



Village of Spring Lake

Council Work Session

Dial-in number: (872) 240-3212

Access code: 491-125-213

October 12, 2020

7:00 p.m.

Pursuant to Executive Order No. 2020 – 129, the Village of Spring Lake will conduct its business virtually to mitigate the spread of COVID-19. Members of the public are welcome and encouraged to participate in this meeting. Members of the public are not required to register or otherwise provide information to attend. If a member of the public wishes to participate in the webinar (versus calling in), please email Village Manager Christine Burns at christine@springlakevillage.org to receive the link.

Please utilize the mute function on your phone while on a conference call, when appropriate. There will be an opportunity at the end of the meeting for public comment.

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| | |
|----|--|
| 1 | 7:00 p.m. – 109 S. Jackson |
| 2 | 7:10 p.m. – Water Service Abandonment on M-104 (Wally Delamater) |
| 3 | 7:20 p.m. – Barber School & Clock Tower Resurfacing (Wally Delamater) |
| 4 | 7:25 p.m. – Conflict of Interest Policy (Marv Hinga) |
| 5 | 7:30 p.m. – USDA Contract w/Engineer (Marv Hinga) |
| 6 | 7:32 p.m. – USDA Contract w/Attorney (Marv Hinga) |
| 7 | 7:35 p.m. – Budget Amendments (Marv Hinga) |
| 8 | 7:37 p.m. – Board & Committee Appointments |
| 9 | 7:38 p.m. – Parks & Recreation Asset Management Planning |
| 10 | 8:00 p.m. – 7 th Amendment to the DDA (DeMario Johnson) |
| 11 | 8:03 p.m. – Tanglefoot Park Redevelopment |
| 12 | 8:21 p.m. – Landscape Planning |
| 13 | 8:24 p.m. – Communications |
| 14 | 8:26 p.m. - Minutes |
| 15 | 8:27 - Public Comment <i>Council Work Sessions are open to the public, and as such, the public is invited to speak at the end of each meeting. Each speaker should ask to be recognized by the chair, must state their name and address for the record and should limit their comments to 3 minutes. Speakers will be muted at the 3-minute mark.</i> |
| 16 | 8:30 – Adjourn |

*times are approximate

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Chris Burns, Village Manager

DATE: October 6, 2020

RE: 109 S. Jackson Redevelopment

Background: At their September 14th meeting, Council was presented with a plan from ARM to swap properties near the 109 S. Jackson Street property that they purchase on 12/20/19. Council asked for a monetary breakdown of the proposed swap. Staff enlisted the assistance of Capstone Development to execute a Broker's Opinion of Value. The opinion is not an appraisal, but what the Broker believes to be market value based on current conditions. The cost of a Broker's Opinion of Value is considerably less than a full-blown appraisal and much quicker to execute.

The documents were not ready when this agenda report was prepared, but I hope to have it in hand to discuss at the meeting. It is my understanding that Brandon Brown will also have further drawings to share with Council.

Issues & Questions Specified: Should Council continue to explore the proposal from ARM?

Alternatives: N/A

Financial Impact: Unknown at this point in time.

Recommendation: Continue working with ARM to facilitate dialogue related to the redevelopment.

Attachments: None at press time. Will distribute when available.

TO: Village President Mark Powers & Council Members
FROM: Wally Delamater
Director, Spring Lake DPW
DEPT: Water Department
DATE: October 12, 2020
RE: Unhook Abandoned Water Services Under Savidge Street (Project Estimate Update)



Background: Water Services - Savidge Street from Fruitport Road to Savidge Court.

Over a period of years, certain properties along Savidge St. corridor have experienced the need for new development, add fire suppression lines, and/or update service lines. When the need for a new service occurred, the existing line was shut off at the property line and left in place. The water main itself runs parallel with and in many cases run under the traffic lanes of Savidge Street, north side. Once we learned that MDOT intends on resurfacing M104/Savidge Street from 148th west to the bridge we began evaluating underground infrastructure.

Thus far we located eight water services that have been abandoned. These are old service lines are still under pressure. The services are shut off at the curb stop, on the south side of Savidge St. but not unhooked from the water main. We know that any water service can leak at any time. In this case these are abandoned services that will never be used again. At this time the road resurfacing project is scheduled to begin July 19, 2021 and finished by the end of August.

Issues & Questions Specified: The question is, based on the engineers estimate, do you want to continue with the process to remove these services? A green light to continue pursuing only means that bid documents will be prepared and released for bid early December. Once bids are received, January 2021, a recommendation with cost will be brought to Council. At that time Council will have the opportunity to determine if we continue. This project would not occur until 2021 and will have to be completed prior to the MDOT resurfacing project July 19, 2021.

(Possible Schedule)

| | |
|--------------------------|--|
| Release for bids: | December 9, 2020 |
| Open Bids: | January 6, 2021 |
| Award by Council: | January 11, 2021 |
| Preconstruction Meeting: | April 21, 2021 |
| Start Construction: | Any time after May 3, 2021 (We will specify a continuous 2-week time period) |
| Complete Construction: | Before June 30, 2021 |

Alternatives:

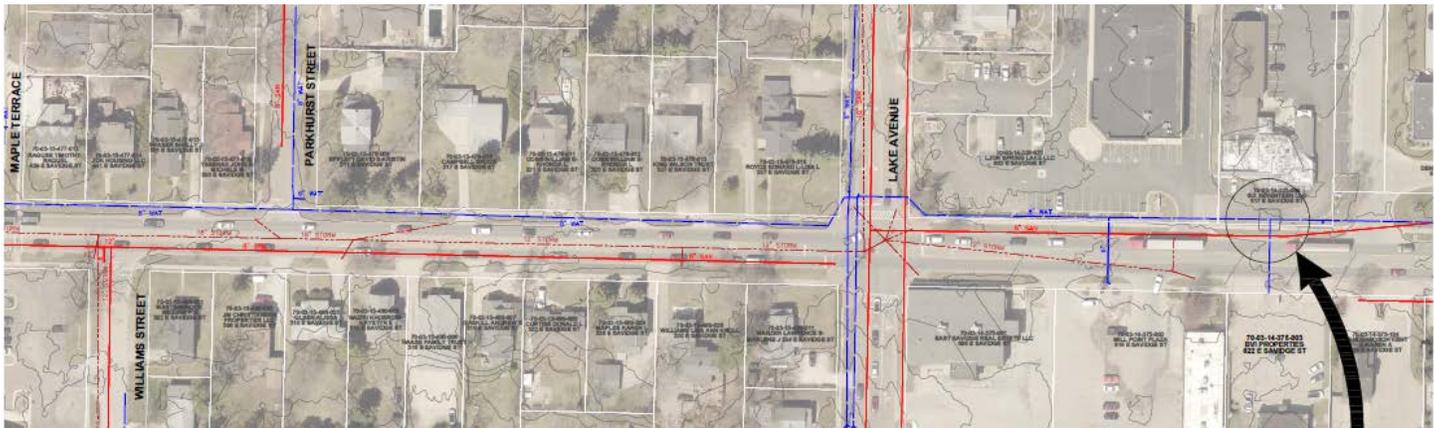
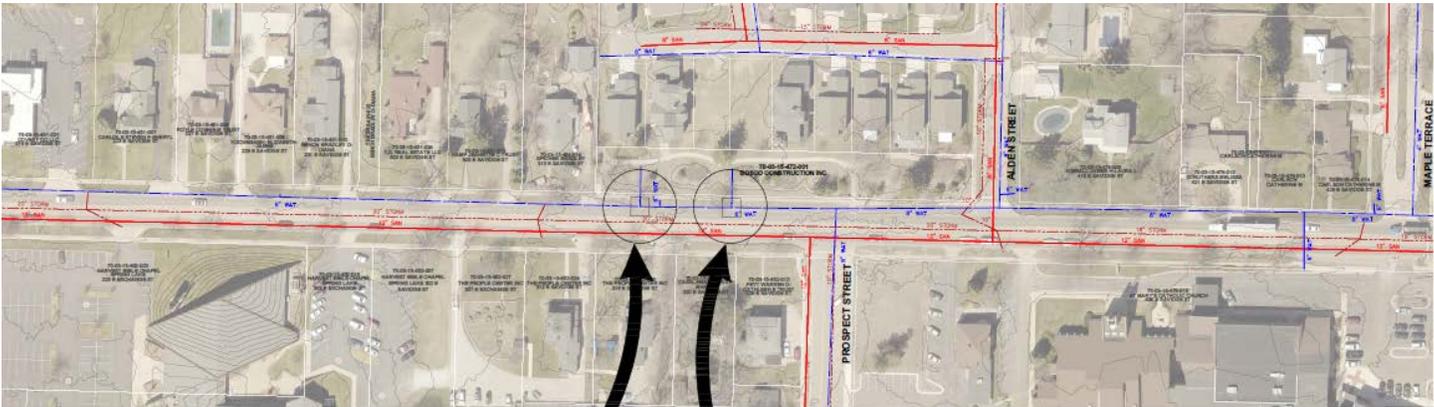
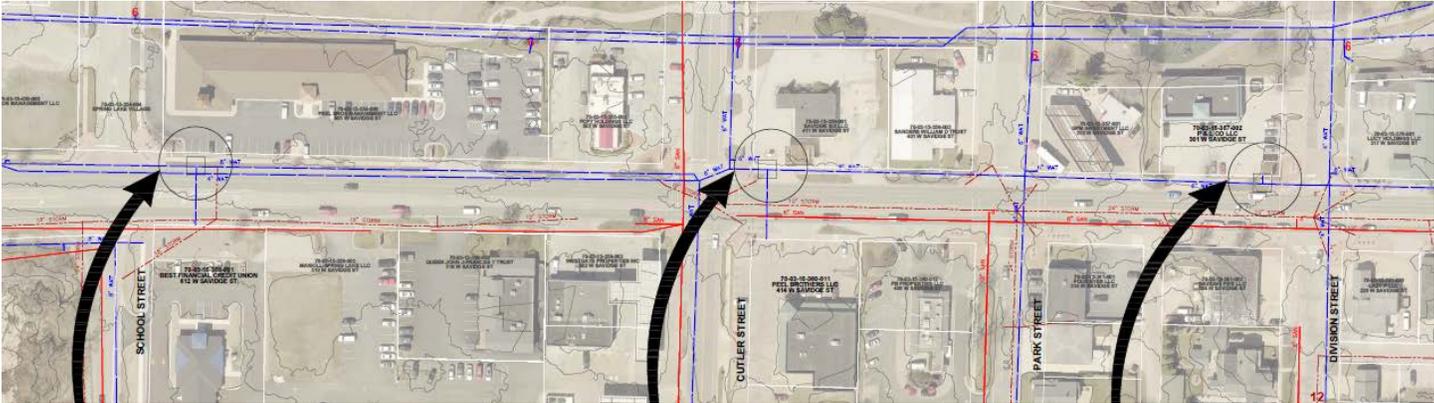
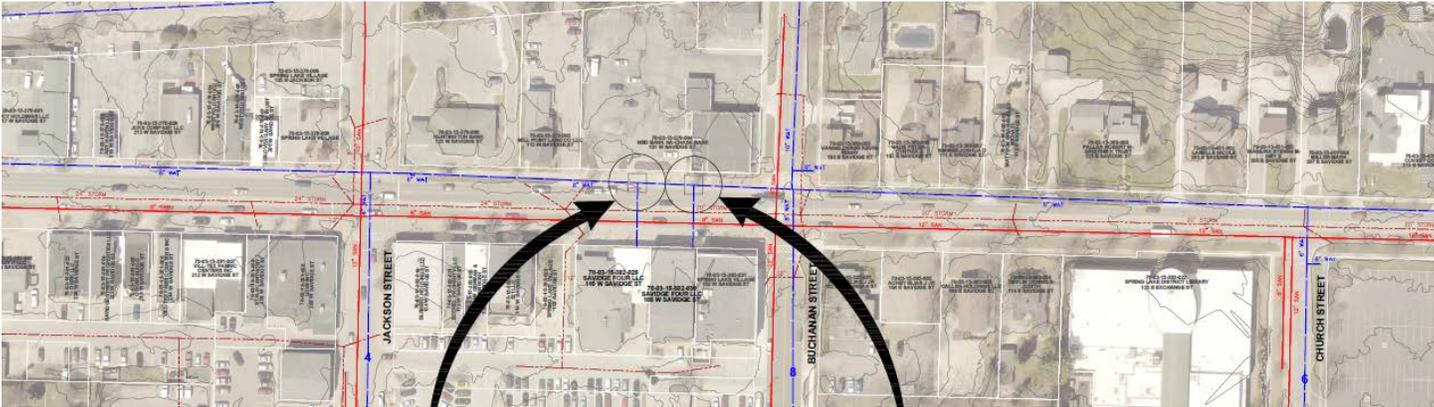
- 1) Remove abandoned still connected service
- 2) Leave service lines in place

Financial Impact: There is no additional financial commitment required at this time. Currently, the only financial commitment is the \$7,000 service agreement for design engineering.

Recommendations: The recommendation at this time would be to proceed through the bid process.

Attachments: Engineers Estimate, Drawing of Locations

| ITEM | | ESTIMATED | | | |
|--------------------------------|---|-----------|----------|-------------|--------------------|
| NO. | ITEM DESCRIPTION | UNIT | QUANTITY | UNIT PRICE | TOTAL COST |
| 1 | Mobilization 10% | Lsum | 1 | \$7,750.00 | \$7,750.00 |
| 2 | Tree Removal | Ea | 2 | \$1,500.00 | \$3,000.00 |
| 3 | Curb and Gutter, Rem | Ft | 155 | \$12.00 | \$1,860.00 |
| 4 | Pavt, Rem | Syd | 125 | \$15.00 | \$1,875.00 |
| 5 | Sidewalk, Rem | Syd | 115 | \$12.00 | \$1,380.00 |
| 6 | Excavation, Earth | Cyd | 355 | \$12.00 | \$4,260.00 |
| 7 | Water Service Disconnection | Ea | 8 | \$1,000.00 | \$8,000.00 |
| 8 | Subbase, CIP | Cyd | 180 | \$18.00 | \$3,240.00 |
| 9 | Aggregate Base, 8 inch, 21AA, Modified | Syd | 125 | \$25.00 | \$3,125.00 |
| 10 | Hand Patching | Ton | 10 | \$250.00 | \$2,500.00 |
| 11 | Joint, Contraction, Crg | Ft | 175 | \$30.00 | \$5,250.00 |
| 12 | Pavt, Repr, Nonreinf, Conc, Modified | Cyd | 42 | \$250.00 | \$10,500.00 |
| 13 | Curb and Gutter, Conc, Det F4, Modified | Ft | 155 | \$30.00 | \$4,650.00 |
| 14 | Sidewalk, Conc, 4 inch | Sft | 1,035 | \$6.00 | \$6,210.00 |
| 15 | Decorative Stamped Concrete, 6 inch | Sft | 60 | \$35.00 | \$2,100.00 |
| 16 | Turf Establishment | Syd | 115 | \$20.00 | \$2,300.00 |
| 17 | Traffic Control Max. \$15,000 | Lsum | 1 | \$15,000.00 | \$15,000.00 |
| TOTAL CONSTRUCTION COST | | | | | \$83,000.00 |



TO: Village President Mark Powers & Council Members
 FROM: Wally Delamater
 Director, Spring Lake DPW
 DEPT: Downtown Development Authority
 DATE: October 12, 2020
 RE: Parking Lot Resurfacing, Barber School and Clock Tower



Background:

The surface of both parking lots have deteriorated to a point where resurfacing is required. The Clock Tower lot, north area will receive a structure adjustment and regrading to improve usability and winter maintenance. The Barber School lot has a leaching basin for drainage. The only item not yet included in the cost estimate is the addition of drain lines along the east and west side of the building. The lines would connect to the down spouts and direct the roof runoff to the parking lot leaching basins. The drain lines should take care of the wet basement issues caused by the lack of down spout drains around the perimeter of the building.

Issues & Questions Specified: The question is, based on the engineers estimate, do you want to continue with the parking lot resurfacing project? A green light to continue pursuing only means that bid documents will be prepared and released for bid early November. Once bids are received, December 2020, a recommendation with cost will be brought to Council. At that time Council will have the opportunity to determine if we continue. This project would not occur until 2021.

(Possible Schedule)

Release for bids: November 9, 2020
 Open Bids: December 9, 2020
 Award by Council: December 14, 2020
 Preconstruction Meeting: April 14, 2021
 Start Construction: Any time after May 10, 2021 (We will specify a continuous 2-week time period)
 Complete Construction: Before June 30, 2021 (Should only take a week or so to complete)

Alternatives:

Financial Impact: There is no additional financial commitment required at this time. Currently, the only financial commitment is the \$3,950 service agreement for design engineering. The estimated project cost is well within the approved 20/21 budget

| | | | | | | |
|---------------------|---------------------------|----------------------|---------|--------|---------|---------|
| 236-000.000-978.000 | PAVING | | 147,465 | 19,223 | 215,475 | 100,000 |
| | | FOOTNOTE AMOUNTS: | | | | 50,000 |
| | BARBER SCHOOL PARKING LOT | | | | | |
| | | FOOTNOTE AMOUNTS: | | | | 50,000 |
| | CLOCK TOWER PARKING LOT | | | | | |
| | | GL # FOOTNOTE TOTAL: | | | | 100,000 |

Recommendations: The recommendation at this time would be to proceed through the bid process.

Attachments: Engineers Estimate, Drawing of Locations

| ITEM NO. | ITEM DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | TOTAL COST |
|----------------------------------|---|------|--------------------|------------|--------------------|
| Barber School Parking Lot | | | | | |
| 1 | Mobilization 10% | Lsum | 0.4 | \$6,137.50 | \$2,455.00 |
| 2 | Erosion Control, Silt Sac | Ea | 1 | \$200.00 | \$200.00 |
| 3 | HMA Surface Removal | Syd | 550 | \$7.00 | \$3,850.00 |
| 4 | Drainage Structure Temp Lowering & Adjustment | Ea | 1 | \$750.00 | \$750.00 |
| 5 | Subgrade Undercutting | Cyd | 10 | \$100.00 | \$1,000.00 |
| 6 | Aggregate Base, 8 inch, 21AA Modified | Ton | 10 | \$100.00 | \$1,000.00 |
| 7 | HMA, 13A (2-inch) | Ton | 70 | \$100.00 | \$7,000.00 |
| 8 | HMA, 36A (1.5-inch) | Ton | 50 | \$125.00 | \$6,250.00 |
| 9 | Pavt Mrkg, Waterborne, 4-inch, White | Ft | 160 | \$1.50 | \$240.00 |
| 10 | Pavt Mrkg, Waterborne, 4-inch, Blue | Ft | 125 | \$1.50 | \$187.50 |
| 11 | Pavt Mrkg, Waterborne, Accessible Sym | Ea | 1 | \$350.00 | \$350.00 |
| 12 | Turf Establishment | Syd | 70 | \$15.00 | \$1,050.00 |
| | Subtotal | | | | \$24,332.50 |
| Clock Tower Parking Lot | | | | | |
| 13 | Mobilization 10% | Lsum | 0.6 | \$6,137.50 | \$3,682.50 |
| 14 | Erosion Control, Silt Sac | Ea | 3 | \$200.00 | \$600.00 |
| 15 | HMA Surface Removal | Syd | 1,000 | \$7.00 | \$7,000.00 |
| 16 | Drainage Structure Temp Lowering & Adjustment | Ea | 1 | \$750.00 | \$750.00 |
| 17 | Subgrade Undercutting | Cyd | 15 | \$100.00 | \$1,500.00 |
| 18 | Aggregate Base, 8 inch, 21AA Modified | Ton | 35 | \$100.00 | \$3,500.00 |
| 19 | HMA, 13A (2-inch) | Ton | 120 | \$100.00 | \$12,000.00 |
| 20 | HMA, 36A (1.5-inch) | Ton | 90 | \$125.00 | \$11,250.00 |
| 21 | Pavt Mrkg, Waterborne, 4-inch, White | Ft | 400 | \$1.50 | \$600.00 |
| 22 | Pavt Mrkg, Waterborne, 4-inch, Blue | Ft | 40 | \$1.50 | \$60.00 |
| 23 | Pavt Mrkg, Waterborne, Accessible Sym | Ea | 2 | \$350.00 | \$700.00 |
| 24 | Turf Establishment | Syd | 35 | \$15.00 | \$525.00 |
| | Subtotal | | | | \$42,167.50 |
| TOTAL CONSTRUCTION COST | | | | | \$66,500.00 |



| | | |
|---|--|--|
| <p>SIL BORING NO. SP-2</p> | <p>DEPTH 0.0' TO 0.35' 0.35' TO 1.02' 1.02' TO 3.0'</p> | <p>DESCRIPTION ASPHALT GRAVEL SAND FINE EOL (F BORING) NO GROUNDWATER ENCOUNTERED</p> |
|---|--|--|

| | | |
|---|--|--|
| <p>SIL BORING NO. SP-3</p> | <p>DEPTH 0.0' TO 0.26' 0.26' TO 0.7' 0.7' TO 3.0'</p> | <p>DESCRIPTION ASPHALT GRAVEL SAND FINE EOL (F BORING) NO GROUNDWATER ENCOUNTERED</p> |
|---|--|--|



SEE
SHEET NO.
SE-1

DEPTH
0.0' TO 0.17'
0.17' TO 1.00'
1.00' TO 2.42'
2.42' TO 3.0'

CONSTRUCTION
AS-BUILT
GRAVEL
SAND FINE
CLAY BROWN
TOP OF SLOPE
BOUNDARY: DEDUCTED AT 3.0'



HMA SURFACE REMOVAL FULL DEPTH, FINE GRADING & 3" HMA RESURFACING
(PAVEMENT MARKINGS SHALL BE REPLACED TO MATCH EXISTING)

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Marv Hinga, Clerk/Treasurer

DATE: October 9, 2020

RE: Conflict of Interest Policy

Background: The USDA requires that the Village have a Conflict of Interest policy adopted by Council. The policy was reviewed by Bob Sullivan and is attached for Council review.

Issues & Questions Specified: Should Council adopt a Conflict of Interest policy?

Alternatives: Do not adopt the policy and seeking funding from somewhere other than the USDA.

Financial Impact: Interest rates with USDA are lower than the open bond market and their terms are longer (up to 40 years).

Recommendation: Adopt the Conflict of Interest policy.

Attachments: Conflict of Interest Policy



Village of Spring Lake Conflict of Interest Policy

Statement of Policy

The Village of Spring Lake (the “Village”) is committed to maintaining the highest integrity in all that we do. The Village requires all appointed and elected officials to **avoid** any conflict, or appearance of conflict, between their interests and those of the Village, and to **disclose** promptly any actual or potential conflicts.

Purpose

The purpose of this policy is to ensure that the Village operates in compliance with applicable and regulatory requirements, and that the reputation, name, and integrity of the Village are not compromised. The fundamental principle guiding its implementation is that no Council Member, Board Member or employee should have, **or appear to have**, any personal or financial interests, relationships, or affiliations that conflict with the interests of the Village. This policy is intended to educate Council Members, Board Members and employees about situations that generate potential Conflicts of Interest; to clarify expectations about disclosing Conflicts of Interest; and to identify means to manage, reduce, or eliminate such Conflicts of Interest.

Scope

This policy applies to all Council Members, Board Members and employees of the Village.

Examples of Conflicts of Interest

It is impossible to give an exhaustive list of situations that might present a Conflict of Interest. However, the most common situations that give rise to a Conflict involve an employee or a relative of a Council Member, Board Member or employee who:

- has an existing or potential financial interest or other interest which impairs, or might appear to impair, that person's independent, unbiased judgment when performing Village responsibilities.
- has a significant business relationship with a person or firm engaging in, or seeking to engage in, business with the Village.
- has a significant ownership interest in an outside company or organization and may receive a financial or other benefit from knowledge or information confidential to the Village.
- has an interest in an organization that competes with the Village.

- profits personally, e.g., through commissions, stipends, loans, expense reimbursements or other forms of compensation, from any company or organization doing business or seeking to do business with the Village.
- conducts business, or causes business to be conducted, by a separate legal entity (e.g. a corporation or partnership) and lists a Fordham location as its place of business.
- accepts compensation or gifts from third parties, such as vendors, or other Village-affiliated groups or individuals.

Gifts, Gratuities, and Favors

Employees may not solicit or accept, either directly or indirectly, any gift, gratuity, or favor with an economic value in excess of \$25, or any gift, gratuity, or favor that may be reasonably perceived by an impartial observer to affect the employee's decision-making authority.

Subject to any other applicable rules or regulations, this policy is not intended to prohibit the acceptance of modest insubstantial courtesies, openly given and acknowledged as part of the usual business amenities (e.g., occasional business-related meals, holiday baskets, or promotional items) of nominal or minor value **not to exceed \$50** (cumulative value for courtesies, meals, and/or items not to exceed \$250 in any twelve-month period).

Failure to abide by the provisions of this section may result in disciplinary action, up to and including, employment discharge.

Disclosing Conflicts of Interests

It is the responsibility of the employee to report promptly any actual or potential conflict that may exist between him/her (and/or his/her relative) and the Village Manager. Failure to disclose any existing or potential Conflict of Interest may result in disciplinary action, up to and including employment discharge.

Managing Conflicts of Interests and Enforcement

The Village Council delegates authority to the Village Manager to investigate, manage, resolve, and report all Conflicts of Interest to the Village Council. Once a Conflict of Interest is disclosed, in consultation with Legal Counsel, it will determine the next steps with respect to the Conflict. It may determine that the Conflict of Interest will be managed, reduced, or eliminated. The President of the Village, in consultation with Legal Counsel and the Finance Committee, retains final authority to determine appropriate disciplinary measures for failure to comply with the terms of this policy.

Policy Definitions

Conflict of Interest: A conflict of interest arises if there is an **actual** divergence between private interests and the person's professional and fiduciary obligations to the Village. A **potential** conflict of interest exists when circumstances may lead to the divergence between private and Village interests. A **perceived** conflict of interest exists when an

independent observer might question whether the person's actions can reasonably be influenced by considerations of personal gain, financial or otherwise.

Relative: An individual's spouse, domestic partner, parent, natural or adopted child, grandchild, great-grandchild, sibling, half-sibling, ancestor, or the spouse or domestic partner of the individual's child, grandchild, great-grandchild, or sibling.

Related-Party Transaction: Any transaction, agreement, or other arrangement in which a related party has a financial interest and in which the Village or an affiliate of the Village is a participant.

Financial Interest: A Council Member, Board Member or employee has a "Financial Interest" if, either directly or indirectly, through a relationship involving business, investment, or relatives, he/she has:

- a. An ownership or investment interest in any entity with which the Village has a transaction or affiliation;
- b. A compensation arrangement with any entity with which the Village has a transaction or affiliation;
- c. A potential ownership or investment interest in, or compensation arrangement with any individual or entity with which the Village is considering or negotiating a transaction or arrangement.

Date Policy Adopted:

Village President

Village Clerk

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Marv Hinga, Clerk/Treasurer

DATE: October 9, 2020

RE: USDA Contract with Engineer

Background Bonding through the USDA requires the Village have in place an engineering contract.

Issues & Questions Specified:

Alternatives: None.

Financial Impact:

Recommendation: Proceed with agreement pending review by Village Attorney.

Attachments:



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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of October 12, 2020 (“Effective Date”) between
Village of Spring Lake (“Owner”) and
Moore & Bruggink, Inc. (“Engineer”).

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

Spring Lake Water Main & Sanitary Sewer Improvements ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: Provide project plan development, design, and construction engineering services to upgrade the water distribution system and the sanitary sewer collection system. The project will also include upgrades to one lift station, with electrical and other appurtenant items.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- B. **Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development,**

Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of

the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are

more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
 - 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 - 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design

calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
 37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
 38. **Agency—The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.**
- B. *Day*:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. – **NOT USED**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or

anceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

- A. **Agency Concurrence.** Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

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

Owner: Village of Spring Lake

Engineer: Moore & Bruggink, Inc.

By: _____
Print name: Mark Powers
Title: Village President
Date Signed: _____

By: _____
Print name: Brian J. Hannon, P.E.
Title: Vice President
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

MI PE 6201056276

State of: Michigan

Address for Owner's receipt of notices:

102 West Savidge Street
Spring Lake, Michigan 49456

Address for Engineer's receipt of notices:

2020 Monroe Avenue NW
Grand Rapids, Michigan 49505

Designated Representative (Paragraph 8.03.A):

Mark Powers

Title: Village President

Phone Number: 616-842-1393

E-Mail Address: mark.powers.jd@gmail.com

Designated Representative (Paragraph 8.03.A):

Brian J. Hannon, P.E.

Title: Vice President

Phone Number: 616.363.9801

E-Mail Address: bhannon@mbce.com

This is **EXHIBIT A**, consisting of **18** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Engineer's Services

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

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

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:
 - 1) No action;
 - 2) Water Main and Sanitary Sewer Improvements
 - b. **In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.** ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~
 - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] **[insert specific number]** alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
[Deleted]
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed **and approved by the Agency**, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables: **Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency.**
 15. Furnish 3 review copies of the Report and any other Study and Report Phase deliverables to Owner within 90 days of the Effective Date and review it with Owner. Within 15 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. ~~Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's comments.~~ **Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within 30 days of receipt of Owner's and Agency's comments.**
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

- A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from

Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
9. Perform or provide the following other Preliminary Design Phase tasks or deliverables: **The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.**
10. Furnish 3 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **150** days of authorization to proceed with this phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 3 copies of the revised Preliminary Design Phase

documents, revised opinion of probable Construction Cost, and any other deliverables within 30 days after receipt of Owner's comments.

- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
 - 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 - 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 - 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 - 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 - 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 - 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 - 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 - 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

9. Perform or provide the following other Final Design Phase tasks or deliverables: **The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.**
 10. Furnish for review by Owner, its legal counsel **and Agency**, and other advisors, 3 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **60** days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of such documents to Owner within 30 days after receipt of Owner's comments and instructions.
 12. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Exhibit A, Attachment 6) for this purpose.**
 13. **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.**
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables **and all final design phase deliverables have been accepted by Owner.**
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This

schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.**
 - 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 - 4. Consult with Owner as to the qualifications of prospective contractors.
 - 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - 6. ~~If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~ **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.**

b. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: **Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.**
 10. **Provide copies of Manufacturers' Certifications to the Bidders on any brand name iron and steel products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers' Certifications are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction.**
 11. **Provide copies of Manufacturers' Certifications to the Contractor on any brand name iron and steel products specified as sole-source in the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction."**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of

Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* ~~If requested by Owner to do so,~~ Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as

assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. **The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
 11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
 12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturers Certification to the Contractor for said item.** Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.**

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- d. **Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction."**

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. **Review Change Proposals to ensure compliance with AIS.**

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final

determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.**
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
- a. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**

25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E (“Notice of Acceptability of Work”) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer’s knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- a. **Obtain the Contractors’ Certification letter and copies of Manufacturers’ Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors’ and Manufacturers’ Certifications to the Owner and a copy of Contractor’s Certification to the Agency**
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract’s correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
None
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements, **not including preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, **but only if the Owner's request is made after completion of the Study and Report Phase.**
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;

- b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. ~~Preparing Record Drawings, and furnishing such Record Drawings to Owner. [Deleted]~~
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~ **Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.**
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
9. **Performance of detailed staking necessary for construction of the project, in excess of the control staking set forth in Exhibit A, Engineer's Services, Part 1, A1.05, A.8.**
10. **Laboratory tests, well tests, borings, specialized geological, soils, hydraulic, or other studies.**

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: None

B.2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.**
- B. Sign change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.**
- C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.**
- D. Where the Owner directly procures American Iron and Steel products,**
 - 1. Include American Iron and Steel clauses in the procurement contracts;**
 - 2. Obtain Manufacturers' Certifications; and**
 - 3. Provide copies to Engineers and Contractors.**

This is **EXHIBIT C**, consisting of 7 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
4. The total compensation for services under Paragraph C2.01 is estimated to be \$832,000 based on the following estimated distribution of compensation:

| | |
|--|-----------|
| a. Study and Report Phase (PER) | \$24,000 |
| b. Preliminary Design Phase | \$122,750 |
| c. Final Design Phase | \$122,750 |
| d. Bidding or Negotiating Phase | \$12,500 |
| e. Construction Phase | \$515,000 |
| f. Post-Construction Phase | \$35,000 |

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner **and Agency**. See also C2.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of March 2020) to reflect equitable changes in the compensation payable to Engineer.
Changes will not be effective unless and until concurred in by the Owner and Agency.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner **and**

Agency to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$325,920 based upon full-time RPR services [as required by project progress and conditions] during an **ten-hour** workday, Monday through Friday, over a **280-day** construction schedule.
2. **If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services will be based on designated employee and their rate classification.**

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.10.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of March 2020) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. Other Provisions Concerning Payment Under this Paragraph C2.04:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
 2. Additional services to be included with the signed contract are:
 - a. Soil borings ;
 - b. O&M manual; and
 - c. Measurement verification; and
 - d. Estimated reimbursable expenses based on C2.05B.
 - e. Anticipated costs for these additional services are \$45,000.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of March **2021**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

| | |
|---------------------------|----------------|
| 8"x11" Copies/Impressions | \$0.10/page |
| Copies of Drawings | \$0.20/sq. ft. |
| Mileage (auto) | \$0.55/mile |
| Laboratory Testing | cost plus 10% |
| Meals and Lodging | at cost |

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

| <u>Professional Discipline/Position</u> | <u>Billed Rate per Hour</u> |
|---|-----------------------------|
| Engineering: | |
| Principal in Charge | \$178.00 |
| Senior Engineer | \$133.00 |
| Engineer III | \$121.00 |
| Engineer II | \$103.00 |
| Engineer I | \$90.00 |
| CAD/Drafter: | |
| CAD III | \$97.00 |
| CAD II | \$83.00 |
| CAD I | \$64.00 |
| GIS Analyst: | \$97.00 |
| Landscape Designer: | \$89.00 |
| Inspectors: | |
| Chief Inspector | \$116.00 |
| Inspector III | \$97.00 |
| Inspector II | \$84.00 |
| Inspector I | \$77.00 |
| Surveyors: | |
| Chief Surveyor | \$122.00 |
| Survey Technician | \$66.00 |
| Crew Chief | \$90.00 |
| Instrument Person | \$74.00 |
| Field Crew: | |
| One Man | \$86.00 |
| Two Man | \$160.00 |

| Professional Discipline/Position | Billed Rate per Hour |
|---|-----------------------------|
| Clerical: | \$67.00 |
| Mileage: | \$0.55/Mile |

Out of Pocket Expenses will be charged at 1.1 times actual cost.

Rate increases are typically 3% to 5% and are given on an annual basis.

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

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

ARTICLE 1 – SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. **Maintain all Manufacturers' Certifications in the project file and on-site during construction to ensure compliance with AIS, as applicable.**

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. ~~Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~ **[Deleted]**
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - 8. Authorize Owner to occupy the Project in whole or in part.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Spring Lake Water Main & Sanitary Sewer Improvements

OWNER: Village of Spring Lake

CONTRACTOR: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: Moore & Bruggink, Inc.

NOTICE DATE:

To:

Owner

And To:

Contractor

From:

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of **\$5,550,000.00**.
- B. A bidding or negotiating contingency of ten percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. **Engineer's determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.**
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for

Exhibit F – Construction Cost Limit.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Page 1

services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

a. By Engineer:

- 1) Workers' Compensation: Statutory
- 2) ~~Employer's Liability --~~
 - i) ~~Bodily injury, Each Accident~~
 - ii) ~~Bodily injury by Disease, Each Employee~~
 - iii) ~~Bodily injury/Disease, Aggregate~~
- 3) General Liability --
 - i) Each Occurrence (Bodily Injury and Property Damage): **\$1,000,000**
 - ii) General Aggregate: **\$2,000,000**
 - iii) **Damage to Rented Premises (Ea Occurrence) \$1,000,000**
 - iv) **Med Exp (Any one person) \$ 10,000**
 - v) **Personal & Adv Injury \$1,000,000**
 - vi) **Products – Comp/Op Agg \$2,000,000**
- 4) Excess or Umbrella Liability --
 - i) Per Occurrence: **\$1,000,000**
 - ii) General Aggregate: **\$1,000,000**

Automobile Liability --~~Combined Single Limit (Bodily Injury and Property Damage) Hired and Non-owned:~~ **\$1,000,000**
- 5) Professional Liability –
 - i) Each Claim Made **\$1,000,000**
 - ii) Annual Aggregate **\$2,000,000**

6) Other (specify): **N/A**

b. By Owner:

1) Workers' Compensation: Statutory

2) Employer's Liability --

i) ~~Bodily injury, Each Accident~~ _____

ii) ~~Bodily injury by Disease, Each Employee~~ _____

iii) ~~Bodily injury/Disease, Aggregate~~ _____

3) General Liability --

i) General Aggregate: **NONE**

ii) Each Occurrence (Bodily Injury and Property Damage): **\$5,000,000**

4) Excess Umbrella Liability

i) Per Occurrence: **NONE**

ii) General Aggregate: **NONE**

5) Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$5,000,000

6) Other (specify): **N/A**

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. Moore & Bruggink, Inc.
Engineer

b. Soils & Structures
Engineer

c. Century A&E
Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by **a mediator mutually agreeable to the Owner and the Engineer**. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner 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, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated xx/xx/2020.

Special Provisions

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

None

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **xx/xx/2020**.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement: October 12, 2020

Owner: Village of Spring Lake

Engineer: Moore & Bruggink, Inc.

Project: Spring Lake Water Main & Sanitary Sewer Improvements

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ____ Additional Services to be performed by Engineer
- ____ Modifications to services of Engineer
- ____ Modifications to responsibilities of Owner
- ____ Modifications of payment to Engineer
- ____ Modifications to time(s) for rendering services
- ____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

| | |
|----------------------------------|----------|
| Original agreement amount: | \$ _____ |
| Net change for prior amendments: | \$ _____ |
| This amendment amount: | \$ _____ |
| Adjusted Agreement amount: | \$ _____ |

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

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

OWNER: VILLAGE OF SPRING LAKE

ENGINEER: MOORE & BRUGGINK, INC.

By: _____
Print
name: Mark Powers
Title: Village President

By: _____
Print
name: Brian J. Hannon, P.E.
Title: Vice President

Date Signed: _____

Date Signed: _____

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Marv Hinga, Clerk/Treasurer

DATE: October 9, 2020

RE: USDA Contract with Attorney

Background:

The template for the Contracts with Attorneys was forwarded to Roger Swetz. He is working on those documents and will forward once they are complete.

Issues & Questions Specified:

Alternatives: None.

Financial Impact:

Recommendation:

Attachments:

Christine Burns

From: Roger A. Swets <RSwets@dickinson-wright.com>
Sent: Thursday, October 1, 2020 6:44 PM
To: Christine Burns
Subject: Re: EXTERNAL: USDA Agreement

Caution! This email is from an external address and contains a link. Use caution when following links as they could open malicious web sites.

Hi Chris,
There are two attorney roles, the bond counsel, which is me and then counsel under the legal services agreement that does the real estate and contract review work. I think you said before you want Ron for the legal services agreement work. If that is so, I will work with Ron to get you letters for both.

Thanks,
Roger

On Oct 1, 2020, at 3:26 PM, Christine Burns <christine@springlakevillage.org> wrote:

Roger,

We are continuing to plod forward with our USDA funding for water/sewer improvements. One of the items that we need to have on the October agenda is an agreement with our attorney (assuming that's you, right?) Can you please tell me what your hourly rate is and what a not to exceed amount would be (see page 8 of attachment)?

Thanks!

Chris

Christine Burns
<image002.png>
102 W. Savidge St., Spring Lake, MI 49456
P 616.842.1393 F 616.847.1393
christine@springlakevillage.org

<image004.png>

<RD Apply - MI Guide 2 (revised 11-18-19).pdf>

Roger A. Swets Member

200 Ottawa Ave., N.W.
Suite 1000
Grand Rapids MI 49503

Phone 616-336-1043

Fax 844-670-6009

Email RSwets@dickinsonwright.com

[Profile](#) [V-Card](#)

DICKINSON WRIGHT PLLC

ARIZONA CALIFORNIA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
TENNESSEE TEXAS WASHINGTON D.C. TORONTO

The information contained in this e-mail, including any attachments, is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

Village of Spring Lake
 October 2020 Budget Adjustments

| Adjustment | Account | Fund | Dept. | Account | Current | Proposed | Change |
|--|---------------------|---------------|---------------------|---------------------------------|---------|----------|---------|
| #1 | 101-172.000-910.000 | General Fund | Manager | Insurance | 2,000 | 1,455 | (545) |
| | 101-215.000-910.000 | General Fund | Clerk/Treasurer | Insurance | 3,200 | 1,500 | (1,700) |
| | 101-265.000-910.000 | General Fund | Village Hall | Insurance | 3,100 | 4,330 | 1,230 |
| | 101-270.000-910.000 | General Fund | Barber School | Insurance | 475 | 895 | 420 |
| | 101-381.000-910.000 | General Fund | Planning/Zoning | Insurance | 100 | 285 | 185 |
| | 101-553.000-910.000 | General Fund | Central Park | Insurance | 1,200 | 1,950 | 750 |
| | 101-555.000-910.000 | General Fund | Mill Point Park | Insurance | 250 | 950 | 700 |
| | 101-557.000-910.000 | General Fund | Lakeside Beach | Insurance | 260 | 705 | 445 |
| | 101-558.000-910.000 | General Fund | Whistlestop Park | Insurance | 125 | 85 | (40) |
| | 101-692.000-910.000 | General Fund | Parks Maintenance | Insurance | 2,275 | 830 | (1,445) |
| | 202-463.000-887.208 | Major Streets | Routine Maintenance | Non-Motorized Pathway Expense | 8,000 | 6,405 | (1,595) |
| | 202-463.000-910.000 | Major Streets | Routine Maintenance | Insurance | 0 | 1,595 | 1,595 |
| | 203-463.000-887.208 | Local Streets | Routine Maintenance | Non-Motorized Pathway Expense | 4,000 | 2,330 | (1,670) |
| | 203-463.000-910.000 | Local Streets | Routine Maintenance | Insurance | 0 | 1,670 | 1,670 |
| | 218-444.000-801.902 | Pathways | Pathways | Contract Workers | 11,000 | 9,030 | (1,970) |
| | 218-444.000-910.000 | Pathways | Pathways | Insurance | 0 | 1,970 | 1,970 |
| | 236-000.000-910.000 | DDA | DDA | Insurance | 0 | 1,090 | 1,090 |
| | 236-000.000-940.000 | DDA | DDA | Equipment Usage | 45,000 | 43,910 | (1,090) |
| Adjust current year budgets for Liability Insurance. | | | | | | | 0 |
| #2 | 249-000.000-695.000 | Building | Revenue | Appropriation from Fund Balance | 0 | 6,530 | 6,530 |
| | 249-381.000-703.000 | Building | Planning/Zoning | Part Time wages | 1,350 | 750 | (600) |
| | 249-381.000-708.000 | Building | Planning/Zoning | Vision Reimbursement | 0 | 30 | 30 |
| | 249-381.000-801.000 | Building | Planning/Zoning | Professional Services | 0 | 5,000 | 5,000 |
| | 249-381.000-801.400 | Building | Planning/Zoning | Building Inspections | 0 | 1,500 | 1,500 |
| | 249-381.000-801.600 | Building | Planning/Zoning | Electrical Inspections | 0 | 300 | 300 |
| | 249-381.000-801.700 | Building | Planning/Zoning | Mechanical Inspections | 0 | 300 | 300 |
| Adjust current year Building Fund budget. | | | | | | | 0 |

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Chris Burns, Village Manager

DATE: October 6, 2020

RE: Board & Committee Appointments

Background: Each November, Council (re) appointments members to various boards and committees. In 2020, the following terms are expiring:

| Board | Vacancies | Expiring |
|-----------------------|-----------|----------|
| DDA | 3 | 2024 |
| Planning Commission | 3 | 2023 |
| ZBA | 1 | 2023 |
| Parks & Recreation | 2 | 2023 |
| Historic Conservation | 2? | 2023 |

Several years ago, Council took the position that terms which were expiring were not automatically renewed. If a person wished to continue their service on a board/committee, they could reapply for their seat. Council would then consider *all* applicants and the most qualified individuals would be appointed to serve.

Issues & Questions Specified: Should the Council appoint members to fill seats in November?

Alternatives: Do not appoint, thereby creating vacancies and various boards/committees.

Financial Impact: None.

Recommendation: Seek applicants.

Attachments: Advertisement.

**Village of Spring Lake
Applications for Appointment
To Boards and Commissions**



The Village of Spring Lake has several board and commission positions with terms expiring in November. Spring Lake residents (you must be a registered voter in the Village) who wish to be considered for appointment to one of these positions are invited to submit an Application for Appointment to the Spring Lake Village Clerk, 102 W. Savidge, Spring Lake, MI 49456. Forms are available at Village Hall, by calling 842-1393, or on the Village website: <http://www.springlakevillage.org/wp-content/uploads/delightful-downloads/2019/11/application-for-boards-and-commissions-2.pdf>

Planning Commission: 3 positions expiring November 2023. The Planning Commission focuses on land use issues, maintains a Land Use Plan, and reviews and recommends Zoning Ordinance regulations, changes, applications for zoning district changes, development plans, site plans, and special uses.

Parks & Recreation Commission/Tree Board: 2 positions expiring November 2023. The Recreation Commission advises the Village Council regarding recreation facilities and maintains a Parks and Recreation Plan which addresses community needs. The Tree Board contemplates aspects of the Village's forestry program, including the budget associated with forestry operations.

Downtown Development Authority – 3 positions expiring November 2024. The DDA makes recommendations regarding the DDA budget, the TIF plan and approves façade grant applications.

Historic Conservation District Commission – 2 positions available with expirations of 2023. This Commission is responsible for all aspects of protecting the historic integrity of the Village per Chapter 42 of the Village's Code of Ordinances.

Each of these seats has an incumbent who currently serves. All incumbents are required to reapply to retain their seat and Council will select the most qualified candidate for each position.

Applications are due by 5:00 p.m., November 2, 2020. For more information, please contact Marv Hinga at 842-1393.

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Chris Burns, Village Manager

DATE: October 6, 2020

RE: Parks & Recreation Asset Management Planning

Background: There has been much discussion over the past 5 years on whether or not the Village should seek a millage to help support the maintenance and upkeep of public parks. At their September Parks & Recreation Board Meeting, the topic was again broached. Based on the damage that has been done by high water and the aging infrastructure that has been identified by the P&R Asset Management Plan, prioritizing repairs for 2021 and beyond will prove challenging.

The Village hired MCSA Group, Inc. to develop a comprehensive Parks & Recreation Asset & Management Plan for all Village park properties. That report was distributed to board members back in July. The \$3,850,143 question is now, “*What do we do with the plan?*”

Issues & Questions Specified: If we chose to use the Asset Management Plan as a road map forward (which is why we commissioned the report in the first place) then how do we pay for the necessary improvements, which are estimated at just under \$4,000,000?

Alternatives:

1. Do nothing. Continue to maintain parks with funding allocated on a yearly basis during the budget process.
2. Ask the voters (by means of a ballot question) for a millage (yet to be determined) to support the maintenance and upkeep of the public parks.
3. Increase millage. Council has the authority to increase the millage rate to support General Fund operations without going to the polls.

Financial Impact:

1. Do nothing. Funds will be allocated funding based on what’s “left over” after all other General Fund priorities are covered.
2. Ask the voters. The cost of an election would be several thousand dollars. The cost of the election could be shared if the millage question was placed along with another ballot question.
3. Increase millage. Impact is based on how much the millage is increased. The bigger question is related to the political appetite to do so without permission of your constituents.

Recommendation:

Council discretion.

Attachments: Spreadsheet showing

| | 2019 | 2020 | 2021 | 2022 |
|---|-------------|-------------|-------------|----------|
| Library Operating (Expires 2030) | 1.1285 | 1.0000 | 1.0000 | 1.0000 |
| Library Operating (Perpetual) | 0.5470 | 0.5470 | 0.5470 | 0.5470 |
| Library Debt (Paid Off 2021) | 0.4100 | 0.3600 | 0.0000 | 0.0000 |
| Parks Maintenance | 0.0000 | 0.1785 | 0.5385 | 0.5385 |
| | 2.0855 | 2.0855 | 2.0855 | 2.0855 |
| | | | | |
| Total Village Taxable Value* | 145,212,259 | 146,664,382 | 148,131,025 | |
| Dedicated Millage for Parks Maintenance | | 0.1785 | 0.5385 | 0.5385 |
| Total Revenue Generated | | \$25,920 | \$78,979 | \$79,769 |

*Assumes a 1% increase per year

| Millage Rate | Taxable Value of Home | \$100,000 | \$144,596 | \$200,000 | \$240,280 |
|---------------------|------------------------------|------------------|------------------|------------------|------------------|
| 1.0000 | | 100.00 | 144.60 | 200.00 | 240.28 |
| 0.7500 | | 75.00 | 108.45 | 150.00 | 180.21 |
| 0.5850 | | 58.50 | 84.59 | 117.00 | 140.56 |

WORK SESSION AGENDA REPORT

TO: Village President Mark Powers & Council Members

FROM: DeMario Johnson, Assistant to the Village Manager

DATE: October 9, 2020

RE: Public Hearing Notice- Downtown Development Authority 7th Amendment

Background:

The Downtown Development Authority has adopted a motion, recommending that the Village council amend the current Downtown Development Authority plan and Tax Incremental Financing plan. The new *Seventh Amendment* will not only add projects to the current plan but will extend the duration of the Downtown Development Authority for an additional 20 years, ensuring that future projects are completed.

Public Hearing Notice:

A public hearing regarding this matter has been scheduled for the **October 19, 2020** Village Council Meeting. This meeting has been added to the Council's agenda.

Publishing Requirements:

The amendment adoption process requires that the following occurs:

- A mailing to all property owners within the Downtown Development Authority, at least 20 days but not more than 40 days prior to the hearing date. (**September 25, 2020**)
- Published twice in the local newspaper at least 20 days but not more than 40 days prior to the hearing date. (**September 26, 2020 and September 29, 2020**)
- A mailing to each taxing jurisdiction that is, or would be, subject to capture of the tax increment financing plan for the District, at least 20 days prior to the hearing date. (**September 28, 2020**)
- A posting in 20 conspicuous and public places in the proposed expanded district, at least 20 days prior to the hearing date. (**September 28, 2020**)

All publishing requirements have successfully been finalized.

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Chris Burns, Village Manager

DATE: October 6, 2020

RE: Tanglefoot Park Redevelopment

Background: A focus group has been working with Progressive AE since January 2020 on a proposed plan for the redevelopment of Tanglefoot Park. Due to Covid, the design phase slowed slightly in March, but the focus group met virtually in order to keep the process moving along. The focus group was comprised of the following individuals.

Chris Burns – Resident/Village Manager

David Dye – Resident/Architect

Joy Gaash - Chamber President/Farmer's Market Representative

Jess Garrison – Resident/Realtor

Michelle Hanks – Resident/Council Member/DDA Member/Business Owner x2

Angela Stanford-Butler – DDA Director

Lesley VanLeeuwen-Vega- Resident/DDA Member/Planning Commissioner/Graphic Artist

Samantha Verplank – Resident/Donor

Please keep in mind that the images included in the packet are not 100% accurate (read: they are not architectural drawing, they are conceptual). The next step is to hire a firm to complete the design/site plan to the point where bids can be sought.

Issues & Questions Specified: Should the Village continue moving forward with the redevelopment and bonding processes?

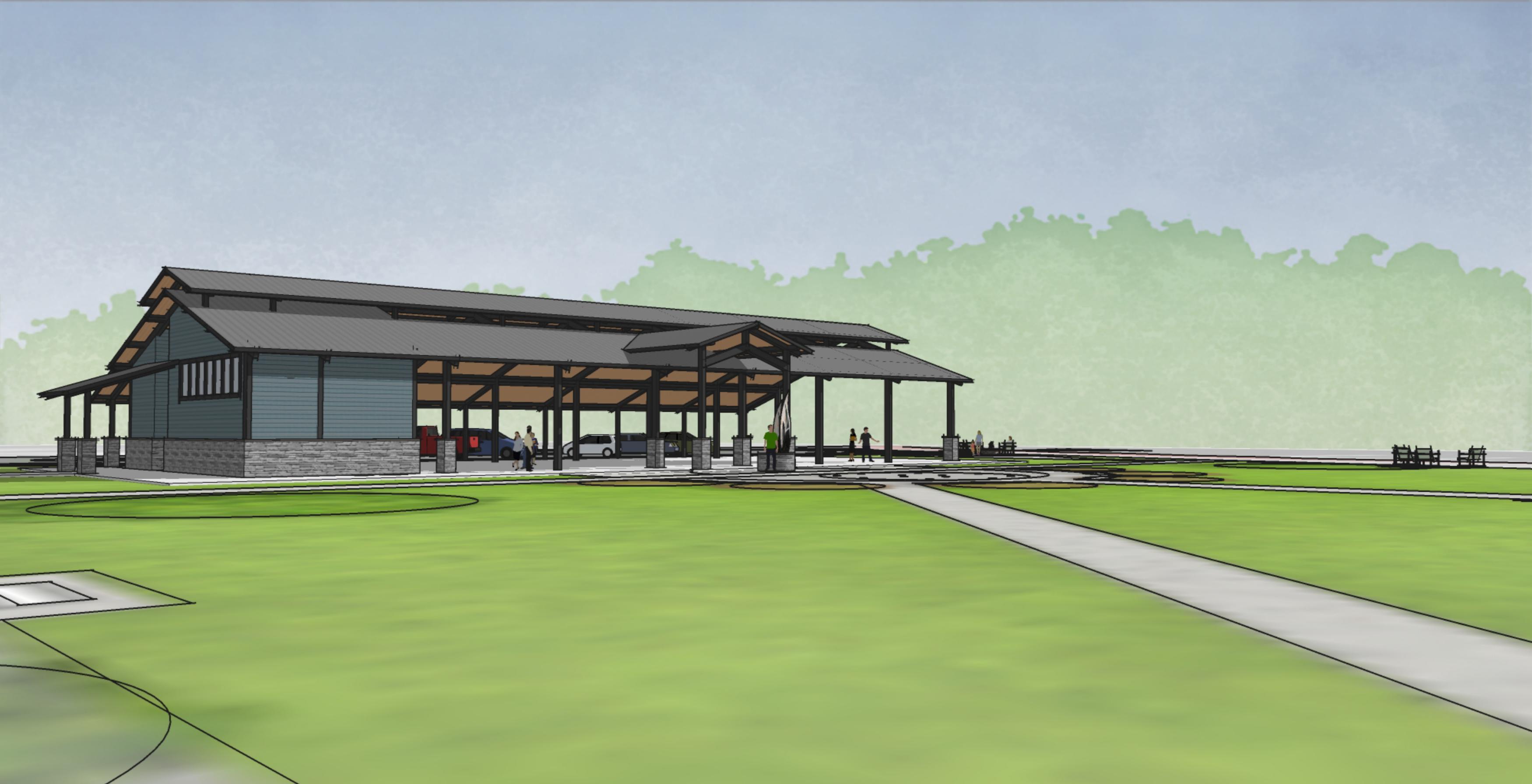
Financial Impact: None to the General Fund. All costs are running through the DDA.

Recommendation: Continue moving forward on the Design & Construction Management of Tanglefoot Park.

Attachments: Conceptual drawings of Tanglefoot Park.

















AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Chris Burns, Village Manager

DATE: October 6, 2020

RE: Native Landscape Education

Background: Several years ago, Council approved the conversion of some public landscape beds to Michigan Natives. Due to all-volunteer efforts, a number of beds have been converted to native plantings. However, with the onset of Covid and the aging of volunteers, we saw a decrease in bed maintenance in 2020 and a significant increase in citizen complaints. Staff does not have the skillset or bandwidth to adequately tend every garden in the Village, nor do we have the desire to continually educate the public on the difference between a weed and a Michigan Native. After a lengthy conversation with Pam Blough, it seems as though there is a balance that needs to be struck between 100% Michigan Natives (which still require water and attention) versus the manicured English garden look.



The Adopt-a-Garden torch has been passed from Darcy Dye to Robert Lopez & DeMario Johnson, who will organize volunteers moving forward. However, it became readily apparent this summer that the Village cannot solely rely on volunteers to tend to public spaces.

Issues & Questions Specified:

Should the Village enlist the help of a professional Landscape Architect in order to address the ongoing improvements to the public planting areas?

What should happen with the gardens that are located within park areas (i.e. Lakeside Trail & Whistle Stop Playground) in the future?

Alternatives:

- A. Do nothing and just address the complaints as they arise.
- B. Continue to work towards educating the public and Village staff on the importance of Michigan Natives.

- C. Work with volunteers and DPW staff to ensure spaces continue to thrive, regardless of weather, pandemics and leadership changes.

Financial Impact:

An amount not to exceed \$2,000 for Pam Blough to develop a plan work with boards, committees, volunteers and citizens on how to effectively and successfully manage public planting areas.

Recommendation:

The Parks & Recreation Board considered this proposal at their September meeting. They recommend approval of the expenditure and execution of the contract.

Attachments:

PM Blough proposal

September 3, 2020

Ms. Chris Burns
Village Manager
Village of Spring Lake
102 W. Savidge Street
Spring Lake, MI 49456

RE: Proposal for Native Landscape Information and Joint Meeting

Dear Ms. Burns,

In follow up to our conversation regarding Native Landscape Plantings we have prepared this proposal to assist the Village with understanding the existing ordinances and community desires regarding Native Landscapes. The discussion includes understanding and comparing native, natural, and horticultural plantings which can be implemented in a variety ways and combinations. Understanding these terms, the plant genetics, variety of uses and desired visual outcomes can greatly help in determining the landscape vision for the community.

A community's landscape ordinance directly affects the overall appearance and beauty of the business district, entry corridors, neighborhoods, and industrial areas setting the tone and overall quality of life. As development takes place, the landscape ordinance puts into place the green space and the vegetative structure around the developments. Without these, the urban landscape can resemble barren asphalt plains, concrete surfaces, and cold facades that are not welcoming or community focused. Planned development, one parcel at a time joins the community together, creating the fabric and welcoming visual impact so much more desired. The landscape ordinances within the Zoning Ordinance is an important part of creating this sense of place within the Community.

This proposal will provide our services to review the Village's existing landscaping ordinance as well as review areas of implementation. and provide examples, education, and answer questions through the following services.

1. Conduct an audit of the Village's Landscape Ordinance and provide a report as to the included elements, strengths, and weaknesses of the ordinance, and insights as to information that might provide the opportunity for a better plan review document.
2. Provide additional insights of elements or options that the Village might want to consider to improve and/or strengthen the ordinance or basic operations. This will bring some new ideas to consider at this time, not the actual wording or whether or not to adopt these ideas, but rather, what can be the impacts of the Landscaping Ordinance.
3. Provide a focus on understanding the differences between natural, native, and horticultural plantings and various levels of maintenance.
4. Prepare written report and PDF presentation for meeting.

5. Discuss with staff additional information that may be relevant to the discussion for added day to day insights and to review materials prior to meeting.
6. Attend a joint meeting with the Village of Spring Lake invited staff, boards, councils, etc. to present a report and presentation of the findings and insights. Participate in the meeting discussion. Meeting date to be determined.

The proposed fee for these services is a not to exceed fee of \$2,000.00. This fee will be invoiced monthly based on the services provided during the previous month. This fee includes all time, materials, and expenses. Any fee not utilized over the course of the project will not be invoiced to the Village. Additional services can be added by the Village on an hourly basis.

We appreciate this opportunity to further serve the Village of Spring Lake. Please feel free to contact us with any questions in order that we can modify this proposal to best serve your intentions.

Sincerely,

PM Blough, Inc.



Pamela Blough, PLA, FASLA
President & Principal Landscape Architect

Approved to Proceed:

Christine Burns, Village Manager
Village of Spring Lake

AGENDA REPORT

TO: Village President Mark Powers & Village Council Members

FROM: Chris Burns, Village Manager

DATE: October 6, 2020

RE: Communications

The following communications were received or sent over the past month:

- Complaint (Roberts)
- Violation (203 S. Cutler)

12:46



Laurie Roberts



Laurie Roberts

Lives in Nunica, Michigan

D & W Pharmacy CPT

Went to Spring Lake High School

MON 4:23 PM

Hi Laurie! I wanted to reach out to you regarding something you posted about me on Facebook that has me scratching my head. I'm not sure that we know each other, but I was hoping you could enlighten me as to how we know each other and what it was that I allegedly did that was illegal? I take these accusations very seriously and if there is a wrong I need to right, I would love that opportunity. Thanks and have a great day. Fondly, Chris Burns



Aa





Spring Lake Fire Department

106 N. Fruitport Rd
Spring Lake, MI 49456
Phone: 616.215.1590

Dave Hudson
Fire Inspector
dhudson@springlaketwp.org

Date: 10/1/2020

TO: 3RB, LLC
c/o Robert Shaver, Rhoades McKee
55 Campau Ave. NW, Suite 300
Grand Rapids, MI 49503

CC: Christine Burns, Spring Lake Village Manager
Crystal Morgan, Attorney

RE: 203 Cutler St., Spring Lake, MI 49456

Dear 3RB, LLC:

This is a follow-up to the notices issued to you on November 8, 2018 and May 23, 2019, and the multiple related communications from the Village of Spring Lake and the Spring Lake Fire Department (collectively, the "Village"), including through its attorney, that have followed. You were previously notified on multiple occasions that you could not lawfully store any boats at 203 S. Cutler St. ("Property") until the required fire protection systems were installed, approved, and operational. You were also previously informed that any violations would result in an enforcement action in which the Village will seek a court order requiring removal of any boats from the Property.

The Village is aware that in addition to the required firewall you are in the process of installing the fire suppression and alarm systems necessary to conduct indoor boat storage at the Property, although you have not yet obtained all necessary permits for the installation and operation of such systems. The status of your project and anticipated completion date remains unclear to the Village.

The Village relied on your representations the Property would be brought into compliance before Fall 2020 and, if not, no boats would be stored at the Property. Today, I observed several boats and at least one recreational vehicle being stored indoors at the Property, as shown below:



Serving the Township and Village of Spring Lake



Based on my observations, I find that the Property remains in violation of the International Fire Code, 2015 ed., as indoor boat storage (or any Group S-1 storage occupancy) cannot be conducted at the Property without the necessary fire protection system, including an automatic sprinkler system, being installed, approved, and operational. See the previous notices issued to you and IFC § 903.2.9.

This is a continuing violation and renders the Property unsafe due to the fire hazards presented by the unlawful indoor storage.

Time is of the essence given the conclusion of the boating season and the desire to remedy this violation before more boats are brought to the Property thereby increasing the potential costs to you or to the Village (which would be chargeable to you) in removing and relocating the boats. In addition, it is imperative that the building and the components of the fire protection systems are accessible for installation, inspection, and any necessary modifications or repairs before any boats or other items requiring sprinkling are brought into the building.

The Property will be reinspected on or after October 6, 2020. Per Section 109 of the International Fire Code (“IFC”), if the violation is not remedied, the Village will institute the appropriate legal proceedings to restrain, correct or abate the violation, including in this case **to require removal of all boats and other items being stored unlawfully inside the building, and to prevent any further indoor storage of those items until such time that the required fire protection systems are installed and operational and you have complied with all other applicable code requirements.** The Village may also seek fines, costs, and other remedies permitted by law, including but not limited to an order prohibiting any business conduct or occupancy causing or contributing to this violation, as set forth in Section 109 of the IFC. Please note that the owner and any agent, operator, or occupant responsible for the violation are required to comply with this notice.

Your immediate cooperation is appreciated.

If you have any questions please contact my office.

Dave Hudson, Fire Inspector
Spring Lake Fire Department

Village of Spring Lake
Draft Council Work Session Minutes
September 14, 2020
7:00 p.m.
Dial-in number: (408) 650-3123
Access code: 636-241-885
Spring Lake, Michigan

President **Powers** called the meeting to order at 7:02 p.m.

- 1. Planning Commission Appointment** – Manager **Burns** explained that applications for the open Planning Commission seat had been received from Jess Garrison and Stewart Johnson. **Burns** said that Johnson had served on the Planning Commission for a couple of years and had resigned in 2014 due to family obligations and would now like to be considered for the empty seat and had indicated he would attend the meeting this evening but had not yet joined the meeting.

President **Powers** interviewed applicant Jess Garrison.

- 2. 109 S. Jackson Proposal (Brandon Brown)** – **Burns** introduced Brandon Brown's business partner Eric Wolf, and architect Bradley Boyer, sharing their site plan for the property. Eric Wolf gave an overview of the site plan for a proposed property swap. Bradley Boyer explained their parking concept. **Duer** asked if the property swap, in size, would be apples to apples. Boyer said the existing property is 53 x 53 and the proposed swap would be 80 x 130. **Council** discussed the property swap and requested **Burns** obtain an opinion of value on both properties to ensure that the swap would be a zero-sum game when it was all said and done.
- 3. Public Hearing, 7th Amendment to the DDA (DeMario Johnson)** – **Johnson** explained that on August 11th the DDA adopted a motion recommending that Council amend the current DDA Plan which included the Tax Incremental Financing Plan. **Johnson** said the 7th Amendment would not only add potential projects to the current plan but it would also extend the life of the DDA District another 20 years, which was set to expire in 2022, ensuring that future projects, including Tanglefoot Park redevelopment, would be complete. **Council** agreed to move forward with the 7th Amendment.
- 4. Barber School Emergency Generator (Wally Delamater)** – **Delamater** explained that it had been determined last year that a new generator was needed for Barber School and that 3 quotes for 2 different types had been received. **Delamater** said that the water-cooled generator was their best choice and estimated to last 20 to 30 years. **Council** agreed that a generator at Barber School was needed and this item could be added to the Consent Agenda.

5. **Digital Reader Board @ Plantenga's (Angela Stanford-Butler) – Stanford-Butler** explained that the DDA had reviewed a couple options for a digital reader board and recommended Council consider a 60% digital/40% static design, which would need variance since the Zoning Ordinance allowed 50%/50%. **Council** agreed on the 60%/40% design which could be added to the Consent Agenda.
6. **Spring Lake Sparkle (Angela Stanford-Butler) – Stanford-Butler** gave an overview of the Spring Lake Sparkle event and introduced Brant Raterink who presented his lighting design ideas and planned events that would kick off on the Friday after Thanksgiving and continue through Christmas. Raterink said that along with all the light installations and light shows some of the events they were hoping to have included a polar express train, wreath and Christmas tree sales, popup/flash mob music experiences and food and beverage tents. Raterink explained that he was working with Lilley Cares and their goal was a 5-year vision adding to Spring Lake Sparkle each year and they already had ideas to add next year. **Stanford-Butler** explained that she would be representing the DDA and the Village would be hosting this event, but Lilley Cares would be doing the fundraising. Robert Lopez shared the fundraising events that were coming up. **Council** agreed they were looking forward to these events and were very happy to support them.
7. **Street Light Request, 704 E. Savidge – Burns** reported that Stonegate Condo Association made this request because the entrance to their drive was very dark. **Burns** said that the initial cost would be \$100 to install an LED light. **Council** agreed this item could be placed on the Consent Agenda
8. **Historic Conservation Committee Request (Mark Miller) – Miller** explained that they had raised more funds for the Sesquicentennial events than they needed so they were asking permission from Council to apply the extra funds to a new Historic Designation book. **Miller** said that Sherron Collins would also be talking to the donors to make sure they don't mind using the funds for another use. **Council** agreed they did not mind if the Historic Conservation Committee used their funds in another way.
9. **Trick or Treat Hours – Burns** shared that residents had been asking if Halloween was being canceled but since Halloween was not a Village holiday, residents could celebrate however they were comfortable. **Burns** said there would not be downtown Trick or Treating for the businesses, but residential Trick or Treating hours were set for 6 p.m. to 8 p.m.

10. Communications

- **Complaint**

- Backyard Chicken Spreadsheet – **Burns** shared that the person that had requested additional language to the Backyard Chicken Ordinance had moved out of the Village, so her recommendation was that they revisit this in the spring.
- Complaint – Double Utility Poles – **Burns** reported that she had given both AT&T and Charter a deadline to get their lines moved from the old to the new poles so that Consumers can remove the extra poles.
- Complaint – Handrich (water meter)
- Complaint – Mitchell (irrigation @105 W. Exchange)
- Complaint – Patterson
- Complaint – Poel (invasive species)
- Complaint – Rokos (Jackson Street visibility)
- Complaint – Stuhan (Flags)
- Complaint - Entin (sewer lateral @ 212 Monarch)
- Short-term Rental Violation – Gelbard – **Burns** reported that the Short-Term Rental Ordinance did not have any penalties included for violations so that was being looked into and would be brought to Council at a later date.
- Website Contact – Ruker

11. Minutes - Minutes of the August 10, 2020 Work Session and August 17, 2020 regular meeting were attached for review.

12. Public Comment –

- Angela **Stanford-Butler** shared information on the Lilley Cares Volunteer Week that included a clean-up event at Marv’s Bark Park on Saturday and a fundraising event to update the park.
- Lee Schuitema, 408 W Exchange, commented that he had concerns with the plan for 109 S Jackson that getting to the post office in the winter looked challenging for elderly. Schuitema also said he was enthused about the Sparkle events.
- Council Member Hanks shared that the mural on Seven Steps Up was finished and a ribbon cutting ceremony would be held on September 29, 2020 at 5:30p.m.

13. Adjournment: There being no further business, Village Council adjourned the meeting at 8:20 p.m.

Mark Powers, Village President

Maryann Fonkert, Deputy Clerk

DRAFT MINUTES
Monday, September 21, 2020
7:00 P.M., Barber School
Dial-in number: (571) 317-3112
Access code: 828-848-869



Pursuant to Executive Order No. 2020 – 129, the Village of Spring Lake will conduct its business virtually to mitigate the spread of COVID-19.

1. Call to Order

President **Powers** called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Roll Call

Present: Duer, Hanks, Miller, Petrus, Powers, TePastte, Van Strate.

Absent: None

4. Approval of the Agenda

Motion by **TePastte**, second from **Hanks**, to approve the agenda as presented.

Yes: 7 No: 0

5. 7:04 p.m. Consent Agenda

- A. Approved the payment of the bills (checks numbered 61321 to 61371 and electronic payments numbered 141 to 146) in the amount of \$493,282.37.
- B. Approved the minutes for the August 10, 2020 work session and the August 17, 2020 regular Council meeting.
- C. Approved the purchase of an emergency generator for Barber School from Wolverine Power for an amount not to exceed \$10,770.00.
- D. Approved the purchase a digital reader board from Advanced Signs to replace the sign at Plantenga's based on a recommendation from the DDA.
- E. Approved Resolution 2020 – 19 a Resolution to amend the Consumers Energy street light contract to install a new streetlight at 704 E. Savidge.
- F. Approved the Historic Conservation Commission's request to use excess funds

raised for the Sesquicentennial to update their Historic Homes & Landmarks brochure.

G. Approved Halloween residential trick-or-treat hours for 6:00 p.m. until 8:00 p.m.

Motion by **TePastte**, second from **Hanks**, to approve the Consent Agenda as presented.

Yes: 7 No: 0

6. General Business

A. Introduction of Interim Fire Chief John Stalzer

Subject: John Stalzer has been named the Interim Fire Chief for Spring Lake Fire Department.

Interim Fire Chief John Stalzer introduced himself and shared the monthly fire department report with Council.

B. Appointment of Planning Commissioner

Subject: A vacancy exists on the Planning Commission, with a term expiring 11/2021. Two applications were received and both candidates were invited to attend the Council Work Session. Once candidate, Jess Garrison, attended the meeting and was interviewed by Council.

Council had no more discussion on this item.

Motion by **TePastte**, second from **Hanks**, to appoint Jess Garrison as a Planning Commission member with a term expiring 11/2021.

Yes: 7 No: 0

C. Amendment to the Spring Lake Development Plan of the Downtown Development Authority and Designate a Public Hearing Date.

Subject: Due to the upcoming expiration date of the Downtown Development Authority, the DDA is recommending that the Village council amend the current Downtown Development Authority Plan and Tax Increment Finance Plan. The new Seventh Amendment will not only add projects to the current plan but will extend the duration of the Downtown Development Authority for an additional 20 years, ensuring that future projects are completed. A date of October 19, 2020 is set for a public hearing on the adoption of a proposed ordinance.

Burns explained that a Public Hearing had been planned for this meeting, but

earlier in the week, it was realized that a Resolution of intent, stating that a Public Hearing would be held, needed to be adopted first and then the Public Hearing would be held at the October meeting.

Motion by **TePastte**, second from **Hanks**, to adopt Resolution 2020-18, a resolution of intent to amend the Spring Lake Development Plan of the Downtown Development Authority and Designate a Public Hearing Date.

Yes: 7 No: 0

7. Department Reports

- A. Village Manager**
- B. Assistant to the Manager**
- C. Clerk/Treasurer/Finance Director**
- D. DDA**
- E. OCSO**
- F. Fire**
- G. DPW**
- H. Building/Planning/Zoning**
- I. Water**
- J. Sewer**
- K. Minutes from Various Board & Committees**
 - 1. Planning Commission (07/28/20)
 - 2. DDA (08/11/20)
 - 3. Parks & Recreation (08/03/20)
 - 4. Historic Conservation Committee (08/24/20)

8. Old Business and Reports by the Village Council – No old business

9. New Business and Reports by Village Council – No new business

10. Status Report: Village Attorney – No additions

11. Statement of Citizens

Christine Hunt 214 W Exchange, stated that she and neighbors had been to Village Hall on more than one occasion to look at the 7th Amendment, but it was not there. **Stanford-Butler** responded that she and Johnson had spent 10 to 15 minutes with Ms. Hunt and her neighbor explaining the 7th Amendment and that Ms. Hunt had looked through the plan. Ms. Hunt said she would come back to Village Hall and look at it again.

Jonathon Mitchell, 110 W Exchange, spoke regarding items in the Village that he was unhappy with.

12. Adjournment

Motion by **Van Strate**, second from **Hanks**, Village Council adjourned the meeting at 7:25 p.m.

Yes: 7

No: 0

Mark Powers, Village President

Maryann Fonkert, Deputy Clerk