

**AGREEMENT BETWEEN
CITY OF BERLIN, NEW HAMPSHIRE
AND
WRIGHT-PIERCE
FOR
AERATION BLOWER REPLACEMENT PROJECT**

DATED _____

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AGREEMENT BETWEEN
CITY OF BERLIN, NEW HAMPSHIRE
AND
WRIGHT-PIERCE
FOR
AERATION BLOWER REPLACEMENT PROJECT

THIS IS AN AGREEMENT made as of _____, 2017
between the City of Berlin, New Hampshire ("CLIENT") and Wright-Pierce ("ENGINEER").
CLIENT intends to replace one of the existing 100 HP multi-stage centrifugal Hoffman blowers
with a new 50 HP positive displacement (PD) blower to reduce the minimum air flow rate to the
existing activated sludge system. The engineering services would entail preliminary design, final
design, bidding and construction administration services for a design-bid-build project for the
aeration blower replacement.

CLIENT and ENGINEER in consideration of their mutual covenants herein agree in respect to the
performance or furnishing of professional engineering services by ENGINEER with respect to the
Project and the payment for those services by CLIENT as set forth in Section 2 below. Execution
of this Agreement by ENGINEER and CLIENT constitutes CLIENT's written authorization to
ENGINEER to proceed on the date first above written with the first phase of the Services described
in Section 1 below. This Agreement will become effective on the date first above written.

SECTION 1 - SCOPE OF SERVICES

I. Study and Report Phase – No Services Provide.

II. Preliminary Design Phase

Based on the findings and recommendations summarized in the December 2016 Aeration System Design Basis and Modification Options – Supplemental Alternatives Technical Memorandum (TM), ENGINEER will perform the following Preliminary Design Phase services:

- A. ENGINEER will conduct kick-off meeting and site visit with CLIENT to confirm desired design basis for aeration blower replacement. ENGINEER's current understanding based on the December 2016 TM includes designing a blower that can meet the following conditions:

Table 1
Design Basis Summary of New PD Blower

| Design Condition | New Blower Option (50 HP) |
|---------------------------|------------------------------|
| Capacity | |
| Minimum (ICFM) | 212 |
| Minimum (SCFM) | 184 |
| Maximum (ICFM) | 842 |
| Maximum (SCFM) | 730 |
| Discharge Pressure (psig) | 9.0 |
| Blower Speed, Min (rpm) | 1,592 |
| Blower Speed, Max (rpm) | 4,779 |
| Motor Horsepower (HP) | 50 |
| Budgetary Cost Per Blower | \$30,900 |

It is anticipated that the ENGINEER's Project Manager, Project Engineer, Instrumentation Engineer and Electrical Engineer will attend the kick-off meeting and site visit to discuss the project requirements with the CLIENT.

- B. ENGINEER will conduct updated headloss calculations of existing aeration system to confirm blower sequencing scheme and available capacity overlap between blowers. It is assumed that the new PD blower will not operate concurrently with the existing multi-stage blowers, but will be sequenced on and off as aeration demand increases/decreases.
- C. ENGINEER will obtain updated quotes for tri-lobe PD blowers designed to meet the design conditions outlined in Table 1 above. Updated pricing will be obtained.
- D. ENGINEER will summarize design basis and controls requirements in a Draft TM for CLIENT's review. Draft TM will contain the following:
1. Summary of design basis
 2. Summary of tri-lobe PD blower recommendation

3. Preliminary demolition plan
 4. Preliminary layout plan and section
 5. Summary of control modifications and description
 6. Updated cost estimate
 7. Construction sequencing requirements
 8. Preliminary schedule
- E. ENGINEER will meet with the CLIENT to review Draft TM. ENGINEER's Project Manager will attend meeting via conference call.
- F. Based on CLIENT's comments on DRAFT TM, address comments and submit Final TM. A total of three hard copies and one electronic copies will be submitted.
- G. Submit the Draft TM within 45 days after receiving written authorization to proceed from CLIENT, and submit the Final TM within 7 days of receiving the CLIENT's comments.

III. Final Design Phase.

Upon written authorization from CLIENT, ENGINEER shall:

- A. Develop 90% Drawings and Specifications for the blower replacement recommended in the Final TM.
1. It is anticipated that approximately 10 drawing sheets will be developed (1 cover sheet, 3 process sheets, 4 electrical sheets, 2 instrumentation sheets)
 2. An abbreviated set of technical specifications will be developed, including front end documents, sufficient for bidding the project. Specifications will be in the EJCDC format. It is assumed that the City will not pursue funding through the New Hampshire DES for this project. Therefore, a copy of the final Contract Documents will be provided to New Hampshire DES for their records.
- B. ENGINEER will meet with the CLIENT to review 90% Drawings and Specifications. ENGINEER's Project Manager will attend meeting via conference call. Meeting minutes will be provided in an e-mail and distributed to all attendees. The resolution of comments will be outlined in the minutes.
- C. ENGINEER will address CLIENT comments in 100% Contract Documents suitable for bidding.
- D. Submit the 90% Drawings and Specifications within 60 days after receiving written authorization to proceed from CLIENT, and submit the 100% Contract Documents within 14 days of receiving the CLIENT's comments.

IV. Bidding Phase.

During the Bidding Phase, ENGINEER shall perform the following services:

- A. Assist the CLIENT with advertising the project.
- B. Distribute bidding documents to prospective bidders. Documents will be distributed electronically.
- C. Attend pre-bid meeting.
- D. Prepare and distribute one Addendum for the project.
- E. It is assumed that the CLIENT will conduct the bid opening.
- F. Conduct bid evaluation of the low bid CONTRACTOR.
- G. Assist the CLIENT with Contract award.
- H. Supply copies of Contract Documents to the CONTRACTOR.

V. Construction Phase.

During the Construction Phase, ENGINEER shall perform the following services:

- A. Construction Administration Services: During the Construction Administration Phase, ENGINEER shall consult with and advise CLIENT about implementation of the Drawings and Technical Specifications prepared under the Final Design Phase. The services of the ENGINEER shall include:
 - 1. Review shop drawings and/or other submittals from the CONTRACTOR for compliance with construction documents.
 - 2. Answer questions from the CONTRACTOR and CLIENT as work progresses.
 - 3. Attend two construction meetings on site. It is anticipated that the Project Engineer will attend in person and the Project Manager will attend via conference call.
 - 4. Conduct punchlist inspection of the substantially completed work.
 - 5. Conduct final inspection of the completed work to ensure conformance with the construction documents.

The ENGINEER has assumed 81 hours of engineering assistance will be provided during construction.

VI. Operational Phase.

During the one-year warranty period, the ENGINEER will provide on-call operational support for the constructed project. The ENGINEER has assumed 18 hours of engineering assistance will be provided during this phase of the project.

VII. Additional Services.

During ENGINEER's work on the project, it may become apparent to either CLIENT or ENGINEER that Additional Services not included in the basic Scope of Services are desired. ENGINEER will undertake to provide such Additional Services upon CLIENT's written authorization.

SECTION 2 - COMPENSATION

I. Payments to ENGINEER

ENGINEER's fee for the services outlined in the **SCOPE OF SERVICES** section of this Agreement is as follows:

For Scope Items I through VI above, compensation will be based on ENGINEER's Salary Costs times a factor of 2.2, plus Reimbursable Expenses and charges for Consultant's services. Total estimated compensation for Scope Items 1 through VI is \$36,500.

| Task | Total Hours | Labor Cost by Task | Non-labor Cost by Task | Total Costs By Task |
|------------------------------------|--------------------|---------------------------|-------------------------------|----------------------------|
| II PRELIMINARY DESIGN PHASE | 70 | \$8,300 | \$600 | \$8,900 |
| III FINAL DESIGN PHASE | 98 | \$11,800 | \$300 | \$12,100 |
| IV BIDDING PHASE | 33 | \$3,100 | \$100 | \$3,200 |
| V CONSTRUCTION PHASE | 81 | \$9,600 | \$300 | \$9,900 |
| VI OPERATIONAL PHASE | 18 | \$2,300 | \$100 | \$2,400 |
| TOTALS | 300 | \$35,100 | \$1,400 | \$36,500 |

For authorized Additional Services, ENGINEER will bill CLIENT a fee based on ENGINEER's Salary Costs times a factor of 2.2, plus Reimbursable Expenses and charges for Consultants' services.

This Agreement (consisting of pages 1 to 7 inclusive and Exhibits A) constitutes the entire agreement between CLIENT 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

CLIENT:

City of Berlin, NH

By: James A. Wheeler, PE

Signature:

Title: City Manager

Date: _____

Address for giving notices:

CITY OF BERLIN, NH

168 Main Street

Berlin, NH 03570

ENGINEER:

Wright-Pierce

By: Paul F. Birkel, PE

Signature:

Title: Senior Vice President

Date: _____

Address for giving notices:

WRIGHT-PIERCE

99 Main Street

Topsham, Maine 04086

SCHEDULE OF TERMS AND CONDITIONS
FOR
AGREEMENT BETWEEN
CITY OF BERLIN, NEW HAMPSHIRE
AND
WRIGHT-PIERCE
DATED _____

EXHIBIT A
SCHEDULE OF TERMS AND CONDITIONS
(CLIENT IS OWNER)
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SCHEDULE OF TERMS AND CONDITIONS (CLIENT IS OWNER)

1.0 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 ENGINEER's profession practicing under similar conditions 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.

2.0 Client's Responsibilities

Except as otherwise provided in this Agreement, CLIENT shall do the following in a timely manner as requested by ENGINEER and shall bear all costs incident thereto:

2.1. Designate in writing a person to act as CLIENT's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decision with respect to ENGINEER's services for the Project.

2.2. Provide all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations, and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications.

2.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project as requested by ENGINEER.

2.4. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

2.5. Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

2.6. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

3.0 Reuse of Documents

3.1. Documents are Instruments of ENGINEER's Service

All documents including Drawings and Specifications provided or furnished by ENGINEER (or ENGINEER's Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER and ENGINEER's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of ENGINEER and ENGINEER's Consultants, as appropriate) whether or not the Project is completed. CLIENT may make and retain copies of documents for information and reference in connection with the use and occupancy of the Project by CLIENT. Such documents are not intended or represented to be suitable for reuse by CLIENT or others

on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by ENGINEER and ENGINEER's Consultants, as appropriate, for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's Consultants, and CLIENT shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.

3.2. Records Retention/Access to Records.

ENGINEER will retain pertinent records relating to the services performed under this Agreement for a period of three (3) years following completion of the services, during which period the records will be made available to CLIENT at ENGINEER's office during normal business hours with reasonable advance notice. Copies will be prepared by ENGINEER for CLIENT for reasonable cost of reproduction and associated labor.

3.3. Information transmitted to CLIENT on Computer Disk or by electronic means

The CLIENT acknowledges that any revisions made to electronic media and any consequences of its direct or indirect use by the CLIENT or its agents are beyond the control of the ENGINEER. The ENGINEER cannot be held responsible for software errors, for deterioration of data due to aging, damage to the computer disk, or for failure of the data to respond as intended if used with software and/or operating systems other than those on which it was developed. The original document maintained by the ENGINEER shall be the controlling document.

4.0 Third Party Information

CLIENT acknowledges and agrees that ENGINEER may solicit and reasonably rely on third party information essential and relative to the performance of ENGINEER's duties created and addressed by this Agreement whenever such information is under the control of a third party; and, ENGINEER will not be responsible or liable for the direct or indirect consequences of its reliance on such third party information. Examples of the type of third party information addressed above include, but are not limited to, any information within the control of any of the following: a public, quasi-public or private utility; a governmental body, agency or government (federal, state or local); water and/or sewer facility, district or entity; or, an agent or employee of CLIENT.

5.0 Estimates of Cost

Since ENGINEER has no control over the cost of labor, materials or equipment or over Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, its estimate of probable project costs provided for herein are to be made on the basis of its experience and qualifications and represent its professional judgment as a design professional familiar with the construction industry, but ENGINEER cannot and does not guarantee that proposals, bids or the project costs will not vary from its estimate of probable costs. If, prior to the Bidding or Negotiating Phase, CLIENT wishes greater assurance as to the project costs, CLIENT shall employ an independent cost estimator. Engineering services to modify the Contract Documents to bring the project costs within any limitation established by CLIENT will be considered Additional Services and paid for as such by CLIENT.

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to construct the project including furnishing and installing all equipment and materials, but it will not include ENGINEER's compensation and expenses, the cost of land, right-of-way, or compensation for or damages to properties unless this Agreement so specifies, nor will it include CLIENT's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project.

6.0 Allocation of Risks

6.1. ENGINEER shall Indemnify CLIENT from Claims caused by ENGINEER's Negligence

To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against any and all costs, losses and damages (including but not limited to reasonable attorneys' fees and all court or other dispute resolution costs) arising from claims by third parties, to the extent caused by the negligent acts, errors or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

6.2. CLIENT shall Indemnify ENGINEER from Claims caused by CLIENT's Negligence

To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, and employees and ENGINEER's Consultants from and against any and all costs, losses and damages (including but not limited to reasonable attorney' fees and court or other dispute resolution costs) arising from claims by third parties, to the extent caused by the negligent acts, errors or omissions of CLIENT or CLIENT's officers, directors, partners, employees, agents and CLIENT's consultants with respect to this Agreement or the Project.

6.3. CLIENT shall Indemnify ENGINEER from Claims caused by Hazardous Waste

In addition to the indemnity provided under Paragraph 6.2 of this Schedule, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER and its officers, directors, partners, and employees and ENGINEER's Consultants from and against all claims, costs, losses, and damages (including but not limited to reasonable attorneys' fees and court or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release or escape of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material at, on, under or from the Project site.

6.4. ENGINEER's Liability Limited to Amount of Insurance Proceeds Paid

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants, and any of them, to CLIENT and anyone claiming by, through or under CLIENT, for any and all claims, losses, costs or damages whatsoever 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 the negligence, professional errors or omissions, strict liability or breach of contract or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents or ENGINEER's Consultants or any of them (hereafter "CLIENT's Claims"), shall not exceed the total insurance proceeds paid up to the limits required in Section 7.1 on behalf of or to ENGINEER by

ENGINEER's insurers in settlement or satisfaction of CLIENT's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal). If no such insurance coverage is recovered with respect to CLIENT's Claims, then the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, and employees and ENGINEER's Consultants and any of them to CLIENT and anyone claiming by, through or under CLIENT, for any and all such uninsured CLIENT's Claims shall not exceed the ENGINEER's fee or \$100,000, whichever is less.

6.5. Exclusion of Special, Incidental, Indirect and Consequential Damages

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, ENGINEER and ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants shall not be liable to CLIENT or anyone claiming by, through or under CLIENT for any special, incidental, indirect or consequential damages whatsoever, 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 any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents or ENGINEER's Consultants, or any of them.

6.6. Limitation of ENGINEER's Liability on Comparative Negligence Basis

To the fullest extent permitted by law, ENGINEER's total liability to CLIENT and anyone claiming by, through or under CLIENT for any claim, cost, loss or damages caused in part by the negligence of ENGINEER and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of CLIENT, ENGINEER and all other negligent entities and individuals determined on the basis of comparative negligence principles. CLIENT further agrees to hold harmless ENGINEER against any such claim, cost, loss or damages but only to the extent of the percentage share that CLIENT's negligence bears to the total negligence of CLIENT, ENGINEER and all other negligent entities and individuals determined on the basis of comparative negligence principles.

7.0 Insurance

7.1. ENGINEER's Insurance

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, from claims or damages because of injury to or destruction of property, and from professional liability claims due to ENGINEER's negligent acts, errors or omissions. Upon request, ENGINEER shall list CLIENT as an additional insured on ENGINEER's general liability insurance policy, and shall provide CLIENT with a copy of the Certificate of Insurance.

As long as it remains commercially available, ENGINEER shall procure and maintain the following insurance coverage:

- A. Worker's Compensation: Statutory Limits.
- B. Employer's Liability: \$500,000 per Accident and \$500,000 per Disease per Employee.
- C. Commercial General Liability, including Bodily Injury and Property Damage: \$1,000,000 occurrence and \$2,000,000 aggregate.

- D. Commercial Automobile Liability, including owned, hired and non-owned vehicles: Combined Single Limit of \$1,000,000 per accident.
- E. Excess Umbrella Liability: \$5,000,000 per occurrence and \$5,000,000 aggregate over the Employer's, Commercial General and Commercial Auto Liability.
- F. Professional Liability Insurance: \$1,000,000 per claim and \$3,000,000 annual aggregate.

7.2. CLIENT's Insurance and Contractor's Insurance

CLIENT shall list ENGINEER and ENGINEER's Consultants as additional insureds on any general liability or property insurance policies carried by CLIENT that are applicable to the Project. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list ENGINEER and ENGINEER's Consultants as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor. All policies of property insurance shall contain provisions to the effect that ENGINEER and ENGINEER's 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 the insured or any additional insureds thereunder.

7.3. Additional Insurance

At any time, CLIENT may request that ENGINEER, at CLIENT's sole expense, provide additional insurance coverage. If so requested by CLIENT, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by CLIENT, at CLIENT's sole expense.

8.0 Subsurface Conditions

8.1 Interpretations and Recommendations Based Solely on Information Available.

CLIENT recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by the ENGINEER or ENGINEER's geotechnical Consultant, and that the data, interpretations and recommendations of the ENGINEER or geotechnical Consultant are based solely on the information available to it. The ENGINEER or geotechnical Consultant will be responsible for those data, interpretations, and recommendations, but neither shall be responsible for the interpretation by others of the information developed.

8.2 Utilities

In the prosecution of its work, the ENGINEER, and its Consultants will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. CLIENT agrees to release, indemnify, and hold the ENGINEER, and its Consultants harmless for any damage to subterranean structures or utilities and for any impact this damage may cause where the subterranean structures or utilities are not called to the ENGINEER, and its Consultants' attention or are not correctly shown on the plans furnished.

9.0 Independent Contractors

It is understood and agreed that all contractors and Consultants engaged by the ENGINEER are independent contractors of the ENGINEER and not employees or agents of the ENGINEER; and ENGINEER shall have no right, duty or obligation to direct or control the means, methods or techniques of any such contractors and consultants.

10.0 Compensation

10.1. Direct Labor Costs

Direct Labor Costs means the hourly wages paid to ENGINEER's personnel. For salaried personnel, the imputed direct hourly rate shall be the weekly salary divided by 40.

10.2. Standard Billing Rates

ENGINEER's Standard Billing Rates mean Direct Labor Costs times ENGINEER's Standard Multiplier that is based on ENGINEER's standard and customary overhead rate and profit. Standard Multiplier will be adjusted as may be appropriate to reflect changes in its various elements. All such adjustments will be in accordance with generally accepted accounting practices.

10.3. Reimbursable Expenses

Reimbursable Expenses are those non-labor expenses associated with ENGINEER's conduct of the Project. Some examples of Reimbursable Expenses are meals, transportation, printing and photocopying costs, and field equipment rental. The amount ENGINEER will bill for Reimbursable Expenses will be in accordance with ENGINEER's standard schedule of Reimbursable Expenses Billing Rates or, if the expense item is not listed on the schedule, the cost actually incurred or the imputed cost ENGINEER allocates to the expense item.

10.4. Invoices/Late Payment

Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to CLIENT at least monthly. Invoices are due and payable upon receipt. If CLIENT fails to pay any invoice within thirty days of the invoice date, the amounts due ENGINEER will increase at the rate of 1.0% per month from the thirtieth day following the invoice date; and, in addition, ENGINEER may, after giving seven days' written notice to CLIENT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment.

10.5. Professional Services Taxes

If at any time ENGINEER's compensation under this Agreement becomes subject to a professional services tax, sales tax, Value Added Tax, gross receipts tax or similar levy imposed by any local, state, federal or other government or quasi-government agency or authority, CLIENT agrees to pay such tax or levy on ENGINEER's behalf or reimburse ENGINEER for its paying such tax or levy.

11.0 Controlling Law

This Agreement is to be governed by the laws of the State of New Hampshire. Any dispute resulting in legal action and not resolved by arbitration, mediation or such other method as may be mutually agreed to by the parties, shall be adjudicated solely and exclusively within the jurisdiction of the State of New Hampshire.

12.0 Financial Advisor

ENGINEER is not a financial professional firm and makes no recommendations as to the best way for CLIENT to fund the Project. ENGINEER recommends that CLIENT seek the advice of an Independent Registered Municipal Advisor or other financial professional regarding the type and structure of financing appropriate for the Project.

13.0 Dispute Resolution

The parties hereto agree that prior to filing litigation they will consider alternative dispute resolution techniques to resolve all claims, counter claims, disputes and other matters in question between the parties arising out of or relating to this Agreement.

14.0 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

15.0 Precedence

These provisions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document.

16.0 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and ENGINEER, who 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.

17.0 Successors and Assigns

CLIENT and ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither CLIENT nor ENGINEER shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than CLIENT and ENGINEER.

18.0 Survival

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of ENGINEER under this Agreement or the termination of this Agreement for any reason.

19.0 Termination

The obligation to provide further services under this Agreement may be terminated:

19.1 For cause

For cause by either party upon thirty 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. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; provided, however, that

if and to the extent such substantial failure cannot be reasonably cured within such thirty-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 from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

19.2 By ENGINEER

By ENGINEER upon seven days' written notice if ENGINEER believes that ENGINEER is being requested by CLIENT to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional; or upon seven days' written notice if the ENGINEER's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

In the case of termination under this paragraph, ENGINEER shall have no liability to CLIENT on account of such termination.

19.3 For convenience

For convenience by CLIENT effective upon the receipt of notice by ENGINEER.

19.4 ENGINEER's Compensation

In the event of any termination, CLIENT will pay ENGINEER for all services rendered to the date of termination and all reimbursable expenses.

20.0 Equal Employment Opportunity

Wright-Pierce is an Equal Employment Opportunity employer and is committed to recruiting, hiring, training and promoting for all job classifications without regard to race, religion, color, national origin, sex or age, physical or mental handicap, marital status or status as a disabled veteran, veteran of the Vietnam era, ex-offender or former patient of a state institution except where based on a bona fide occupational qualification.