

WARWICK SEWER AUTHORITY
AGREEMENT FOR CONSULTING AND ENGINEERING SERVICES

THIS AGREEMENT made as of _____, 2023, by and between the Warwick Sewer Authority (hereinafter referred to as "CLIENT"), and _____, a corporation organized under the laws of the _____ (hereinafter referred to as "CONSULTANT").

WHEREAS, CLIENT plans to complete various sewer infrastructure improvement projects under Contract # _____ (On-Call Engineering Services) (hereinafter referred to as the "Project") requiring professional services and desires CONSULTANT to perform such services associated therewith (hereinafter referred to as the "SERVICES"); and

WHEREAS, CONSULTANT is desirous of performing the SERVICES required; and

WHEREAS, CLIENT and CONSULTANT desire to enter into an Agreement to cover the Services required as more particularly described hereinafter.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto agree as follows:

ARTICLE I
Scope of Services

- 1.1 A written definition of the SERVICES to be performed by CONSULTANT is set forth in Appendix A, Scope of Services, attached hereto and made a part hereof. In addition, the CONSULTANT shall provide completed project plans and specifications to the WSA for review and incorporate WSA comments into the final documents before publishing.
- 1.2 CONSULTANT will perform or cause to be performed those SERVICES described in Appendix A of this Agreement. CONSULTANT shall complete the SERVICES prior to DEADLINE.
- 1.3 CLIENT and CONSULTANT shall meet prior to the commencement of SERVICES, with a view to agreeing generally upon Project premises, schedules, number and kinds of employees to be used by CONSULTANT for the purpose of facilitating performance of the SERVICES, general agreement on accounting and other procedures, the time of acceptance by CLIENT of the completed Project and other related matters. It is understood that CONSULTANT will not proceed with SERVICES until receipt of authorization to do so from CLIENT.
- 1.4 The CONSULTANT will perform professional services as described in Appendix A. Future work tasks, not included in Appendix A, may include construction phase services, among other engineering services. If mutually agreed, upon completion of services described in Appendix A, a subsequent scope of services and fee for future work will be developed by _____ and the Warwick Sewer Authority and may be incorporated into this Agreement as an amendment.

ARTICLE II
Client Responsibilities

Unless otherwise indicated in Appendix A, CLIENT shall do or provide the following in a timely manner so as not to delay the SERVICES:

- 2.1 Designate in writing to act as CLIENT's representative with respect to the SERVICES to be provided under this Agreement. Said person to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to CONSULTANT's SERVICES for the Project.
 - 2.2 Provide criteria and instructions as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
 - 2.3 Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project including previous reports and any other data relative to design or constructions of the Project such as the following:
 - 2.3.1 data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
 - 2.3.2 appropriate professional interpretations of all of the foregoing;
 - 2.3.3 environmental assessment and impact statements;
 - 2.3.4 property, boundary, easement, right-of-way, topographic and utility surveys;
 - 2.3.5 property descriptions; and
 - 2.3.6 zoning, deed and other land use restrictions;
- all of which CONSULTANT may use and rely upon in performing SERVICES under this Agreement.
- 2.4 Arrange for access and to make provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform SERVICES under this Agreement.
 - 2.5 Other than approvals and permits that are specifically part of the CONSULTANT's Scope of Services, furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others and the CLIENT as may be necessary for completion of the Project.
 - 2.6 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by CONSULTANT and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of CONSULTANT.

- 2.7 Give written notice to CONSULTANT whenever CLIENT observes or otherwise becomes aware of any defect in the project.
- 2.8 The WSA may utilize this material in any way it sees fit, and the CONSULTANT agrees to make no claims against the WSA or any authorized agent thereof, for any such usage of these materials.
- 2.9 The CONSULTANT shall comply with all State, Federal and local statutes, ordinances and regulations applicable to the execution and the performance of this Agreement.

ARTICLE III
Compensation and Terms of Payment

- 3.1 The CLIENT shall compensate CONSULTANT for the SERVICES performed under this Agreement payable in accordance with schedule provided in Appendix A, attached hereto and made a part hereof. .
- 3.2 In the event the CLIENT disputes any invoice item, the CLIENT shall give CONSULTANT written notice of such disputed item within fifteen (15) business days after receipt of invoice and shall pay to CONSULTANT the undisputed portion of the invoice according to the provisions hereof.
- 3.3 If any payment provided for hereunder is to be made on some basis other than a lump sum price, CONSULTANT shall not provide, nor be obligated to provide any services, the charges for which would exceed the amount of compensation authorized by CLIENT without the written authorization of the CLIENT.
- 3.4 The acceptance of final payment by the CONSULTANT shall operate as a release and be a release to the WSA, or any of its agents, from all claim and liability to the CONSULTANT for anything done or furnished for or relating to the work under this Contract, or for any act or neglect of the WSA, or any of its agents, insofar as the execution of this contract is concerned.

ARTICLE IV
Termination

- 4.1 This Agreement may be terminated by the CLIENT either party for cause upon seven (7) days written notice or by the CLIENT for convenience upon thirty (30) days written notice in which event CONSULTANT shall be paid for (a) SERVICES rendered to the date of notice, (b) for all costs incurred by CONSULTANT in connection with the SERVICES to the date of notice, (c) for all costs necessary to terminate all commitments for the SERVICES made by CONSULTANT prior to the date of notice, and (d) for all costs and expenses of CONSULTANT's demobilization. Termination of the Contract shall not limit any legal rights of the WSA.

ARTICLE V
Force Majeure

- 5.1 CONSULTANT, including CONSULTANT's subcontractors, if any, shall not be responsible hereunder for any delay, default or nonperformance of this Agreement, if and to the extent that such delay, default or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, terrorist activity, sabotage, flood, epidemic, act of government authority in either its sovereign or contractual capacity, labor, material, equipment or supply shortage, or any other cause beyond the reasonable control of such party.

ARTICLE VI
Ownership of Documents

- 6.1 CLIENT shall be considered to be the owner of all documents, drawings, plans, and specifications prepared by CONSULTANT pursuant hereto, except those documents comprising procedures and calculations proprietary to CONSULTANT. From time to time when no longer needed by CONSULTANT, and at the request of CLIENT, CONSULTANT shall turn over all files and records containing information not proprietary to CONSULTANT and accumulated by CONSULTANT in the performance of its duties hereunder, except that CONSULTANT may keep copies of all of same for its permanent files and records. Nothing contained in this paragraph shall be construed as limiting or depriving CONSULTANT of its rights to use its basic know-how and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the SERVICES to be performed pursuant to this Agreement.
- 6.2 Any reuse of CONSULTANT prepared documents without the written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or its consultants.

ARTICLE VII
Indemnity

- 7.1 CONSULTANT agrees to protect, indemnify, and hold CLIENT free and harmless from and against claims, liabilities, demands and causes of action arising in favor of third parties, for personal injuries, death, or damages to property, if and to the extent that the same arise out of the negligence of CONSULTANT, its agents, servants and employees, while engaged in the performance of SERVICES hereunder.
- 7.2 CLIENT agrees to protect, indemnify, and hold CONSULTANT free and harmless from and against claims, liabilities, demands and causes of action arising in favor of third parties, for personal injuries, death, or damages to property, if and to the extent that the same arise out of the negligence of CLIENT, its agents, servants and employees, while engaged in the performance of SERVICES hereunder.

ARTICLE VIII
Responsibility

- 8.1 CONSULTANT shall perform its duties hereunder on a professional efforts basis, consistent with generally accepted industry standards. CONSULTANT shall correct any defects to the extent arising out of its negligence without additional cost to the CLIENT; under this Agreement. CONSULTANT's liability under this Article is conditioned upon receipt of written notice of any defect promptly upon discovery and an opportunity to inspect the defect to verify the cause thereto.
- 8.2 Notwithstanding anything in this Agreement, Consultant shall not be responsible for, nor have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with this project, and shall not be responsible for any construction contractor's failure to carry out the work in accordance with the contract documents. Consultant shall not be responsible for, nor have control over, the acts or omissions of any construction contractors, their subcontractors, any of their agents or employees or any other person performing any work related to this project.
- 8.3 Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over any contractor's methods of determining prices, or over competitive bidding or market conditions, CONSULTANT's opinion of probable Project Cost and Construction Cost provided for herein are to be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional familiar with the construction industry; but CONSULTANT cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinion of probable cost prepared by CONSULTANT.
- 8.4 Notwithstanding anything contained in this Agreement, CONSULTANT shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project Site. To the fullest extent permitted by law, CLIENT agrees to defend, indemnify and hold harmless CONSULTANT from any cost, expense, claim or liability, including reasonable attorneys' fees, arising out of CONSULTANT's performance of SERVICES and made or brought against CONSULTANT for any actual or threatened environmental pollution or contamination except to the extent caused by CONSULTANT's negligence.
- 8.5 CONSULTANT's liabilities, obligations and responsibilities are exclusively those expressly set forth in this Agreement, and no other liabilities, obligations and responsibilities are either expressed or implied.

ARTICLE IX
Insurance

- 9.1 CONSULTANT shall provide, pay for, and maintain in force at all times during the SERVICES to be performed, the following insurance:

- 9.1.1 Workers' Compensation Insurance as required by all state and federal workers' compensation acts, the Federal Longshoremen's and Harbor Workers' Compensation Act, the Outer Continental Shelf Act and such other acts as may be applicable to the SERVICES performed hereunder.
- 9.1.2 General Public Liability insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with combined single limit of not less than One Million (\$1,000,000.00) Dollars per occurrence.
- 9.1.3 Automobile Public Liability Insurance with a minimum of One Million (\$1,000,000.00) Dollars per occurrence coverage for both bodily injury and property damage.
- 9.1.4 Professional Liability Insurance with limits of liability not less than Two Million (\$2,000,000.00) Dollars per claim.
- 9.2 CONSULTANT shall provide to CLIENT within thirty (30) days of signing of this Agreement certificates evidencing such policies. The certificates provided to CLIENT shall state that CLIENT shall be given thirty (30) days notice prior to cancellation of the policy. CONSULTANT shall name CLIENT as an additional insured on the policies described in paragraphs 9.1.2 and 9.1.3.
- 9.3 The CLIENT shall require each contractor, subcontractor and other consultants contracted by the CLIENT to provide appropriate insurance and to name CONSULTANT as a named insured as herein described and to include CONSULTANT as an indemnified party in its indemnification provision to the CLIENT.
- 9.4 The failure of the CONSULTANT to maintain insurance coverage in accordance with the terms of this Agreement shall constitute a violation of this Agreement. Such failure may, at the sole discretion of the WSA, result in either termination of the contract, and/or inclusion of Contract Retainage up to 10% of the total contract price.
- 9.5 The CONSULTANT shall take notice that the cancellation of any insurance under this Agreement shall not affect the obligation of the CONSULTANT to maintain each coverage, or his/her obligations under this Agreement, or his/her liability under this Agreement.

ARTICLE X
Miscellaneous

10.1 **Record Keeping and Audit**

If any payment provided for hereunder is to be made on some basis other than a lump sum price, CLIENT shall have the right to inspect and audit CONSULTANT's books, records and all associated documents relating to such costs (excluding, however, the basis for agreed upon fixed rates). CONSULTANT agrees to maintain records and associated documents for a period of two (2) years from the end of the calendar year in which such costs were incurred and to make such books and records available to CLIENT at all

reasonable times within the two (2) year period and for so long thereafter as any dispute remains unresolved. CLIENT may photocopy or reproduce any such books and records at its own expense.

10.2 Changes

a) CLIENT shall have the right to make changes, additions, and required substitution. However, any difference in cost to CONSULTANT resulting from these changes shall be added or deducted from the contract price by amendment. If these changes result in delays in design or construction, the time for performance will be extended a period equal to the delay.

b) CLIENT shall furnish CONSULTANT with written instructions, signed by a duly authorized person, covering any deviations which CLIENT may require.

10.3 Assignment

This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party acquiring all or substantially all of the business and assets of such party.

10.4 Governing Law

The provisions of this Agreement shall be governed by the laws of the State of Rhode Island, unless stated otherwise.

10.5 The failure of the WSA to enforce at any time any of the provisions of the Agreement, or to exercise any option which is herein provided, or to require at any time performance by the Consultant of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or the right of the WSA to thereafter enforce each and every provision.

10.6 Should any part, term, or provision of this Agreement be by a court of competent jurisdiction declared invalid, illegal or in conflict with any law of the State or the United States, the validity of the remaining portions or provisions shall not be affected thereby.

10.7 Approvals, Authorizations, Notices

All notices authorized or required between the parties, or required by any of the provisions herein shall be given in writing and shall be sent by certified mail, return receipt requested, and deposited with an accepted postal service, postage prepaid, and addressed to the party intended to receive it. Notices may also be given by personal delivery or may be sent by telex to the party intended to receive it with the sending party confirming the message by certified mail in the same manner as provided above within ten (10) calendar days thereafter, but said notice shall be deemed given on the date the telex is sent. Notice shall be addressed, mailed and delivered or telexed to the party to whom the notice is given at the address shown herein, to wit:

CLIENT
Warwick Sewer Authority

Executive Director
Warwick Sewer Authority
125 Arthur W. Devine Blvd.
Warwick RI 02886

CONSULTANT
Company Name
Principal Contact
Business Address

10.8 Entire Agreement

This agreement constitutes the entire Agreement between the parties hereto and supersedes any oral or written understandings, proposals, or communications heretofore entered into by or on account of the parties and may not be changed, modified, or amended except in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ATTEST

By: _____

By: _____
President

By: _____

ATTEST

WARWICK SEWER AUTHORITY

By: _____

By: _____

By: _____

By: _____

APPENDIX A
SCOPE OF SERVICES