

**RESOLUTION AUTHORIZING THE AGENCY
TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT
WITH DELAWARE ENGINEERING, D.P.C.**

A regular meeting of the Town of Montgomery Industrial Development Agency (the "Agency") was convened in person at Town Hall, 110 Bracken Road, Montgomery, New York, and by telephone conference call in accordance with Governor Cuomo's Executive Order Nos. 202.1 and 202.15, on July 14, 2020 at 5:30 o'clock p.m., local time.

The meeting was called to order by the Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Jeffrey D. Crist	Chairperson
Edwin Williams	First Vice Chairperson
John W. Dickson	Second Vice Chairperson
Matthew P. Stoddard	Treasurer
Robert Santo	Member
Randi Greene	Member
Donald Berger	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Suzanne Hadden	Clerical and Recording Secretary
Robert J. McLaughlin, Esq.	Agency Counsel

The following resolution was offered by Member Randi Greene, seconded by Member Matthew P. Stoddard, to wit:

Resolution No. 0720-01

**RESOLUTION AUTHORIZING THE AGENCY
TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT
WITH DELAWARE ENGINEERING, D.P.C.**

WHEREAS, the Town of Montgomery Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 527 of the 1971 Laws of New York, as amended, constituting Section 911-c of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose

of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, under Section 858 of the Act, the Agency's purpose is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities and continuing care retirement communities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York; and

WHEREAS, consistent with its statutory purpose under the Act, the mission of the Agency is to assist in the enhancement and diversity of the economy of the Town of Montgomery (the "Town") by acting in support of projects in the Town that create and/or retain jobs and/or promote private sector investment utilizing the statutory powers of the Agency as set forth under the provisions of the laws of the State of New York; and

WHEREAS, pursuant to the provisions of the Town Law, the Town is currently developing a comprehensive plan (the "Comprehensive Plan") to identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the Town; and

WHEREAS, Route 17k is a major roadway through the Town containing several sections of vacant land, including land currently or formerly used as farmland; and

WHEREAS, Delaware Engineering, D.P.C. ("Delaware Engineering") has submitted a proposal to the Agency to conduct a corridor study (the "Corridor Study") of Route 17k from I-84 Exit 6 to the Village of Montgomery and also including the lands around the Orange County Airport which will complement and be available as an attachment to the Comprehensive Plan; and

WHEREAS, Delaware Engineering will provide the Agency with services requiring special or technical skill, training, or expertise; and

WHEREAS, the Agency believes that the Corridor Study will assist the Agency in fulfilling its purpose and mission by developing market-driven approaches that recognize trends, challenges, and opportunities within the Route 17k corridor, including lands around the Orange County Airport, which may advance the establishment of market ready and shovel ready sites for private sector investment that will create or preserve jobs in, and the economic prosperity of, the Town; and

WHEREAS, the Agency has adopted a Procurement Policy pursuant to Section 858-a(2) of the Act; and

WHEREAS, pursuant to section four of the Agency Procurement Policy, the solicitation of professional services, such as the technical services of an engineer engaged to prepare plans, may constitute a circumstance where the solicitation of alternative proposals and quotations may not be in the best interest of the Agency; and

WHEREAS, written public comments were received by the Agency objecting to the Corridor Study; and

WHEREAS, the Agency requested that the Executive Director and a representative of Delaware Engineering ("DE Representative") address the public comments received concerning the Corridor Study, its purpose and an alleged conflict of interest concerning the DE Representatives position as an engineer for Delaware Engineering and as a member of the Board of the Orange County Partnership; and

WHEREAS, the Agency is satisfied that the public comments submitted to the Agency by the public have been properly addressed by the Agency's Executive Director and the DE Representative at this meeting; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the professional services agreement;

WHEREAS, based upon a review of the proposed professional services agreement, the agreement seeks the Agency to engage a consultant for a study which constitutes a "Type II action" (as said quoted term is defined in the Regulations), and therefore it appears that no further determination or procedure under SEQRA is required with respect to the proposed agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency determines that the entry into the professional services agreement to conduct the Corridor Study is a Type II action under the Regulations and no further determination or procedure under SEQRA is required with respect to such agreement.

Section 2. The Agency hereby determines that a Corridor Study of Route 17k generally from I-84 Exit 6 to the Village of Montgomery and also including the lands around the Orange County Airport, will allow the Agency to fulfill its mission and achieve its purpose under the Act to create and/or retain jobs and/or promote private sector investment by conducting a study that will assist in the development of market-driven approaches that recognize trends, challenges, and opportunities within the Route 17k corridor included in the Corridor Study which may advance the establishment of market ready and shovel ready sites for private sector investment that will create or preserve jobs in, and the economic prosperity of, the Town.

Section 3. The Agency hereby determines that the Corridor Study will require engineering services requiring special or technical skill, training, or expertise and accordingly, that the solicitation of alternative proposals and quotations will not be in the best interest of the Agency.

Section 4. Pursuant to the provisions of the Agency Procurement Policy, the Agency hereby appoints Delaware Engineering, D.P.C., as its authorized vendor to conduct a corridor study and report of Route 17k generally from I-84 Exit 6 to the Village of Montgomery and also including lands around the Orange County Airport, substantially upon such terms and conditions as are set forth in the contract attached hereto as **Exhibit A**. The Chair and the Executive Director are hereby authorized to negotiate and execute such contract when finalized and provide a copy there to the members of the Agency.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

Jeffrey D. Crist	VOTING	YES
Edwin Williams	VOTING	YES
John W. Dickson	VOTING	YES
Matthew P. Stoddard	VOTING	YES
Robert Santo	VOTING	YES
Randi Greene	VOTING	YES
Donald Berger	VOTING	NO

The foregoing resolution was thereupon declared duly adopted.


STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

I, the undersigned Secretary of Town of Montgomery Industrial Development Agency (the “Agency”), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency held on July 14, 2020 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

4th
15 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of July, 2020.


Secretary

(SEAL)

EXHIBIT A
FORM OF PROFESSIONAL SERVICES AGREEMENT
ROUTE 17K CORRIDOR STUDY

PROFESSIONAL SERVICES AGREEMENT

Economic Development Corridor Study

This Agreement is by and between

Town of Montgomery Industrial Development Agency ("CLIENT")
110 Bracken Road
Montgomery, NY 12549

and,

Delaware Engineering, D.P.C. ("ENGINEER")
28 Madison Avenue Extension
Albany, New York 12203

Who agree as follows:

The CLIENT hereby engages the ENGINEER to perform the services described in Part I ("Services") and the ENGINEER agrees to perform the Services for the compensation set forth in Part II. Work shall be conducted pursuant to the Standard Terms and Conditions provided in Part III. The ENGINEER shall be authorized to commence the Services upon execution of this Agreement. The CLIENT and the ENGINEER agree that this signature page, together with Parts I-III and any attachments referred to therein, constitute the entire agreement between them relating to continuing Project assignments (Agreement).

APPROVED FOR CLIENT

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED FOR ENGINEER

By: 

Printed Name: Mary Beth Bianconi

Title: Partner

Date: July 15, 2020

PART I ENGINEER'S RESPONSIBILITIES

PROJECT APPROACH

Delaware Engineering, D.P.C., in conjunction with Mathes Public Affairs (MPA), offers the depth of skill and experience in the fields of economic development, planning and engineering services to the Town of Montgomery IDA necessary for the creation of an Economic Development Corridor Study with an area to be further defined but generally incorporating a corridor around Route 17k from I-84 Exit 6 to the Village of Montgomery and also including the lands around the Orange County Airport that will act as the foundation for grant applications to advance the establishment of market ready and shovel ready sites for private sector investment that drives jobs and economic prosperity.

Delaware Engineering, D.P.C. will lead the Corridor Study, lead all meetings and presentations, and conduct the work related to data gathering, environmental conditions, land use, infrastructure, GIS analysis, site screening and report preparation. Mathes Public Affairs will participate in all meetings and presentations, conduct the market data gathering, analysis and written documentation regarding the market analysis.

The Delaware Engineering/Mathes Public Affairs approach to the Corridor Study is a phased approach outlined for information purposes to illustrate the overall approach as follows:

Phase	Action	Purpose
1	Economic Development Corridor Study	Determine Market Potential; Identify Opportunities and Constraints; Leverage Document to Apply for Grants to Support Phase 2
2	Environmental Review and Permitting	Engage the Public; Detail Existing Environmental Conditions, Potential Impacts and Mitigation Measures; Outline Steps for Economic Investment; Leverage Documents to Apply for Grants and Low-Cost Financing to Support Phase 3
3	Infrastructure Design and Construction	Construct in Public-Private Partnership the Infrastructure Required to Support Envisioned Economic Investment

The first phase is a corridor study will define the corridor boundaries and document the market potential which is the first step towards market ready and shovel ready site development. This review is objective and intended to outline the full potential of the corridor. The Market Study portion of the scope will include public participation regarding desired land uses to be considered together with broader market demands. Moreover, the corridor study is intended to be used as a spring board for grant applications to support public engagement, the environmental review and permitting process. This phase is the subject of the scope of work as outlined in detail herein.

In the second phase, which is not part of this scope of work, conduct of a broad environmental review under the State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA) to identify current conditions, envision community-supported economic investment through robust public participation as well as public benefits, determine potential environmental impacts on a broad scale and document mitigation measures to reduce or eliminate potential impacts paves the way to sound, sustainable development in the corridor is envisioned.

In the second phase, the preparation of a Generic Environmental Impact Statement (GEIS) under SEQRA establishes thresholds for future projects under which the SEQRA process for applications for site plans and subdivisions is streamlined and focused on mitigation measures for site specific impacts. Robust public participation will be conducted in scoping as well as Draft and Final GEIS review. This creates value in that it ensures that projects are aligned with community vision while providing developers and end users a predictable time frame for local approvals. With respect to NEPA, pursuit of United States Economic Development Administration (EDA) grants necessitate conduct of NEPA.

The work in the first phase is conducted in consideration of the eventual move towards the second phase conduct of SEQRA and NEPA to advance state and federal grant opportunities.

The third phase of the approach is utilization of the corridor study and GEIS from the first and second phases working in conjunction with appropriate local governmental bodies to prepare applications for grants and low-cost financing to extend public infrastructure to the corridor to bring the vision for economic investment to fruition. Ideally, the balance of infrastructure costs not supported by grants or low-cost financing is supported by the private sector beneficiaries of the infrastructure.

The Delaware Engineering/Mathes Public Affairs team has ample success in grant writing for economic development and infrastructure projects, and offers to support the public bodies that will invest to make identified sites shovel ready through preparation of Consolidated Funding Application (CFA) as a value-added future service.

Given that grant programs for 2020 are not occurring in the usual timeline and the current schedule for the Town's comprehensive plan update, the schedule for the Corridor Study spans to December 2020. Ideally, this schedule will provide multiple benefits including informing the Town's Comprehensive Plan Update and positioning the IDA for grant opportunities to support next steps.

The current schedule for the Comprehensive Plan Update extends into early 2021. Ideally, the Corridor Study can be an appendix to the Comprehensive Plan. While the Comprehensive Plan will outline the community's vision for the entire Town, the Corridor Study will objectively assess the market potential of a limited area of the Town. By having both processes proceed simultaneously, ultimately, the Town Board will be well informed to make decisions governing land use in the Town, and in particular, in the Corridor Study to meet the objectives of the community to preserve important land as open space or for residential and community-scale land uses while focusing economic investment that provides the tax revenue to support quality of life in appropriate locations.

Ideally, to best position the Town of Montgomery IDA ("the IDA") to support the preparation of grant applications through the State of New York's Consolidated Funding Application (CFA) in 2021. The timing is critical because applications such as those for Community Development Block Grant (CDBG) funds required conduct of a public hearing prior to submitting the CFA application. A study completed well in advance of potential future grant application deadlines provides ample time for notice and conduct of a public hearing that will support high scoring for that aspect of a CDBG application. In addition to CFA grant opportunities, it may be possible to attract grant funding from the local power utility and from the State and Municipal Facilities fund which is offered through the area's representatives to New York State Government.

SCOPE OF SERVICES

The Delaware Engineering/Mathes Public Affairs team proposes to conduct the scope of services outlined and described herein.

Task 1: Project Kick-off Meeting

Representatives of Delaware Engineering and Mathes Public Affairs will attend a meeting and engage in discussions with the IDA leadership and municipal partners to refine the objectives and deliverables. Importantly, Delaware Engineering provides professional engineering services to the Town of Montgomery, the County of Orange and other towns and villages within the County, resulting in the ability to offer important infrastructure background, understanding of local conditions and elected officials as well as detailed information. The deliverable of this task will be a written meeting summary circulated to the participants.

Task 2: Data Gathering, Review and Study Area Definition

Delaware Engineering will utilize publicly available data as well as extensive knowledge of the local communities to gather existing data including, but not limited to:

- Land Use (GIS-based Real Property Service Data)
- Public Open Space and Recreation
- Natural Resources
- Zoning Districts and Allowable Uses
- Infrastructure (water, sewer, power, Internet)

Once the data is gathered, Delaware Engineering will review the information with the IDA and other relevant parties to determine corridor study area boundaries as well as identify data gaps, the need to gather additional information and methods to do so. A written summary of available data along with significant limitations will be presented to the IDA along with a map of the corridor study area boundaries.

Task 3: Analysis

The Delaware Engineering/Mathes Public Affairs team will evaluate market conditions in the region and competitive regions through review of the following:

- Availability of land – GIS data from Real Property Services (RPS)
- Building activity – IDA and Real Estate information
- Leads in progress – IDA and other local resources
- Mix of industrial and commercial uses – GIS data as well as local knowledge
- Cost of building – Based on recent land development projects

- Cost of permitting/timeframe to development – Local knowledge of zoning and permitting
- Development catchment area (the geography or sectors from which development interest is generated or focused) – Based on local knowledge and custom ESRI Business Analyst Data
- Determine leakage (consumer spending on goods and services outside the study area) of existing services - Based on local knowledge and custom ESRI Business Analyst Data

With respect to detailed Market Analysis, a variety of Northeast sources and market activity will be utilized to create business park and corridor development objectives in both sector type and scale. These sources will include site selector/commercial real estate professionals, local/regional and NE based economic development professionals and NYS Empire State Development. In addition, MPA will draw from previous experience, professional contacts and overall research on current development trends, innovative development practices and resulting shifts in private developer/corporate real estate objectives caused from the overall impact of the COVID 19 crisis. This process will include a minimum of two public information sessions to seek local opinions on regional opportunities, entrepreneurial activity and overall priorities.

Working in conjunction with the IDA and GIS/RPS data, our team will identify properties on the market as well as vacant or underutilized parcels. Given the identified market conditions as well as properties on the market and vacant or underutilized land, the Delaware Engineering/Mathes Public Affairs team will develop criteria for screening sites including but not necessarily limited to:

- Minimum site size for developable area (e.g. eliminate wetlands, watercourses, steep slopes, etc.)
- Maximum distance from highway access
- Zoning/land use

Our team will then apply the screening criteria to properties in the Corridor to develop a list of sites that match the desired criteria. With an initial list of properties identified, the next step will be to vet the list of sites relative to opportunities and constraints in the areas of environmental, infrastructure and zoning/land use. Tabular data with analysis along with maps identifying the screened properties will be prepared and used at meeting with the IDA to review initial findings of the analysis and receive feedback from the IDA.

Task 4: Draft Opportunities and Constraints Analysis Report

Delaware Engineering/Mathes Public Affairs will next prepare a Draft Report to include a brief summary of site and neighborhood analysis and identify key opportunities and constraints in terms of development and contribution to the public realm. Elements will be identified that are both an opportunity and constraint and any conflicting issues. The Draft Report will identify and discuss the balance between competing interests and other limitations. Areas that will be reviewed and addressed include, but are not limited to:

- Potential Site Analysis
- Review of Zoning and Comprehensive Plans
- Identification of Project Sectors
- Maximum Build-out scenarios
- Resulting Project Impacts with Sq. Ft., Jobs, and private investment
- Infrastructure Analysis: Water/Sewer/Transportation/Power/Broadband
- Permitting and Approvals
- Commercial Real Estate Market/Existing/Future Opportunities
- Public Open Space/Recreation
- Natural Constraints/Resources
- Jurisdictional Cooperation and Coordination
- Cost of Development/Orange County Competitiveness
- Development/Retail/Services Leakage
- Marketing Strategies and Approach
- Development Plan/Scope/Next Steps

The Delaware Engineering/Mathes Public Affairs team will attend and participate in a meeting to review the Draft Report to engage in discussions with IDA leadership and others to be identified by the IDA as appropriate to finalize Draft Opportunities and Constraints Analysis Report for the Route Corridor Study Area.

Task 5: Final Opportunities and Constraints Analysis Report

On the basis of the feedback provided during the review of the Draft Report, Delaware Engineering/Mathes Public Affairs will finalize and deliver a comprehensive Corridor Study

Opportunities and Constraints Analysis Report addressing the project scope and deliverables identified by the IDA. The Report will incorporate a detailed outline of next steps towards market ready/shovel ready development including one or more implementation timelines.

Task 6: Attend/Participate in Final Presentation Meeting

Delaware Engineering and Mathes Public Affairs will attend a meeting with the IDA as well as local, county and regional leaders to present findings of the Opportunities and Constraints Analysis Report and respond to questions and comments.

SCHEDULE

Delaware Engineering and Mathes Public Affairs offer the following schedule for the conduct of the Economic Development Corridor Study:

Task	Description	Timeframe
1	Project Kick-Off Meeting	July 2020
2	Data Gathering & Review	July 2020
3	Analysis	August – September 2020
4	Draft Opportunities and Constraints Report	October 2020
5	Final Opportunities and Constraints Report	November 2020
6	Final Presentation Meeting	December 2020

**PART II
COMPENSATION**

Delaware Engineering and Mathes Public Affairs offer the IDA an experienced staff of over 60 professional and technical personnel with extensive local experience and expertise in economic development. We look forward to this opportunity to support the bright future of the Town and propose to conduct the Scope of Services for a lump sum cost of \$110,000 invoiced in equal increments of \$18,333 during the six-month project schedule, with estimated levels of effort for each Task as follows:

Task	Description	Estimated Costs
1	Project Kick-Off Meeting	\$5,000
2	Data Gathering* & Review	\$15,000
3	Analysis	\$30,000
4	Draft Opportunities and Constraints Report	\$30,000
5	Final Opportunities and Constraints Report	\$15,000
6	Final Presentation Meeting	\$5,000

*Plus \$10,000 in expense to obtain ESRI and other data

1. STANDARD OF CARE. Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CLIENT are specifically objected to.

2. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CLIENT. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

3. SAFETY. ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. DELAYS. If events beyond the control of CLIENT or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, ENGINEER shall be entitled to an equitable adjustment in compensation.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon 30 days written notice to the other party. CLIENT shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination. In the event either party defaults in its obligations under this Agreement (including CLIENT'S obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. OPINIONS OF CONSTRUCTION COST. Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CLIENT only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CLIENT.

7. RELATIONSHIP WITH CONTRACTORS. ENGINEER shall serve as CLIENT'S professional representative for the Services, and may make recommendations to CLIENT concerning actions relating to CLIENT'S contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CLIENT'S contractors.

8. CONSTRUCTION REVIEW. For projects involving construction, CLIENT acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CLIENT agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

9. INSURANCE. ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER'S business requirements. Certificates evidencing such coverage will be provided to CLIENT upon request. For projects involving construction, CLIENT agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER'S coverages referenced above shall, in such case, be excess over contractor's primary coverage.

10. HAZARDOUS MATERIAL. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ENGINEER and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. ENGINEER agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CLIENT acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. CLIENT shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize ENGINEER to execute such documents as CLIENT'S agent. CLIENT waives any claim against ENGINEER and agrees to defend, indemnify, and save ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER'S discovery of unanticipated hazardous materials or suspected hazardous materials.

11. INDEMNITIES. To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless CLIENT from and against loss, liability, and damages sustained by CLIENT, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of ENGINEER, its agents or employees.

To the fullest extent permitted by law, CLIENT shall defend, indemnify, and save harmless ENGINEER from and against loss, liability, and damages sustained by ENGINEER, its agents, employees, and representatives by reason of claims for injury or death to persons, damages to tangible property, to the extent caused directly by any of the following: (a) any substance, condition, element, or material or any combination of the foregoing (i) produced, emitted or released from the Project or tested by ENGINEER under this Agreement, or (b) operation or management of the Project. CLIENT also agrees to require its construction contractor, if any, to include ENGINEER as an indemnitee under any indemnification obligation to CLIENT.

12. LIMITATIONS OF LIABILITY. No employee or agent of ENGINEER shall have individual liability to CLIENT. CLIENT agrees that, to the fullest extent permitted by law, ENGINEER'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER'S negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the limits of insurance under this Agreement. If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

13. ACCESS. CLIENT shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

14. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CLIENT for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at the CLIENT'S risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when CLIENT provides deliverables in electronic media to another entity. CLIENT agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. CLIENT shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, ENGINEER shall be advised and the inconsistency shall be corrected at no additional cost to CLIENT. Following the expiration of this 30-day period, CLIENT shall bear all responsibility for the care, custody and control of the electronic media. In addition, CLIENT represents that it shall retain the necessary mechanisms to read the electronic media, which CLIENT acknowledges to be of only limited duration. CLIENT agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CLIENT or others acting through CLIENT.

15. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

16. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

17. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

18. DISPUTE RESOLUTION. Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute cannot be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

19. NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

20. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CLIENT'S contractors, if any.

21. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

22. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.