final Engineering Plan, including drafting of all necessary documents for Town Board review;
3. Assist the Town in exercising real estate options, including drafting of all necessary documents for Town Board review;
4. Assist in processing, as required, invoices for the Town to pay for the costs of construction for wastewater treatment plant or community septic system(s) included in the Project, including drafting of all necessary documents for Town Board review.
5. Construction observation of work done by contractors hired by Town to verify completion and compliance with engineer plans and applicable laws and permits, including compliance with New York City Watershed Regulations.

ARTICLE III

DISBURSEMENT OF FUNDS

Section 3.01 Contract Amount

A. Basic Services

Town shall pay to CWC for services for the Design Review Phase that shall not exceed Three Hundred Twenty-Six Thousand Five Hundred Fifty-Two Dollars (\$326,552.00) for professional fees and expenses to complete the services described in Section 2.01(A) of this Agreement to the extent relevant to the Design Review and Section 2.03 of this Agreement in accordance with the terms of this Agreement and the Amended Identified Community Agreement. Professional fees shall be billed at rates described in Attachment B as well as actual hourly costs of CWC employees. Expenses shall include reasonable out-of-pocket expenses necessary to complete the services including telephone, postage, photocopies, and travel. These costs shall be deducted from the Block Grant Amount.

B. Services for Design and Construction Phases

For the Design and Construction Phases described in Sections 2.04 and 2.06, the Town and CWC expressly agree that it is their intention to agree to a budget to conduct the services described in Sections 2.04 and 2.06 of this Agreement following completion or substantial completion of the Design Review described in Section 2.03 of this Agreement (the "Supplemental Budget"). The Supplemental Budget shall be based upon the Schedule of Fees detailed in Attached D of this Agreement, as well as actual hourly costs of CWC employees together with time and materials estimate. The Supplemental Budget agreed to pursuant to this Section shall be made an Attachment to and incorporated into this Agreement.

Section 3.02 Method of Payment and Payment Obligations

A. CWC shall submit invoices to the Town, in a form acceptable to EFC known as Certification and Disbursement Requests ("Disbursement Requests") (and with appropriate documentation as provided in Appendix B of the Amended Identified Community Agreement), for its services and the services of its subcontractors to the Town, with a copy to New York City Department of Environmental Protection. Each Disbursement Request shall include a description of the services performed by CWC, the amount of hours worked and the hourly rate for the person(s) performing the task(s). Invoices shall also include an itemization of expenses for which reimbursement is requested. CWC may not submit a Disbursement Request to the Town more often than once each month.

The Town shall submit a fully executed Disbursement Request to EFC in accordance with Section 3.02 of the Amended Agreement. The Town shall submit said Disbursement Request to EFC within ten (10) days of receipt of the Disbursement Request(s) from CWC. The Town shall pay CWC for its submitted Disbursement Request(s) within ten (10) business days of receipt of payment from EFC for the Disbursement Request(s).

B. The Town shall not be deemed by virtue of making payments to CWC to have released CWC from any claim or liability, or to have waived any right or rights of action under this Agreement.

C. Upon acceptance by CWC of the final payment to be paid under this Agreement, CWC agrees that it shall be deemed to have fully released the Town from any and all claims, demands

and causes of action regarding payment obligations that CWC has or may have against the Town with respect to this Agreement. Nothing herein shall be deemed to waive any right CWC may have to challenge a payment received from the Town as final.

D. Any funds disbursed by the Town to CWC shall be used for the purpose for which said funds were allocated in a manner consistent with this Agreement and the Amended Agreement.

E. In accordance with Section 2.06 (C)(1) of the Amended Identified Community Agreement, CWC agrees that if the City fails to provide adequate program funds to EFC, EFC shall have no liability to make payment, except where the City's failure to provide adequate Program Funds was due solely to EFC's acts or omission. In addition, CWC agrees that EFC shall have no liability for any failure to make a payment to the Town within 10 business days after a Disbursement Request is submitted, unless such failure is due solely to EFC's gross negligence or willful misconduct.

F. CWC agrees that if the City fails to provide adequate program funds to EFC, the Town shall have no liability to make payment, except where the City's failure to provide adequate Program Funds was due solely to the Town's acts or omission.

ARTICLE 4

INSURANCE

Section 4.01 Insurance

CWC shall maintain insurance in sufficient amount and scope to protect the interests of the Town, CWC, EFC, and the City as provided in Attachment C. If a contractor(s) or Engineer(s) engaged by the CWC for the Project hereunder is not a CWC employee, the CWC shall ensure that each has, and maintains during the term hereof, insurance in sufficient amount and scope to protect the interests of the Town, CWC, EFC, and the City as provided in Attachment C. The Town, EFC, and the City of New York shall be named as additional insureds on the general liability insurance policy of the contractor. CWC shall submit to Town, EFC, and the City Certificates of Insurance for CWC and any consultants retained or engaged by the CWC for work in accordance with this Agreement and with the coverage required under this Agreement prior to commencement of any work by CWC or such contractor or consultant. Said certificates shall name Town and the City as certificate holder and provide that cancellation of such insurance is not effective except upon 30 days prior written notice to Town and the City. The CWC shall enforce the insurance provision of its contracts with any consultant. Proof of existence of said additional insurance status shall be presented by CWC prior to starting work.

ARTICLE 5

RECORDS AND REPORTS

Section 5.01 General

The CWC shall make its records related to the wastewater treatment system, community septic system or septic maintenance district projects as described in this Agreement available to Town, EFC, and the City as they may deem reasonably necessary. The CWC shall provide duplicate copies of all such records to the Town at Town's request. Per Section 8.01, the Town shall own the copyright on any such materials and with such grants of licenses for use.

The CWC shall forward to the Town at its request a copy of any and all written materials and documents prepared pursuant to this Agreement. The CWC shall maintain complete and accurate records in readily accessible files for all its activities in connection with this Agreement. Such records shall include, but are not limited to, financial records detailing the receipt, management and disbursement of all funds provided by the Town pursuant to this Agreement. The CWC shall prepare and maintain documentation and justification in support of expenditures under this Agreement in accordance with generally accepted business practices and shall make such documentation available to the State, including the State Comptroller, and the City, including the City Comptroller, as they consider necessary. The CWC shall maintain all records relating to this Agreement for seven (7) years after generation of the record after completion of construction of the project. This section shall survive Termination of the Agreement pursuant to Section 1.02.

ARTICLE 6

PERSONNEL

Section 6.01 Employees

A. Each Party agrees that their respective employees, officials, agents, consultants, contractors and subcontractors are not employees of the other Party or the City or the New York State Environmental Facilities Corporation. The CWC covenants and agrees that, except for a Town official who may be a Director or Officer of the CWC, neither the CWC nor any of its employees, officials, agents, consultants, contractors or subcontractors will hold themselves out as, nor claim to be, officers or employees of the Town.

B. Neither Party shall be responsible for the work, direction, compensation and personal conduct of each of the other Party's employees, agents, contractors, subcontractors or consultants while engaged under this Agreement.

C. Nothing in this Agreement shall impose any liability or duty on any Party or the City for the acts, omissions, liabilities or obligations of the party or any employee, official, agent,

consultant, contractor or subcontractor of the other Party or for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workmen's compensation, disability benefits and social security except as specifically stated in this Agreement.

D. Neither Party, the City, the New York State Environmental Facilities Corporation, nor the CWC Engineer shall be responsible for any physical injuries or death to the other Party's employees, officials, agents, consultants, contractors or subcontractors or to any other person or damage to property sustained during the CWC's or the Town's operations and work under this Agreement resulting from any act, omission, commission or error in judgment of any of the Town's or CWC's employees, officials, agents, consultants, contractors or subcontractors. Neither party, the City nor the CWC Engineer shall be responsible for the safety and protection of the other Party's employees, officials, agents, consultants, contractors or subcontractors.

Section 6.02 Equal Employment Opportunity

CWC agrees that it has not and will not engage in any unlawful discrimination based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to employment or contract award decisions under this Agreement.

ARTICLE 7

PROCUREMENT OF GOODS AND SERVICES

Section 7.01 General

A. Unless otherwise specified, CWC shall competitively bid all work under this Agreement, exclusive of professional services, not performed by CWC that would be subject to public bidding in accordance with the provisions of section 103 of the New York State General Municipal Law which would apply if CWC were a municipal corporation. CWC shall award competitively bid work to the lowest responsible and responsive bidder. CWC shall solicit, review, and evaluate bids, and award contracts in accordance with the provisions of Section 103 of the New York State General Municipal Law which would apply if CWC were a municipal corporation.

B. CWC shall pay subcontractors performing public work within the meaning of Section 220 of the New York State Labor Law not less than the prevailing wage for those laborers, workers and mechanics performing such public work and comply with all other applicable provisions of Section 220 of the Labor Law.

Section 7.02 Background Investigation Compliance for Contractors

A. CWC agrees and covenants to hire only responsible consultants and contractors with

respect to any work to be performed under this Agreement.

B. A responsible person or firm is one who or which, in the reasonable opinion of CWC and/or its agents or representatives, has the capability in all respects to fully perform the contract requirements, including appropriate licenses where applicable, and the business integrity to justify the award of a contract under this Agreement.

Section 7.03 Business Integrity - VENDEX

This section sets forth the procedures and criteria for determining whether a contractor has the necessary business integrity as required by the Amended Identified Community Agreement between the Town and New York State Environmental Facilities Corporation. As set forth in Section 4.03 (A)(4) therein, the CWC is not required to comply with these procedures unless a contractor is to be awarded a contract under this program which is valued at \$100,000 or more when aggregated with the value of all other contracts awarded to the contractor from funds provided by NYCDEP during the immediately preceding twelve-month period. In order to avoid any potential delay in the awarding of contracts, the CWC may notify potential contractors of their ability to obtain pre-approval through the VENDEX process as set forth herein.

A. For purposes of this Section, the following definitions apply:

1. "Affiliate" shall mean an entity in which the parent of the proposed Contractor owns more than 50 percent voting stock or an entity in which a group of principal owners which owns more than 50 percent of the proposed Contractor also owns more than 50 percent of the voting stock.

2. "Contract" shall mean any contract for the procurement of labor, materials, equipment or services paid for, in whole or in part with Program Funds.

3. "Covered Contract" shall mean a Contract of \$100,000 or more with a Subcontractor, or which is valued at \$100,000 or more when aggregated with the value of all other contracts funded with funds provided by the City of New York ("City") awarded to the same Subcontractor during the immediately preceding twelve-month period. In determining whether a Contract is a Covered Contract, the CWC shall be entitled to rely on a certificate of the subject Subcontractor, except where the CWC has actual knowledge that a Contract is a Covered Contract.

4. "Government Entity" shall include the State or any political subdivision thereto, any entity described in Section 99-r of the New York General Municipal Law, and any federal, state or local agency, department, board, bureau, public authority or public benefit corporation.

5. "Principal Owner" shall mean an individual, partnership, joint venture or

corporation which holds a ten (10) percent or greater ownership interest in a proposed subcontractor.

6. "Subcontractor" shall mean any person or entity other than a Governmental Entity which enters into a Contract with CWC, the CWC Engineer, the Town or with a Governmental Entity which has entered into a Contract with CWC.

B. A Covered Contract shall not be awarded to persons or entities other than "Eligible Subcontractors." An "Eligible Subcontractor" for purposes of this Section is a Subcontractor that has a satisfactory record of business integrity. A Subcontractor shall be deemed to lack the requisite record of business integrity, if any, of the following criteria are met within or during the period commencing ten (10) years prior to completion of the City Vendor Information Exchange System ("VENDEX") questionnaire and continuing through the date of determination:

1. Criminal conduct in connection with government contracts or the conduct of business activities involving: a) the infliction, attempted infliction, or threat of death, intentional personal injury, or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; b) bribery, fraud, bid rigging, embezzlement, theft, perjury, forgery, or other comparable crimes; c) serious moral turpitude, fundamental lack of integrity, or a pattern or practice of a knowing disregard for the law so as to call into question the integrity of the proposed subcontractor; or (d) conspiracy to do any of the above acts. Evidence of such conduct shall consist of (A) (1) a judgment of conviction, (2) a pending criminal indictment, or (3) a formal grant of immunity in connection with a criminal prosecution, in each case of a proposed subcontractor, any director or officer, any principal, any employee primarily responsible for contracting procedures, or any holder of five (5) percent or more of the shares or equity of the proposed subcontractor, or any affiliate or subsidiary of the proposed subcontractor; or (B) any ongoing criminal investigation by a law enforcement agency in which the proposed subcontractor, any director or officer, any principal, employee primarily responsible for contracting procedures, or any holder of five (5) percent or more of the shares or equity of the proposed subcontractor, or any affiliate of the proposed subcontractor is a target.

2. An actual determination by a person or entity which has jurisdiction of a willful noncompliance with the prevailing wage requirements of Section 220 of the Labor Law by the proposed Subcontractor or any affiliate thereof.

3. An actual determination by a person or entity which has jurisdiction of a significant willful violation of the Workers' Compensation Law including, but not limited to, the failure to maintain required workers' compensation or disability coverage.

4. An actual determination by a person or entity which has jurisdiction of a submission by the proposed subcontractor to a government agency of a false or

misleading statement on a uniform questionnaire or other form in connection with a bid or proposal for, or award of, a contract or request for approval of a subcontractor.

5. A conviction or judgment of civil liability against the proposed subcontractor for fraud in connection with a bid or proposal for, or award of, a contract or request for approval of a subcontract.

6. Debarment or current suspension of the proposed subcontractor for reasons of business integrity from consideration for the award of contracts with a government, governmental entity or public authority pursuant to any procedure enacted by statute or adopted by regulation providing for notice and hearing.

7. Arrears for more than one year on income, sales or payroll taxes.

C. Before any Covered Contract is awarded to a Subcontractor, or CWC proposing to award the Covered Contract shall require the proposed Subcontractor to complete the appropriate VENDEX questionnaire, or such revised standard VENDEX questionnaire as the City provides from time to time. CWC shall also require that the proposed Subcontractor submit the completed VENDEX questionnaire to NYCDEP at least thirty-five (35) days before the Covered Contract is awarded to the following address:

New York City Department of Environmental Protection
59-17 Junction Boulevard
17th Floor
Flushing, New York 11373-5108
Attention: Agency Chief Contracting Officer

Pursuant to the Program Contract, the City shall provide the CWC with the name of the contact person who shall provide information during regular business hours as to whether the City has received a particular VENDEX questionnaire and the status of the City's review of such questionnaire. Within five (5) business days of receiving a VENDEX questionnaire, the City shall notify CWC if the VENDEX questionnaire is not complete. If the City fails to notify the CWC within such five (5) business-day period, the VENDEX Questionnaire shall be deemed complete. Within thirty-five (35) days of receiving the VENDEX Questionnaire, the City may provide a report indicating whether the criteria of Subsection (B) are met, including an explanation of the non-confidential evidence that such criteria are met. If the report states in fact that such criteria are met, the Contractor will be deemed not to be an Eligible Contractor unless the City and either CWC, the CWC Engineer or the Town, as the case may be, agree that the Subcontractor possess a satisfactory record of business integrity.

D. Even if the Subcontractor does not meet the criteria set forth in Subsection (B), the City may provide CWC with information within the thirty-five (35)-day period set forth in Subsection (C) which may be relevant to the question of whether a proposed Subcontractor for a Covered Contract has a satisfactory record of business integrity. Before awarding the Covered Contract, CWC, the CWC Engineer or the Town, as the case may be, shall receive and consider such

information provided by the City. If, after receiving and considering such information the CWC, the CWC Engineer or the Town, as the case may be, intends to proceed to award the Covered Contract to such Subcontractor, before making such award, the CWC, the CWC Engineer or the Town, as the case may be, shall respond in writing to any such information provided by the City. If the CWC, the CWC Engineer or the Town, as the case may be, intends to award the Covered Contract and if the CWC, the CWC Engineer or the Town, as the case may be, continue to disagree, the CWC, the CWC Engineer or the Town, as the case may be, shall refer the issue to the Executive Committee of the Watershed Protection and Partnership Council for a recommendation. The Executive Committee shall be given the information provided to the CWC, the CWC Engineer or the Town, as the case may be, written response, and any additional written material which the CWC, the CWC Engineer or the Town, as the case may be, desires to submit. The Executive Committee shall have fifteen (15) days in which to issue a recommendation as to whether a proposed Subcontractor has a satisfactory record of business integrity. The CWC, the CWC Engineer or the Town, as the case may be, shall make a determination whether to award the Covered Contract to the proposed Subcontractor after one of the following occurs, whichever is applicable: (1) the Executive Committee fails to make a recommendation within the fifteen (15) days allotted for Executive Committee review; or (2) the CWC, the CWC Engineer or the Town, as the case may be, reviews any recommendation made by the Executive Committee within such fifteen (15) days.

E. If no report referred to in Subsection (C) or no information referred to in Subsection (D) is received from the City within the thirty-five (35)-day period following the submission of a VENDEX questionnaire is provided in Subsection (C), the Subcontractor may be deemed to be an Eligible Subcontractor for purposes of this Section.

F. The City shall not use this Section as a means of restricting the selection or approval of an Eligible Subcontractor over another Eligible Subcontractor, or the decision that one project be undertaken instead of another. The report shall be based solely on the criteria set forth in Subsection (B) and shall not be based on other factors including, without limitation, financial resources, technical qualifications, experience, organization, material, equipment, facilities, personnel resources and expertise, a satisfactory record of performance, the existence of accounting and auditing procedures, or compliance with requirements for the utilization of small, minority-owned and women-owned businesses as subcontractors; provided that the City shall be entitled to review and rely upon any facts and circumstances relevant to the criteria set forth in Subsection (B).

G. Pursuant to the New Infrastructure Program Contract, at CWC or the Town's request, the City shall defend, indemnify and hold harmless CWC or the Town, its officers, agents and employees from and against any liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of a determination with respect to a Covered Contract pursuant to this Section, including the requirements that Subcontractor complete and submit the VENDEX questionnaire and meet the criteria in Subsection (B), the requirement of submitting disputes to the Executive Committee in Subsection (D), the report or other information provided by the City; and any other dissemination of the information provided by the City necessary to comply with this Section.

H. CWC and the Town agree to cooperate with and provide reasonable assistance to the City in defending any actions or claims which the City may undertake to defend pursuant to Subsection G. The City shall be deemed a third-party beneficiary of this Agreement for the purposes of enforcing Subsections G and H of this Agreement.

ARTICLE 8

REPRESENTATION AND WARRANTIES

Section 8.01 Status and Authority of CWC

A. CWC represents and warrants that:

1. CWC has all requisite power and authority to execute, deliver and perform this Agreement; and
2. This Agreement has been duly authorized by all necessary action on the part of CWC and has been duly executed and delivered by CWC and, assuming due execution and delivery by the Town, constitutes a legal, valid, binding and enforceable obligation of CWC; and
3. The CWC, nor its agents or employees including but not limited to the CWC Engineer, is not making any warranties with respect to any project funded under this contract.

Section 8.02 Authority of the Town

A. The Town represents and warrants that:

1. The Town has all requisite power and authority to execute, deliver and perform this Agreement. This contract shall be accompanied by a resolution passed by the appropriate governing body authorizing the Town Supervisor or other authorized representative to enter into contract. If a separate agency is entering into contract on behalf of a municipality, such contract application shall be accompanied by a resolution passed by the appropriate governing body authorizing the agency to act on behalf of the municipality.
2. This Agreement has been duly authorized by all necessary action on the part of the Town and has been duly executed and delivered by the Town and, assuming due execution and delivery by the CWC, constitutes a legal, valid and enforceable

obligation of the Town.

3. The execution and delivery of this Agreement by the Town and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any provision of applicable law, ordinance or regulation or, to the extent of the Town's knowledge, or any material agreement, judgment, injunction, order, decree or other instrument binding upon the Town.

Section 8.03 Conflict of Interest

A. The Town and CWC represent and warrant that neither the Town nor CWC nor any of their officers or employees have any interest, nor shall they acquire any interest, directly or indirectly, in any contracts or subcontracts, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided.

B. The Town and CWC further represent and warrant that in the performance of this Agreement, no person having such interest or possible interest in any contracts or subcontracts which would or may conflict in any manner or degree with the performance or rendering of the services herein provided shall be employed by them or receive any of the funds to be paid by CWC or the Town.

ARTICLE 9

DEFAULT, SUSPENSION OR TERMINATION

Section 9.01 Defaults and Termination

If either Party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after a first written notice of such default is received by the defaulting Party from the non-defaulting Party, such non-defaulting Party may (in addition to any other rights or remedies available at law or in equity) suspend work or terminate this Agreement upon a second written notice to the defaulting Party. If a material breach of the Agreement cannot be cured within thirty (30) days, the Agreement shall not be suspended or terminated pursuant to this Section if the breaching Party commences appropriate actions to cure the breach prior to the end of the thirty (30) days and diligently prosecutes the actions necessary to cure the breach. If the Town terminates this Agreement pursuant to this section it shall not have any further payment obligations to the CWC or any contractor, subcontractor or consultant retained by the Town.

Section 9.02 Suspension

If the New Infrastructure Program is suspended or terminated pursuant to the Program Contract between NYCDEP, CWC, and New York State Environmental Facilities Corporation, the Town at its option, may suspend or terminate this agreement. The Town shall notify the CWC in writing pursuant to Section 13.05 immediately of any such suspension or termination. CWC shall immediately cease all work on the Project and shall not undertake any further work or make any further payments on the Project except for those contractually committed for, in good faith, prior to receipt of the notice of termination or suspension.

Section 9.03 Force Majeure

In the event either Party cannot comply with the terms and conditions of this Agreement because of an act of God, terrorist act, war, strike or other condition as to which conduct the Party affected was not the proximate cause, that Party's performance hereunder may be excused or delayed provided the Party notifies in writing within ten (10) days of obtaining knowledge of such condition and requests an appropriate extension of the relevant terms and conditions of this Agreement and further provided that the Party makes its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.

ARTICLE 10

INDEMNIFICATION

Section 10.01 Indemnification

The Parties agree to defend and indemnify each other and save each other harmless from all claims, liabilities, losses or expenses of every character whatsoever relating to or arising out of this Agreement, where such injury or damage is the result of the indemnifying Party's negligence or willful tort occurring while working on activities relating to this Agreement. In the event such injury or damage is caused by the combined negligence of the Parties, each Party shall be responsible for its relative culpability. CWC further agrees to indemnify the City and EFC and save them harmless from all claims, liabilities, losses or expenses of every character whatsoever (including EFC's reasonable attorneys' fees) relating to or arising out of this agreement, where such injury or damage is the result of CWC's negligence or willful tort while working on activities under this Agreement.

Section 10.02 Indemnification Procedures

The party claiming a right to indemnification (the "Indemnitee"), shall give written notice to the other party, as the case may be (the "Indemnitor") of each claim for indemnification hereunder, specifying the amount and nature of the claim, and of any matter which, in the opinion of Indemnitee, is likely to give rise to an indemnification claim. Indemnitor shall have the right to undertake the defense of any such matter at Indemnitor's sole expense and through legal counsel

reasonably acceptable to Indemnitee, provided that Indemnitor proceeds in good faith, expeditiously and diligently. Indemnitee shall, at its option and expense, have the right to participate in any defense undertaken by Indemnitor, with legal counsel of its own selection. No settlement or compromise may be made by Indemnitor without the prior written consent of Indemnitee, which shall not be unreasonably withheld, unless (i) prior to such settlement or compromise Indemnitor acknowledges in writing Indemnitor's obligation to pay in full the amount of the settlement or compromise and all associated expenses, and (ii) Indemnitor has paid all amounts owed by it under the settlement or compromise and all associated expenses or Indemnitee is furnished with security reasonably satisfactory to Indemnitee that Indemnitor will in fact pay such amount and expenses.

ARTICLE 11

INVESTIGATIONS AND INSPECTIONS

Section 11.01 Cooperation with Governmental Investigations

CWC and the Town agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a New York State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

Section 11.02 Inspections

The City and the Town may, from time to time, conduct random, unannounced inspections of the work being performed by any contractors or subcontractors to this Agreement to determine whether the work is being done in accordance with the terms of this Agreement. The CWC shall cooperate fully with any such inspection.

ARTICLE 12

BONDS

Section 12.01 Bonds

A. In addition to any other bonds required by law, if any, for the completion of the work specified hereunder, the CWC shall require the following bonds from construction contractors who bid on or are awarded any contract from the CWC for work hereunder in the review or pre-construction phases that exceeds Fifty Thousand Dollars (\$50,000).

1. From each construction contractor who bids on a construction contract from the Town a bid bond or other security satisfactory to the Town in an amount not less than five percent (5%) of the amount bid by such contractor for such contract, to secure the contractor's commitment to honor such bid and enter into a contract with the Town at the price bid, if awarded the contract in question; and

2. From each construction contractor who is awarded a construction contract from the Town for any portion of such work a performance bond, or other security satisfactory to CWC, in an amount not less than one hundred percent (100%) of the amount of such contract, to secure the faithful performance of such contract by the contractor and the completion of all work required thereunder, and a payment bond in compliance with the State Finance Law Section 137, or other security satisfactory to CWC, in an amount not less than one hundred percent (100%) of the amount of such contract, to secure the prompt payment of all monies due and owing to all persons furnishing labor or materials in prosecution of such work.

3. Required bonds shall be submitted to Town for review and approval prior to commencing any work under the contract in question.

Each bond furnished pursuant to sub-section A above shall be issued by a surety company qualified to do business in the State of New York and shall name the CWC and Town as obligees.

ARTICLE 13

MISCELLANEOUS

Section 13.01 Severability

If any provision of this Agreement or its application shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not in any way be affected or impaired.

Section 13.02 Compliance with the Law

Each Party agrees that all acts to be performed by them in connection with this Agreement shall

be performed in compliance with all applicable federal, State and local laws, rules, regulations and orders and the terms of the Program Contract.

Section 13.03 Assignment or Other Disposition of the Agreement

The Town and CWC agree not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title, or interest herein, or its power to execute such Agreement to any person, company or corporation without the prior written consent of CWC, except that the foregoing provision shall not prohibit the Town from retaining and employing consultants to assist in performing services hereunder in accordance with the terms hereof.

Section 13.04 Modification

This Agreement may not be modified or amended except by an instrument in writing signed by the Town and CWC and approved by resolution of the CWC Board of Directors. Any modification must be approved by NYCDEP in writing. This Agreement may not be modified or amended orally.

Section 13.05 Notifications

Unless otherwise expressly provided in this Agreement, any notice from one Party to the other required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or by certified mail, return receipt requested, by overnight mail or by facsimile transmission followed by delivery by hand, by certified mail, return receipt requested, to the following addresses:

The Town:

Supervisor
Town of Shandaken
PO Box 134
Allaben, New York 12480

To CWC:

Catskill Watershed Corporation
PO Box 569
Margaretville, New York 12455
Attention: Alan L. Rosa, Executive Director

Section 13.06 Joint Venture.

Nothing herein shall be deemed to create a partnership or joint venture between CWC, the Town,

EFC or the City in any manner.

Section 13.07 Third Party Beneficiaries

The City is a Third-Party Beneficiary to this Agreement. This Agreement is not intended to benefit or interest any other third party.

Section 13.08 No Contractual Relation with New York City

Nothing contained in this Agreement shall create any contractual relation between the Town, CWC, any contractor or subcontractor, EFC and the City except as provided for in Section 13.07 of this Agreement.

Section 13.09 Other Funds

Nothing in this Agreement shall prevent CWC or the Town from applying for, or obtaining any financial assistance through grants, loans or other forms of financial aid from any federal, State, local or City agencies, or private or charitable organizations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Catskill Watershed Corporation

By _____
Alan L. Rosa
Executive Director

Town of Shandaken

By _____
Robert A. Stanley
Supervisor

STATE OF NEW YORK)
) ss.:
COUNTY OF ULSTER)

On the ____ day of _____, 2010, before me personally came Robert A. Stanley to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the Supervisor of Shandaken, the municipality described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Municipality.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF DELAWARE)

On the ____ day of _____, 2010, before me personally came Alan L. Rosa, to me known, who, being by me duly sworn, did depose and say that he resides at Arkville, New York; that he is the Executive Director of the Catskill Watershed Corporation, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

Notary Public

Attachment A

1. CWC will perform all work in accordance with the terms of the New York City (the "City") Watershed Memorandum of Agreement ("Watershed MOA").
2. CWC will perform all duties and responsibilities under the in compliance with all applicable federal, State local laws, rules, regulations and orders.
3. CWC has and will maintain general liability insurance in an amount and of a type commonly held by construction design consultants (if applicable).
4. CWC has and will maintain general liability insurance in an amount and scope sufficient to protect the interests of CWC and the City, and CWC and the City shall be named as additional insureds.
5. CWC agrees to indemnify the Town and the City and assume liability for injuries on the same basis identified in the Watershed MOA.
6. CWC asserts that no payment, gift or thing of monetary value was made, given or promised to a CWC officer, director, or employee to obtain the Consultant Contract or any other agreement with the City or CWC.
7. CWC asserts that nothing contained in the Consultant Contract shall impair the rights of the City under this Agreement or the Watershed MOA.
8. CWC asserts that nothing contained in the Agreement shall create any contractual relationship between the CWC and the City based solely on the Agreement.
9. CWC will not engage in any unlawful discrimination in hiring employees under the Agreement based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation.

I assert to the best of my knowledge that the nine (9) statements listed above are true and accurate.

Signature

Date

Attachment B – Schedule of Fees Design Review Phase



2009 SCHEDULE OF RATES

Engineering and Project Management

Principal Engineer II.....	\$160/hr
Principal Engineer I.....	\$134/hr
Senior Project Manager II.....	\$124/hr
Senior Project Engineer II.....	\$124/hr
Senior Project Manager I.....	\$112/hr
Senior Project Engineer I.....	\$112/hr
Project Manager II.....	\$101/hr
Project Engineer II.....	\$101/hr
Project Manager I.....	\$96/hr
Project Engineer I.....	\$96/hr
Assistant Project Engineer III.....	\$91/hr
Senior Engineering Technician II.....	\$91/hr
Senior Engineering Technician I.....	\$82/hr
Assistant Project Engineer II.....	\$82/hr
Environmental Scientist II.....	\$82/hr
Assistant Project Engineer I.....	\$72/hr
Engineering Technician II.....	\$72/hr
Environmental Scientist I.....	\$72/hr
Engineering Technician I.....	\$63/hr

Planning

Senior Planner I.....	\$112/hr
Planner II.....	\$96/hr
Planner I.....	\$82/hr
Assistant Planner II.....	\$72/hr
Assistant Planner I.....	\$63/hr

Support Staff

Computer Technician II.....	\$63/hr
Computer Technician I.....	\$52/hr

Direct Expenses

Mileage.....	IRS standard rate
Other Direct Expenses.....	At Cost

Attachment C – Insurance Requirements

APPENDIX D

Insurance

Article I. Insurance Coverages Required to be Procured and Maintained by the Identified Community.

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection ("DEP"), 59-17 Junction Boulevard, 19th Floor, Corona, New York 11368, Attention: Lindsay Newland Bowker, Risk Manager, with a copy to New York State Environmental Facilities Corporation, 50 Wolf Road, Albany, New York 12205, Attention: Director of Operations and Administration

- | | |
|---------------------------|--|
| (X) Worker's Compensation | Statutory per NY Law without regard to jurisdiction (See Section 1.01.1 below) |
| (X) Employer's Liability | Statutory (See Section 1.01.2) |

-
- (X) Commercial General Liability CG 00 01 (ed. 11/88) or equivalent.
Combined Single Limit - Bodily Injury and Property Damage
- | |
|---|
| \$2,000,000 per Occurrence |
| \$2,000,000 products/completed operations aggregate |
| \$4,000,000 general aggregate |
| \$25,000 maximum deductible |

(See Section 1.01.3a for additional requirements).

-
- (X) Automobile Liability: CA 00 01 (ed. 01/80) or equivalent.
Combined Single Limit - Bodily Injury and Property Damage
- | |
|---------------------------|
| \$500,000 each occurrence |
|---------------------------|

The following coverage must be provided:

- (X) Comprehensive Form (X) Owned (X) Hired (X) Non-Owned
(See Section 1.01.4)
-

Article II. Insurance Coverages required to be Procured and Maintained by the professional Consultants (excluding attorneys) engaged or retained to assist or advise the Identified Community in connection with any of the work contemplated by the Scope of Work.

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection ("DEP"), 59-17 Junction Boulevard, 19th Floor, Corona, New York 11368. Attention: Lindsay Newland Bowker, Risk Manager, with a copy to New York State Environmental Facilities Corporation, 50 Wolf Road, Albany, New York 12205, Attention: Director of Operations and Administration

- | | |
|---------------------------|--|
| (X) Worker's Compensation | Statutory per NY Law without regard to jurisdiction (See Section 1.01.1 below) |
| (X) Employer's Liability | Statutory (See Section 1.01.2) |

-
- (X) Commercial General Liability CG 00 01 (ed. 11/88) or equivalent.
Combined Single Limit - Bodily Injury and Property Damage
- | |
|---|
| \$1,000,000 per Occurrence |
| \$1,000,000 products/completed operations aggregate |
| \$2,000,000 general aggregate |
| \$25,000 maximum deductible |

(See Section 1.01.3a for additional requirements).

-
- (X) Automobile Liability: CA 00 01 (ed. 01/80) or equivalent.
Combined Single Limit - Bodily Injury and Property Damage
- | |
|---------------------------|
| \$500,000 each occurrence |
|---------------------------|

The following coverage must be provided:

- (X) Comprehensive Form (X) Owned (X) Hired (X) Non-Owned
(See Section 1.01.4)

(X) Other Insurance:

All contracts for professional engineering services for design, engineering surveys, and/or construction management shall require that the consultant maintain and present evidence of a professional Errors and Omissions policy with a U.S. domiciled company providing limits of not less than \$1 Million per claim, \$1 Million aggregate, and a deductible or self-insured retention not to exceed \$25,000 per claim.

Article III. Insurance Coverages Required to be Procured and Maintained by Contractors/
Subcontractors.

Notes: Insurance indicated by (X) is required.

Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection ("DEP"), 59-17 Junction Boulevard, 19th Floor, Corona, New York 11368. Attention: Lindsay Newland Bowker, Risk Manager, with a copy to New York State Environmental Facilities Corporation, 50 Wolf Road, Albany, New York 12205. Attention: Director of Operations and Administration.

- | | |
|---------------------------|--|
| (X) Worker's Compensation | Statutory per NY Law without regard to jurisdiction (See Section 1.01.1 below) |
| (X) Employer's Liability | Statutory (See Section 1.01.2) |

-
- (X) Commercial General Liability CG 00 01 (ed. 11/88) or equivalent.
Combined Single Limit - Bodily Injury and Property Damage
- | |
|---|
| \$1,000,000 per Occurrence |
| \$1,000,000 products/completed operations aggregate |
| \$2,000,000 general aggregate |
| \$25,000 maximum deductible |
- (See Section 1.01.3a for additional requirements).

-
- (X) Automobile Liability: CA 00 01 (ed. 01/80) or equivalent.
Combined Single Limit - Bodily Injury and Property Damage
- | |
|---------------------------|
| \$500,000 each occurrence |
|---------------------------|

The following coverage must be provided:

- (X) Comprehensive Form (X) Owned (X) Hired (X) Non-Owned
(See Section 1.01.4)

Article IV. General Provisions Applicable to Insurance Coverages.

(These provisions are applicable to both the insurance coverages required to be carried by the Identified Community, by the professional Consultants, and by Contractors/ Subcontractors). In each case, the reference to "contractor" shall mean the party required to carry insurance coverage, and the reference to "contract" shall mean either this Agreement (in the case of the Identified Community) or the contract pursuant to which the professional Consultants, or contractor is providing services to the Identified Community (in the case of the Consultants, or a Contractor/ Subcontractors).

Section 1.01

1.01.01. Worker's Compensation Insurance:

Before performing any work on the Contract, the Contractor shall procure Worker's Compensation Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or service under the contract. Two certificates of such insurance or authority for self-insurance shall be furnished to DEP at its address shown above, with a copy to EFC at its address shown above.

Employer's Liability Insurance:

Before performing any work on the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation for all employees providing labor or services for whom worker's compensation coverage is not a statutory requirement. Two certificates of such insurance shall be furnished to DEP at its address shown above, with a copy to EFC at its address shown above.

1.01.3a Commercial General Liability:

Before commencing work, the Contractor shall procure a commercial general liability insurance policy issued by a New York admitted carrier through a New York Licensed resident broker via the New York admitted market in the contractor's name and naming EFC and the City, Department of Environmental Protection as additional insured parties (CG 20 10) and endorsed to cover liability assumed by the contractor under the indemnity provisions of the contract. This insurance policy must be maintained during the life of the contract and shall protect EFC, the City, the Contractor and his/her subcontractors performing work from claims for property damage and/or bodily injury which may arise from operations under the contract, whether such operations are performed by him/herself or anyone directly or indirectly employed by him/herself. Two (2) certificates of insurance shall be furnished in a manner acceptable to the DEP, together with copies of all endorsements as pertain to the requirements of the subject contract. A copy of all such documentation shall also be furnished to EFC.

The policy shall contain no exclusions or endorsements which are not acceptable to EFC or the City and shall be of a form and by an insurance company acceptable to EFC and the City.

1.01.3b Commercial General Liability - Endorsements and Exclusions

The following endorsements are required to be made on the policy:

a. Notice: Notices shall be given to EFC and the City, as follows:

To EFC at:

New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207
Attention: Director of Corporate Operations

To the City at:

New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Corona, New York 11368.
Attention: Risk Manager

b. Notice of Cancellation of Policy: The policy shall not be canceled, terminated, modified or changed by the Company unless Sixty (60) days' prior written notice is sent to EFC and the City at the notice addresses referred to above.

1.01.4 Automobile Liability:

Contractor will provide EFC and the City with evidence of insurance covering all owned, non-owned and hired vehicles to be used in connection with the contract. If on a "schedule autos" basis, Contractor shall present the schedule of insured autos, including the vehicles to be used for operations under the contract.

1.01.5 Insurance Agreement:

- (a) The Contractor is required to obtain and to maintain insurance outlined in this Exhibit.
- (b) The insurance required for the contract must be on forms acceptable to EFC and DEP and offered by Insurers acceptable to EFC and DEP. The insurance for all New York Contractors must be issued by New York authorized carriers except as approved by EFC and DEP and in any event must comply with all requirements of New York Law & Regulation and meet the standards of form set forth in 1.01 above. Insurance for non-New York contractors must be through insurers and sureties admitted and authorized in the state of headquarters of the contractor, have an A.M. best rating of A or better and meet the standards of form set forth in the above. Additionally all requirements as to form set forth in New York Law & Regulation apply without regard to jurisdiction as standards of coverage.

- (c) Where circumstances warrant, EFC and the City may, where they agree and at their discretion subject to acceptance by the New York City Law Department and or the Office of the New York City Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements. The letter of credit must be on form prescribed by and payable at a New York City Office of a bank approved by EFC and DEP.
- (d) The Contractor agrees that all insurance contributing to satisfaction of the insurance requirements set out in this Exhibit shall not be modified, terminated, or canceled by the contractor without the prior written approval of EFC and DEP.
- (e) The Contractor shall be solely responsible for payment of all premiums for insurance contributing to satisfaction of the requirements of this Appendix and shall be solely responsible for the payment of all deductible to which such policies are subject, whether or not EFC and/or the City of New York is an insured under the policy.
- (f) Claims made policies will be accepted only for professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies contributing to satisfaction of this Exhibit requirements shall have an extended reporting period option or automatic coverage of not less than two years. If provided as an option, the Contractor agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.
- (g) The Contractor shall promptly notify EFC, Attention: Director of Operations and Administration, and DEP, Attention: Risk Manager, within 24 hours of any accidents arising in the course of operations under the contract causing bodily injury or property damage and shall cooperate fully with EFC and DEP in providing all such records and information as may be requested by EFC and/or DEP in anticipation of claims against EFC and/or the City which may arise from the accident. A complete written report of the accident shall be made within five (5) business days on such form as may be provided by DEP's Risk Manager, with a copy to EFC, attn: Director of Operations and Administration.
- (h) The Contractor or his engineer may apply for approval of higher deductible based on financial capacity and quality of the carrier affording coverage, to be approved by both EFC and DEP.
- (i) Certificates confirming renewals of insurance shall be presented not less than thirty (30) calendar days prior to the expiration date of coverage during the life of the contract.

1.01.06 Forms of Insurance Certificates

Insurance certificates shall conform to the following:

1. Certificate must be issued by the insurance company.

"ACCORD" form certificates issued by brokers are acceptable.

2. Certificate must unconditionally grant to EFC and the City sixty (60) calendar days' notice of cancellation or non-renewal. "Endeavor" or other qualifying language is not acceptable.
3. All additional insureds required by this Exhibit shall be listed as such.
4. The authorized representative of the insurance company executing the certificate must indicate his/her title.
5. Original executed certificates must be delivered.

Attachment D – Schedule of Professional Fees –Design and Construction Phases

Hourly Charge



ATTACHMENT A

2011 SCHEDULE OF RATES

Engineering and Project Management

Principal Engineer II	\$163/hr
Principal Engineer I	\$136/hr
Senior Project Manager II	\$126/hr
Senior Project Engineer II	\$126/hr
Senior Project Manager I	\$114/hr
Senior Project Engineer I	\$114/hr
Project Manager II	\$103/hr
Project Engineer II	\$103/hr
Project Manager I	\$96/hr
Project Engineer I	\$96/hr
Assistant Project Engineer III	\$91/hr
Senior Engineering Technician II	\$91/hr
Senior Engineering Technician I	\$82/hr
Assistant Project Engineer II	\$82/hr
Environmental Scientist II	\$82/hr
Assistant Project Engineer I	\$72/hr
Engineering Technician II	\$72/hr
Environmental Scientist I	\$72/hr
Engineering Technician I	\$63/hr

Planning

Senior Planner I	\$114/hr
Planner II	\$96/hr
Planner I	\$82/hr
Assistant Planner II	\$72/hr
Assistant Planner I	\$63/hr

Support Staff

Computer Technician II	\$63/hr
Computer Technician I	\$52/hr

Direct Expenses

Mileage	IRS standard rate
Other Direct Expenses	At Cost



ATTACHMENT A

2012 SCHEDULE OF RATES

Engineering and Project Management

Principal Engineer II	\$167/hr
Principal Engineer I	\$140/hr
Senior Project Manager II	\$130/hr
Senior Project Engineer II	\$130/hr
Senior Project Manager I	\$117/hr
Senior Project Engineer I	\$117/hr
Project Manager II	\$106/hr
Project Engineer II	\$106/hr
Project Manager I	\$99/hr
Project Engineer I	\$99/hr
Assistant Project Engineer III	\$92/hr
Senior Engineering Technician II	\$92/hr
Senior Engineering Technician I	\$82/hr
Assistant Project Engineer II	\$84/hr
Environmental Scientist II	\$82/hr
Assistant Project Engineer I	\$74/hr
Engineering Technician II	\$72/hr
Environmental Scientist I	\$72/hr
Engineering Technician I	\$63/hr

Planning

Senior Planner I	\$117/hr
Planner II	\$98/hr
Planner I	\$82/hr
Assistant Planner II	\$72/hr
Assistant Planner I	\$63/hr

Support Staff

Computer Technician II	\$63/hr
Computer Technician I	\$52/hr

Direct Expenses

Mileage	IRS standard rate
Other Direct Expenses	At Cost



ATTACHMENT A

2013 SCHEDULE OF RATES

Engineering and Project Management

Principal Engineer II	\$172/hr
Principal Engineer I	\$145/hr
Senior Project Manager II	\$134/hr
Senior Project Engineer II	\$134/hr
Senior Project Manager I	\$121/hr
Senior Project Engineer I	\$121/hr
Project Manager II	\$109/hr
Project Engineer II	\$109/hr
Project Manager I	\$101/hr
Project Engineer I	\$101/hr
Assistant Project Engineer III	\$94/hr
Senior Engineering Technician II	\$94/hr
Senior Engineering Technician I	\$84/hr
Assistant Project Engineer II	\$87/hr
Environmental Scientist II	\$84/hr
Assistant Project Engineer I	\$76/hr
Engineering Technician II	\$74/hr
Environmental Scientist I	\$74/hr
Engineering Technician I	\$65/hr

Planning

Senior Planner I	\$120/hr
Planner II	\$101/hr
Planner I	\$84/hr
Assistant Planner II	\$74/hr
Assistant Planner I	\$65/hr

Support Staff

Computer Technician II	\$65/hr
Computer Technician I	\$54/hr

Direct Expenses

Mileage	IRS standard rate
Other Direct Expenses	At Cost