

**MASTER AGREEMENT BETWEEN
TOWN OF GROTON, CONNECTICUT AND
Consultant Name FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2018 by and between the Town of Groton, Connecticut, a Connecticut municipal corporation with its Town Hall located at 45 Fort Hill Road, Groton, CT 06340 hereinafter called the Town, and **Consultant Name**, a [insert type of entity] headquartered in **Location**, hereinafter called the Consultant.

WITNESSETH, in consideration of the mutual promises herein contained, the parties hereto agree that the terms and conditions of this Agreement are, as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 The specific items of work to be performed by the Consultant shall be identified in a written Task Order prepared mutually by the Town and Consultant. The Task Orders shall establish the scope of services as well as payment terms for specific tasks. A blank "Model" Task Order is attached hereto as Exhibit A. Each Task Order shall be authorized by the Director of Public Works for the Town and a duly authorized principal of Consultant. Performance of services without a mutually agreed upon Task Order shall be at Consultant's risk.
- 1.2 Services shall be performed in accordance with the terms of this Agreement and each Task Order. The terms and conditions of this Agreement shall apply, unless otherwise noted, to the work of each Task Order.
- 1.3 Whenever practical, compensation shall be on a fixed fee basis for the defined scope in each Task Order. However, if because of unknown conditions, incomplete scope definition, and/or complexity a fixed fee cannot be established for a specific task, the Consultant shall be compensated on an hourly basis in accordance with the Current Billing Rates fee schedule presented in Exhibit B.
- 1.4 There shall be no guaranteed minimum fee under this Agreement and the Town is under no obligation to assign projects to the Consultant.
- 1.5 The term of this Agreement shall commence upon full execution hereof by all signatories below (the "Effective Date") and shall continue for a four-year period from the Effective Date unless renewed or extended by written supplemental agreement, task order or terminated in accordance with the terms of this Agreement.
- 1.6 For the purposes of this Agreement, the "Project" as referred to hereinafter shall be as defined in the Task Orders or as revised therein.

ARTICLE 2- SERVICES OF THE CONSULTANT

The Consultant will perform the following professional or other related services:

- 2.1 General

- 2.1.1 The Consultant will perform professional services in connection with the Project as hereinafter stated and/or reflected in any task order(s).
- 2.1.2 The Consultant will serve as a professional engineering representative for services for which this Agreement applies and will consult with and advise the Town during the performance of the services. Such services will include, but not be limited to, pre-project planning, estimating, programming, design, bid and construction administration phases of the project delivery process; attendance at meetings, as requested; advice on permits; general and technical advice and assistance, advice on overall project costs and cash flow requirements; assistance in applying for grant/loan payments.
- 2.1.3 Work shall be more specifically defined by Task Order.

2.2 Standard of Care

Consultant's services will be provided by licensed engineers and other professionals and individuals skilled in other technical disciplines, as appropriate. Consultant shall be responsible for the performance of its services as an independent contractor and in a good and workmanlike manner, consistent with: (i) this Agreement and all task orders; (ii) the instructions, guidance and directions provided by the Town to Consultant; (iii) the highest prevailing applicable professional and industry standards; (iv) sound environmental consulting practices; and (v) any applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction over the Project, and as expeditiously as is consistent with the professional skill and care and the orderly progress of the projects. Consultant shall exercise the aforementioned standard of care set forth in this section 2.2 in performing all aspects of Consultant's services. All references in this Agreement or in the Task Orders to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of Consultant or referenced to any similar term shall include the construction knowledge, inference, reliance, awareness, determination, belief, observation and/or recognition attributed to Consultant, and such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and/or recognition that Consultant would have obtained upon the exercise of Consultant aforementioned standard of care as set forth in this section 2.2 Consultant agrees to correct, at its own expense, any services provided under this Agreement or any task order that does not conform to this standard of care.

Consultant shall provide personnel in connection with its services with the licensure, qualifications and experience necessary to perform the various tasks to perform the services. The Town shall have the right to approve and reject personnel, and have removed from a Project any personnel it reasonably considers unsatisfactory, regardless of whether such personnel has already commenced performing services. Consultant shall name and provide resumes and prior assignments of its core staff to be assigned to a Project for review and approval by the Town.

2.3 Instruments of Services

Consultant is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its services including designs, drawings, specifications, reports and other services provided under this Agreement.

Without limitation of other indemnity obligations set forth in this Agreement, and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold the Town, and all of their respective departments, boards, affiliates, officers, agents, servants, employees, representatives, volunteers, successors and assigns (collectively "Indemnitees") harmless from and against any action, claims, liabilities and/or damages brought against any such Indemnitees that is based upon a claim that the Consultant's instruments of service or the Town's permitted use thereof infringes any patent, copyright or uses, intellectual property rights and/or trade secret of any third party ("Infringement"). The Consultant further agrees to pay all sums which may be assessed against the Town which relate to such Infringement. The Town shall provide the Consultant with written notice of any such Infringement claims and/or of any suits commenced or threatened to be commenced against the Town related to same. Consultant's obligations set forth in this section 2.3 shall survive termination and/or full or partial performance of this Agreement, and shall not be limited by applicable insurance.

2.4 Applicable Codes

The Service Instruments will conform to the generally accepted Federal, State and local laws, statutes, ordinances, codes and regulations applicable to the Project at the time of performance.

2.5 Subcontracting

If, in the opinion of the Town, after consultation with the Consultant, any special or subcontracted services are needed to accomplish the tasks at hand, which such services are not customarily provided by the Consultant, then the Town may authorize in writing to Consultant to have such services performed by a subcontractor. Consultant will work with the Town to select a subcontractor that will best suit the needs of the Town. Such subcontracted services will be authorized in advance by the Town in writing and no services will be initiated prior to the approval by the Town representative.

ARTICLE 3 - RESPONSIBILITIES OF THE TOWN

The Town, without cost to the Consultant, will:

- 3.1 Designate in writing, for each Task Order, a person to act as the Town's representative with respect to the work to be performed under the Project, such person to have authority to transmit instructions, receive information and advise the Consultant as to the Town's policies and decisions pertinent to the work covered by the Project.
- 3.2 Provide access to and make all provisions for the Consultant to enter upon public and private lands as required for the Consultant to perform its work under this Agreement.
- 3.3 Place at the disposal of the Consultant all available documentation pertinent to the Project, including previous reports and any other data relative to the Project; provided, there is no warranty or guaranty, express or implied, that the information or conditions indicated by such documents are complete, accurate and/or representative of existing conditions at the Project site. Such documentation is furnished solely for the convenience of Consultant. Consultant waives any claim of any kind or nature, including those for delay, impact, additional compensation, extra cost, extension of time, inaccuracy, misrepresentation, incompleteness resulting from or arising from any such documentation.

- 3.4 Provide manpower and equipment to operate equipment and to disassemble and reassemble equipment as required for evaluations of the existing systems.

ARTICLE 4 – PERIOD OF SERVICE

- 4.1 The Consultant shall proceed with the services under the Project promptly and will diligently and faithfully prosecute the work to completion in accordance with applicable consulting standards subject to any delays due to strikes, action of the elements, act of any government, civil disturbances, or any other cause beyond the reasonable control of the Consultant.
- 4.2 The Consultant shall not be responsible for delays caused by others.

ARTICLE 5- PAYMENTS TO THE CONSULTANT

- 5.1 For the Services performed, the Consultant shall be paid on a fixed fee or hourly rate basis as identified on the Task Order.
- 5.2 For the services performed on a fixed fee basis: said fee to be payable monthly on the basis of estimated completion to date.
- 5.3 For the services performed on an hourly rate basis: said charges will be at the "Current Billing Rates". Said charges to be payable monthly. Current Billing Rates are subject to change on or about January 1 of each calendar year. The "2018 Current Billing Rates" are attached hereto as Exhibit B. Invoices sent pursuant to sections 5.2 or 5.3 shall be sent only once per month unless otherwise requested by the Town, and shall be due and payable within thirty (30) days of receipt; provided, however, if the Town reasonably objects to any portion of an invoice, the Town shall provide written notification to the Consultant of such objection and the basis for such objection within fifteen (15) days of the date of receipt of the invoice, and the Parties immediately shall make every effort to settle the disputed portion of the invoice.
- 5.4 At any time after execution of a Task Order, the Town may request changes in the scope of services required by the Task Order consisting of additions, deletions, and revisions within the general scope of services being performed by Consultant under this Agreement and/or any applicable Work Authorizations. Whenever a change in the scope and/or time for performance of services occurs, or if the Town has notified Consultant of a change, Consultant shall submit to the Town within a reasonable time a written estimate of the changes in cost and/or schedule, with supporting calculations and pricing. Pricing shall be in accordance with the pricing structure of this Agreement.

In addition, if at any time during the term of this contract, the Town should request the Consultant to reduce the scope of services originally agreed upon for any Task Order issued pursuant to this contract, the Consultant shall then reduce said scope of services, as requested, and the Consultant's fees for such project shall be reduced by a fair and equitable amount.

In the event the Town is unable to reach agreement as to whether an adjustment to compensation or extension is warranted and/or the amount or duration thereof, the matter shall be submitted to mediation as provided in Section 6.9 of this Agreement.

- 5.5.1 Compensation for reimbursable expenses, when authorized, shall be calculated as a multiple of 1.0 times the expense incurred. Payment for authorized reimbursable expenses shall be made upon submittal of sufficient and acceptable documentation accompanying the Consultant's monthly invoice.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Litigation and Additional Work

In the event the Consultant is to prepare for or appear in any litigation on behalf of the Town or is to make investigations of reports on matters not covered by this Agreement, or is to perform other services not included herein, additional compensation shall be paid the Consultant as is mutually agreed upon provided Consultant is not a named party to such litigation. Notwithstanding anything herein to the contrary, in the event Consultant caused and/or bears responsibility for the issue, claims and/or participation, the Town shall not be responsible for compensating and/or reimbursing Consultant for such services and/or expenses.

6.2 Insurance

The Consultant will secure and maintain insurance meeting the Town's requirements as summarized in Exhibit C. However, the Town reserves the right to increase the coverage requirements on an individual Task Order basis, if there are particular liability exposures that would warrant increased limits. In this event, the Consultant may elect to provide "project insurance" specific to that Task Order, or to increase the required categories of coverage on the Consultant's regular insurance policy.

6.3 Save Harmless

In addition to and not in limitation or in lieu of the indemnities set forth in section 2.3 hereof, and to the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless the Indemnitees (as defined in section 2.3 hereof) from and against suits, sums, liabilities, judgments, fines, penalties, causes of action, damages, losses and expenses (including but not limited to additional and/or extra construction expenses and/or costs, reasonable attorney's fees and expert fees), and all other claims whatsoever, foreseen or unforeseen, whether arising in tort, contract or otherwise, brought and/or asserted by any third party (collectively "Claims"), to the extent arising out of, resulting from any negligent act, error or omission in the performance and/or nonperformance of the services of Consultant and/or any subcontractor and/or sub-consultant of Consultant under this Agreement, including but not limited to Claims caused by any violation of applicable Federal, State and/or local law and/or by intentional, reckless and/or negligent acts, misconduct or omissions by and/or Consultant and/or Consultant's subcontractors, sub-consultants and/or anyone directly or indirectly employed by them or anyone whose acts they may be liable. Consultant's obligations set forth in this section 6.3 shall not be limited by fees paid to Consultant under this Agreement and/or by a limitation on amount or type of damages, compensation or benefits payable by or for Consultant, its subcontractors or sub-consultants under worker's compensation acts, disability acts or other employee benefits acts. Consultant's obligations set forth in this section 6.3 shall survive termination and/or full or partial performance of this Agreement, and shall not be limited by applicable insurance, except as defined in this Agreement. Consultant shall not be liable to the extent that any Claims result from the negligent or willful act or omission of the Indemnitees, or by any

other person or entity not acting on Consultant's behalf or under Consultant's right of direction and control.

6.4 Access to Records

The Consultant shall maintain books, records, documents and other material directly pertinent to the performance of the Agreement, in accordance with generally accepted accounting principles and practices consistently applied. The Town shall have access to such books, records, documents and other material for inspection and/or audit. The Consultant shall provide facilities for such access and inspection.

Any and all files, data, records, reports and other information or work product generated in connection with or related to Consultant's Services, shall be retained and stored by Consultant in hard copy and/or electronic form for a period of ten (10) years from the completion of Services or such other period as specified by the Town. If the Town decides to retain said records, it must notify Consultant no later than thirty (30) days prior to the expiration of the period. Any additional expense of retaining documents or transfer of documents to the Town at the end of such ten (10) year period will be at the Town's expense. Provided however, that this provision shall not apply to drafts of plans, specifications, drawings or reports that shall be destroyed immediately upon being superseded in the Project.

6.5 Termination or Suspension of Agreement

6.5.1. Termination for Cause

This Agreement may be terminated by either party subject to the provisions of Article 6.9, Disputes Clause, upon seven (7) business days written notice, should the other party fail substantially to perform in accordance with its terms through no fault of the other, provided, that such other party may offer to cure such failure within such seven (7) business day period, in which event such other party shall have an additional twenty (20) business days in which to effect such cure. In the event of termination, the Consultant shall be paid compensation and reimbursement for Services performed through and including the effective date of such termination for each project task. With respect to termination or suspension pursuant to sections 6.5.1 through 6.5.3 inclusive, no termination or suspension expenses shall be payable to Consultant, nor shall Consultant be entitled to anticipated profit and overhead on services not performed on the Project.

6.5.2. Termination for Convenience.

Either Party may terminate this Agreement and any associated Task Orders for its convenience after giving five (5) days' written notice to the other Party. However, Consultant shall not have the right to terminate this Agreement, without cause, prior to completion by Consultant of all Services required under the Agreement or any outstanding Task Orders. In the event the Town terminates Consultant's services without cause and/or for the Town's convenience, the Town shall be liable to promptly pay Consultant for all work satisfactorily performed through the date of termination.

6.5.3. Suspension.

The Town may, without cause, suspend, delay or disrupt the Project in whole or in part for

such period of time as the Town may determine upon providing three (3) days' written notice to Consultant. Upon such suspension, payment shall be made by the Town to Consultant for that portion of its services satisfactorily performed and accepted as of the date of suspension, but no amount shall be paid for termination expenses and/or anticipated profit or overhead on unperformed services. Should the Town reactivate any services, in whole or in part, the Consultant's compensation and/or schedule may be equitably adjusted, as mutually agreed by the parties, for increases in cost or time caused by such suspension, delay or disruption, except to the extent the services would have been suspended, delayed or disrupted by other cause for which Consultant is responsible. The Town may also unilaterally elect to terminate the remaining services during the period of any such suspension by providing written notice to Consultant.

6.6 Ownership of Documents

All plans, drawings, specifications, models, reports and other materials and work product prepared or furnished by Consultant or on its behalf, including such materials and work product as are produced by Consultant's affiliates, subconsultants and subcontractors, pursuant to this Agreement (collectively, the "Instruments of Service") are and shall be the property of the Town, free and clear of any claim or retention of rights thereto by Consultant and its affiliates, subcontractors and/or subconsultants. The Instruments of Service cannot be used by Consultant or its affiliates, subcontractors or consultants for any purpose beyond the scope of this Agreement without prior written consent of the Town. In addition to the immediately preceding sentence, Consultant agrees to obtain, and convey and assign to Town absolutely and exclusively, all intellectual property rights including, but not limited to, copyrights, in and to the Instruments of Service, and Consultant hereby does so grant, convey and assign to the Town absolutely and exclusively such rights that it owns. The Town agrees to allow Consultant the right to use Instruments of Services from this project for marketing purposes.

All Instruments of Service may be used by Town, in whole or in part, for, among other things, the completion of development of the Project and for future renovation, maintenance, repair or replacement of the Project or any portion(s) thereof.

Client shall not modify the Instruments of Service without the prior authorization of Consultant. The Town agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees, subcontractors, affiliates, consultants, and their successors and assigns against any damages, liabilities, claims and costs arising from or in any way related to or connected with the unauthorized modification of the Instruments of Service by the Town without authorization from Consultant.

6.7 Affirmative Action- Equal Opportunity

The Consultant agrees and warrants that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, mental retardation or physical disability, and further agrees to provide the Town with such information requested concerning the employment practices and procedures of the Consultant. The Consultant shall have an active affirmative action program.

6.8 Conflict of Interest Disclaimer

The Consultant represents and warrants to the Town: a) no person or persons other than those which may be named in the Consultant's qualification and proposal, respectively, have any financial or personal interest in the Consultant's performance hereunder; b) that such qualifications and proposal was made without any collusion, communication or consultation with any other person or persons making any proposal for the same work. Consultant shall not perform, or enter into any agreement for, services for any other person, corporation or entity, except with prior written consent of the Town, if the performance of the services could result in a conflict with Consultants obligations under this Agreement. Consultant represents that it has reasonably evaluated potential conflicts and has disclosed to the Town in writing any prior or existing relationships which present, or could appear to present, a conflict with the Services to be performed.

6.9 Disputes Clause

If any dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled through direct discussions by the representatives of the Parties, the Parties agree then to submit the matter to mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission. If a dispute arises between the Town and its architect, construction manager, contractor, owner's representative or any other party with whom the Town has contracted in connection with the Project related to and/or arising out of Consultant's services under this Agreement or breach thereof, and the Town and/or such other contracting party have elected to litigate or arbitrate such dispute, Consultant and the Town agree that the Town, at its election, may cite Consultant into any such dispute and/or join Consultant into any such dispute as a necessary or interested party and/or otherwise consolidate the respective cases between Consultant and Town, and the Town and such other contracting party, so they can simultaneously be addressed in one forum and proceeding. In the event a dispute arise out of or relates to this Agreement, or the breach thereof, which results in litigation and/or other legal proceeding, the prevailing party shall be entitled to reimbursement of its attorney's fees and costs from the non-prevailing party.

6.10 Applicable Law

Unless otherwise specified within the Agreement, this Agreement shall be governed by the laws of the State of Connecticut.

6.11 Extent of Agreement

This Agreement represents the entire and integrated Agreement between the Town and the Consultant. This Agreement may be amended only by written instrument signed by both the Town and the Consultant.

6.12 Severability Provision

If any terms or provisions of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application or such terms or provision to persons or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced

to the fullest extent permitted by law.

6.13 Assignability

This Agreement is binding on the successors and assigns of the Town of Groton and the Consultant. The Agreement may not be assigned in whole or in part to any third parties without the written consent of both the Town and the Consultant.

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

TOWN OF GROTON

CONSULTANT

By: _____
John Burt
Town Manager

By: _____
<NAME>
<TITLE>

By: _____
Cindy R. Landry
Finance Director

By: _____
Gary J. Schneider
Director of Public Works

EXHIBIT A

PROFESSIONAL SERVICES TASK ORDER

Task Order Number: _____

Task Order Date: _____

Subject to the Master Services Agreement between The Town and <Consultant> dated -- 20_, Town hereby authorizes <Consultant> to perform services as specified in this Task Order and in accordance with the above mentioned Agreement.

1. Project Description: (Insert Description)

Town's Project Number: _____

Project Name: _____

Town's Representative: _____

2. Scope of Work: Consultant shall perform its services as described below:

3. Time Schedule: Consultant shall complete its work by:

4. Compensation: Consultant's Compensation authorized under this Task Order, which shall not be exceeded without prior written authorization of Town, is:

\$ _____

5. Special Conditions: This Task Order is subject to the following special provisions:

6. Amendment: This Task Order amends a previously executed Task Order:

Previous Task Order Number: __ Previous Task Order Date: _____

ISSUED BY:

Gary J. Schneider
Director of Public Works
For: Town of Groton

AGREED TO BY:

<NAME>

Title: _____

For: _____

EXHIBIT B

2018 HOURLY BILLING RATES

To Be Populated Upon Selection of a Consultant

BILLING CATEGORY

Staff 1	\$xx.00
Staff 2	\$xx.00
Staff 3	\$xx.00
Staff 4	\$xx.00

**DIRECT CHARGE
SCHEDULE**

Subcontractors/Subconsultants
Staff Mileage
Field Vehicles
Printing/Repro
Black & White
Copy /Print
 Color Copy/Print
 Electrostatic
 Copy/Print Inkjet
 Plotter
 monochrome Color
 Plotting
 Inkjet Mylar

EXHIBIT C

BASE INSURANCE REQUIREMENTS (Subject to change on a Task Order Basis)

Insurance Requirements - CxA

Consultant, at Consultant's expense, shall agree to maintain in force at all times during the contract the following minimum coverages and shall name Town of Groton as an Additional Insured on a primary and non-contributory basis to all policies, except Workers Compensation. All policies should also include a Waiver of Subrogation. The Additional Insured Endorsement shall be written on ISO Form 2010 and 2037 or its equivalent and shall include coverage for Products/Completed Operations after the work is complete. Neither the General Liability Policy nor the Umbrella policy shall have any exclusion or limitation for XCU coverage.

Insurance shall be written with Carriers approved in the State of Connecticut and with a minimum AM Best's Rating of "A-VIII". In addition, all Carriers are subject to approval by Town of Groton.

		(Minimum Limits)
General Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
	Products/Completed Operations Aggregate	\$2,000,000
Auto Liability	Combined Single Limit	
	Each Accident	\$1,000,000
Umbrella	Each Occurrence	\$1,000,000
	Aggregate	\$1,000,000
Professional Liability	Each Occurrence/Aggregate	\$5,000,000

If any policy is written on a "Claims Made" basis, the policy must be continually renewed for a minimum of two (2) years from the completion date of this contract. If the policy is replaced and/or the retroactive date is changed, then the expiring policy must be endorsed to extend the reporting period for claims for the policy in effect during the contract for two (2) years from the completion date.

Workers' Compensation and WC Statutory Limits

Employers' Liability	EL Each Accident	\$1,000,000
	EL Disease Each Employee	\$1,000,000
	EL Disease Policy Limit	\$1,000,000

Original, completed Certificates of Insurance must be presented to Town of Groton Public Works Department prior to contract issuance. Contractor agrees to provide replacement/renewal certificates at least 30 days prior to the expiration date of the policies. Should any of the above described policies be cancelled, limits reduced or coverage altered, 30 days written notice must be given to the Town.

Also "follow form" umbrella coverage over General Liability, Employer's Liability and Auto Liability in the amount listed above.