

ADDENDA A

**PROPOSED CONTRACT
BETWEEN THE TOWN OF CLINTON CT
AND**

THIS CONTRACT, made this ____day of _____, 2019, by and between the Town of Clinton hereinafter designated as the "Town" and, a State of Connecticut , FEID Number....., hereinafter designated as "the CONSULTANT".

WITNESS THAT:

WHEREAS, the TOWN is a municipality with those powers and responsibilities enumerated by State of Connecticut General Statutes: and its Town Charter; and

WHEREAS, the TOWN is empowered to enter into contractual arrangements with public agencies, private corporations or other person, pursuant to State of Connecticut General Statutes: and it's Town Charter; and

WHEREAS, the TOWN has publicly announced its desire to procure professional services and has solicited proposals from qualified firms; and

WHEREAS, the CONSULTANT has responded to the TOWN'S solicitation of proposals and the CONSULTANT is qualified and willing to provide said services; and

WHEREAS, the Town Board of Selectmen have determined that the CONSULTANT can provide professional services to the TOWN in the most cost effective and efficient manner; and

WHEREAS, the TOWN and the CONSULTANT hereby enter into this CONTRACT to establish the legal obligations of the parties; and

WHEREAS, on _XXXXXXXXXX 2019, the Board of Selectmen approved this Agreement with the CONSULTANT for General Engineering Consulting Services.

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the flowing from each to the other do hereby agree as follows:

SECTION 1: STATEMENT OF WORK, SERVICES AND PERFORMANCE:

1.1 The CONSULTANT shall, to the satisfaction of the TOWN, fully and timely provide services outlined by The Director of Public Works, Planning and Zoning Officer (also serves as Inland Wetlands Officer) a member of Planning and Zoning Commission and a Member of the Public Works Commission. The TOWN reserves the right to seek the services of other consultants in work associated with RFP 2019-EC-01 or the recommendations resulting from work performed under RFP 2019-EC-01 This CONTRACT does not in any way whatsoever obligate the TOWN to provide the CONSULTANT with any minimum or guaranteed amount of work or prevent the Town from seeking or using other consultants for designated projects or consultation services.

1.2 In the performance of professional services, the CONSULTANT will use the highest degree of care and skill in performing its services and will have due regard for acceptable planning and engineering standards and principles.

1.3 Where on-going projects are contemplated, before performing any services, the TOWN and CONSULTANT will negotiate necessary scope of work and consultant and enter into a Supplemental Agreement covering such work and compensation. Reference herein to the Agreement will be considered to include any Supplement Agreement.

1.4 Where on-going projects are assigned, the CONSULTANT agrees to provide project schedule progress reports in a format acceptable to the Town and at intervals established by the Town. The Town will be entitled at all times to be advised, at its request, as to the status of work being done by the CONSULTANT and of the details thereof. Coordination will be maintained by the CONSULTANT with representatives of the Town, or of other agencies interested in the project on behalf of the Town. Either party to the Agreement may request and be granted a conference.

1.5 All services will be performed by the CONSULTANT to the satisfaction of the Town of Clinton and its designees The Director of Public Works, Zoning Enforcement Officer (also serves as Inland Wetlands Officer) who will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and the decision upon all claims, questions and disputes will be final and binding upon the parties hereto.

1.6 All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under the Agreement, as well as all data collected, together with summaries and charts derived there from, will be considered works made for hire and will become the property of the Town upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Town at any time during the performance of such services and/or upon completion or termination if the Agreement. Upon delivery to the Town of said document(s), the Town will become the custodian and owner of submitted documents. The CONSULTANT will not copyright any material and products or patent any invention developed under this agreement. The Town will have the right to visit the site for inspection of the work and the products of the CONSULTANT at any time.

1.7 The CONSULTANT agrees that the sub-consultants identified in their submittal and made part of this CONTRACT shall provide services under this CONTRACT. The services of each sub-consultant are a substantial inducement and material consideration for the CONTRACT. In the event any such sub-consultant can no longer provide the services required by the CONTRACT, the CONSULTANT shall immediately notify the TOWN in writing and the TOWN may elect to terminate this CONTRACT without any liability to the CONSULTANT for unfinished work product. The CONSULTANT may propose a replacement for the sub-consultant, subject to the approval of the TOWN. The TOWN, in its judgment, may elect to compensate the CONSULTANT for any unfinished work product, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

1.8 The TOWN may, without invalidating this Agreement, order changes in any task by altering, adding to or deducting from the Consulting Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the CONSULTANT's cost of, or the time required for, the performance of any of the Consulting Services, the CONSULTANT shall so notify the TOWN. If appropriate, an equitable adjustment to the CONSULTANT's compensation may be made, provided that any adjustment must be approved by the Parties in writing.

SECTION 2: FEES FOR SERVICES

2.1 Prior to performing any Consulting Services in connection with the Project, the CONSULTANT shall obtain from the TOWN a written authorization to proceed. The CONSULTANT shall advise the TOWN in writing immediately of any anticipated change in any task, fee schedule, or time schedule, and shall obtain the TOWN's written consent to the change prior to making any changes. In no event shall the TOWN's consent be construed to relieve the CONSULTANT from its duty to render all Consulting Services in accordance with applicable laws and accepted industry standards.

2.2 Unless otherwise agreed, the CONSULTANT shall submit monthly invoices for compensation, for services completed to date of the invoice and shall submit with such invoice a detailed breakdown, indicating each task performed, person performing the work and time allocated to each task. This breakdown shall be supplied for all work performed by CONSULTANT.

2.3 TOWN shall pay CONSULTANT within 45 days of receipt of CONSULTANT's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement. Payment may be withheld for failure of CONSULTANT to comply with a term, condition, or requirement of this Agreement.

2.4 When the above reasons for withholding payment are removed or resolved in a manner satisfactory to TOWN, payment may be made. The amount withheld shall not be subject to payment of interest by the Town.

2.5 All hourly fees will apply for the term of contract (five years subject to terms of 10.1 General Terms and Conditions

2.6 CONSULTANT shall be entitled to reimbursement for actual out-of-pocket expenses for copying, telephone, faxes, courier services and other approved reimbursable(s), with no multiplier. Out of Pocket expenses must be submitted with monthly invoice.

SECTION 3: TERM

3.1 The TERM OF AGREEMENT shall commence on the date the agreement is fully executed by all parties and shall continue in full force and effect unless and until it terminated as provided below.

3.2 The Town anticipates an initial term of **five** (5) years with a base one (1) year term with additional two (2), two year renewables subject to approval by the Town and Proposer. This agreement is valid for five (5) years and any term longer than five years will require Town approval.

SECTION 4: TERMINATION/DEFAULT

4.1 Termination: The Contract may be sooner terminated on the first to occur of the following:

4.1.1 TERMINATION-Without or Without Cause- In the event either the Town or the Proposer shall, with or without cause, at any time give to the other at least 60 days' advance written notice, the Contract shall terminate on the future date specified in such notice. CONSULTANT shall be

entitled to receive compensation for any work completed pursuant to the Agreement to the satisfaction of TOWN up through the date of termination. Under no circumstances shall TOWN make payment for services that have not been performed.

4.1.2 TERMINATION-Transfer of Ownership- This Agreement may be terminated by the TOWN upon five (5) calendar days' written notice if there is a change of more than 50% of the ownership of the Consultant. CONSULTANT shall notify the Town at least ten (10) business days before any such change in ownership of CONSULTANT.

4.1.3 Mutual Agreement: In the event the Town or the Proposer mutually agree in writing, the Contract may be terminated on the terms and date stipulated in the writing.

4.1.4 Termination by Default: In the event either Party shall give notice to the other that the other Party has substantially defaulted in the performance of any obligation under the Contract, and the default has not been cured within 10 business days following the receipt of such notice by the Party alleged to be in default, the Party giving notice shall have the right to terminate the Contract immediately, upon the close of Town business, or at 5p.m., Eastern Standard Time on the 10th business day after notice was received.

4.1.5 Termination for Insolvency, Bankruptcy, Assignment to Creditors: The Town may, without further notice, terminate this Agreement immediately if the Proposer (i) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (ii) becomes insolvent or a receiver is appointed due to the insolvency; or (iii) makes a general assignments or sale of its assets or business for the benefit of creditors.

4.1.6 Funding Out: The Town shall have the right to cancel this contract at the end of the then current fiscal period if funds are not allotted for the next fiscal year to continue this contract. The Town may effect such cancellation by giving the Proposer written notice of its intention to cancel not less than thirty (30) days prior to the end of the then current fiscal period, stating its reasons for cancellation. Upon cancellation of this contract as provided in this section 10.2 E, the Town shall not be responsible for the payment of any services received which occur after the end of the current contract period.

4.1.7 Upon termination, CONSULTANT shall turn over to TOWN all finished or unfinished work product, documents, data, studies, surveys sketches, plans and reports in its possession. It shall also reasonably assist the TOWN and any replacement consultant in the transition, including taking any acts necessary to allow the transfer of the GIS system.

4.2 In the event CONSULTANT fails to comply with the provision of this Agreement, the TOWN may declare the CONSULTANT in default. Compensation will only be paid for any completed professional services minus any damages pursuant to

4.3 In the event payment has been made for such professional services not completed, the CONSULTANT shall return these sums to the TOWN within ten (10) days after notice that these sums are due. Nothing in this Article shall limit the TOWN's right to terminate, at any time pursuant to Section 3 above, and its right for damages under Section 4.

4.4 In the Event of Default by the CONSULTANT, it shall be liable for all damages resulting from the default.

4.5 The TOWN may take advantage of each and every remedy existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised

from time to time as often and in such order as may be deemed expedient by the TOWN. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy.

SECTION 5: HOURS OF OPERATION

5.1 CONSULTANT shall maintain fully staffed business hours equal to, but not less than the Town's business hours of 9:00 AM to 4:00 PM, Monday through Friday, with the exception of official holidays as designated by the Town of Clinton.

SECTION 6: POLICY OF NON-DISCRIMINATION

6.1 CONSULTANT shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONSULTANT shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as basis for service delivery.

The CONSULTANT shall provide equal opportunity for Subcontractors to participate in subconsulting opportunities. The CONSULTANT understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the CONSULTANT and any Subcontractors, vendors and suppliers.

SECTION 7: DRUG FREE WORKPLACE

7.1 CONSULTANT shall maintain a Drug Free Workplace.

SECTION 8: INDEPENDENT CONTRACTOR

8.1 CONSULTANT is an independent contractor under this Agreement. Personal services provided by CONSULTANT shall be by employees of CONSULTANT and subject to supervision by CONSULTANT, and not as officers or employees of TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT.

SECTION 9: ASSIGNMENT

9.1 Neither this Agreement, nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the First Selectman

SECTION 10: CONFLICTS OF INTEREST

10.1 CONSULTANT shall not perform any services for any private sector clients (including but not limited to, developers, corporations, real estate investor, etc.) on projects within the jurisdictional boundaries of the TOWN.

10.2 CONSULTANT shall not perform any services for any municipality that is contiguous to the TOWN, unless approved by the TOWN.

SECTION 11: INDEMNIFICATION

11.1 CONSULTANT shall indemnify, defend and hold harmless TOWN, its officials, agents, employees, and volunteers from and against any and all claims, liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims resulting or, arising out of any acts, of CONSULTANT, its officials, agents, employees or subcontractors in the performance of the services of CONSULTANT under this Agreement.

11.2 CONSULTANT acknowledges that the agreed fees payable to CONSULTANT includes specific consideration under this Agreement for this hold harmless and indemnification provision.

11.3 CONSULTANT shall indemnify TOWN for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement by CONSULTANT of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Contract. CONSULTANT will defend and/or settle at its own expense any action brought against the TOWN to the extent that is based on a claim that products or services furnished to TOWN by CONSULTANT pursuant to this Contract, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim.

SECTION 12: INSURANCE

12.1 The CONSULTANT shall not commence work under this contract until CONSULTANT has obtained all insurance required under this paragraph and such insurance has been approved by the Town or designee, nor shall the CONSULTANT allow any Subcontractor to commence work on its sub-contract until all similar such insurance required of the subcontractor has been obtained and approved.

12.2 CONSULTANT shall at all times carry professional liability insurance, workers' compensation insurance, comprehensive general liability insurance, and automotive liability insurance with policy limits and deductibles for each coverage at amounts and forms approved by the Town, with such coverage's specifying amount of per occurrence, single limit, for property damage and bodily injury, including death, except that the dollar amount of workers compensation coverage shall be as provided by Connecticut General Statutes. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of three (3) years from the date of execution of this Agreement. Upon request of TOWN, the CONSULTANT shall make available for inspection copies of any claims filed or made against any policy during the policy term. CONSULTANT shall additionally notify TOWN, in writing, within thirty (30) calendar days, of any claims filed or made against any policy in excess of \$250,000 during the policy term. The Town may require any other insurance coverage it deems necessary depending upon the exposures.

12.3 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town or designee prior to the commencement of this contract. These Certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business in the State of Connecticut with financial ratings acceptable to the TOWN. The TOWN shall be named as an additional insured on all insurance policies.

12.4 In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant this contract unless all required insurance remains in full force and effect.

SECTION 13: REPRESENTATIVE OF TOWN AND CONSULTANT

13.1 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Director of Public Works and/or the Planning and Zoning Officer the person(s) to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. CONSULTANT designates **XXXXXXXXXX** as the representative of CONSULTANT to whom all communications pertaining to the day-to-day action of this Agreement shall be addressed.

13.2 The Town shall have the right to require CONSULTANT to change any personnel working on TOWN projects upon providing CONSULTANT with a ten (10) day written notice. Such requests from Town shall not be made unreasonably or arbitrarily.

SECTION 14. COSTS AND ATTORNEY'S FEES

14.1 If either TOWN or CONSULTANT is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including by not limited to, costs and reasonable attorney's fees.

SECTION 15: NOTICES

15.1 Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered or by facsimile transmission with proof of receipt, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the parties designate the following as the respective places for giving of notice.

FOR CONSULTANT:

FOR TOWN:

Christin Goupil
Town of Clinton
54 East Main Street
Clinton CT. 06413
Phone: 860-669-9333

With Copy to:

John Bennet
Town Attorney
30 Plains Road
P.O. Box 959
Essex, Ct. 06426
Phone; 860-767-9055

SECTION 17: RIGHTS IN DATA; COPYRIGHT; DISCLOSURE

17.1 Definition. The term "Data" as used in this Agreement includes written reports, studies, drawings, or other graphic, electronic, chemical or mechanical representation.

17.2 Rights in Data. Drawings, specification, designs, models, photographs, computer CADD discs, reports, surveys and other data developed or provided in connection with this Agreement shall be the property of TOWN and TOWN shall have the full right to use such data for any official purpose permitted under **law**, including making it available to the general public. Such use shall be without any additional payment to or approval by CONSULTANT. TOWN shall have unrestricted authority to publish, disclose distribute and otherwise use, in whole or in part, any data developed or prepared under this Agreement.

17.3 Copyrights. No data developed and or prepared in whole or in part under this Agreement shall be subject to copyright in the United States of America or other country, except to the extent such copyright protection is available for the Town. Consultant shall not include in the data any copyrighted matter unless CONSULTANT obtains the written approval of the Town Manager and provides said Town Manager with written permission of the copyright owner for CONSULTANT to use such copyrighted matter in the manner provided herein.

17.4 If this Agreement is terminated for any reason prior to completion of the work, the TOWN may, in its discretion, use any design and documents prepared hereunder.

SECTION 18: SUBCONSULTANTS

18.1 Sub consultants, if needed, will be subject to the prior written approval of the First Selectman

SECTION 19: COMPLIANCE WITH LAWS

19.1 CONSULTANT shall fully obey and comply with all laws, ordinances and administrative regulations duly made in accordance therewith, which are or shall become applicable to the services performed under the terms of this Agreement.

SECTION 20: TRUTH-IN NEGOTIATIONS CERTIFICATE

20.1 Signature of this Agreement by CONSULTANT shall serve as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

SECTION 21: OWNERSHIP OF DOCUMENTS

21.1 CONSULTANT understands and agrees that any information, document, report or any other material whatsoever which is given by the TOWN to CONSULTANT or which is otherwise obtained or prepared by CONSULTANT under the terms of this Agreement is and shall at all times remain the property of the TOWN. CONSULTANT agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of the Town Manager, which may be withheld or conditioned by the Town in his/her sole discretion.

SECTION 22: AUDIT AND INSPECTION RIGHTS

22.1 The TOWN may, at reasonable times, and for a period of up to three (3) years following the date of performance of any Services by CONSULTANT under this Agreement, audit, or cause to be audited, those books and records of CONSULTANT that are related to CONSULTANT's performance under this Agreement. CONSULTANT agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.

SECTION 23: WARRANTIES OF CONSULTANT

23.1 The CONSULTANT hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services.

SECTION 24: PUBLIC RECORDS

24.1 CONSULTANT understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN contracts, subject to the provision of law and agrees to allow access by the TOWN and the public to all documents subject to disclosure under applicable law. CONSULTANT's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the TOWN. Should the Town be subject to litigation as a result of the CONSULTANTS's refusal to timely provide public records or to provide them at all, the CONSULTANT agrees to hold harmless and indemnify the Town from any damages, including attorney fees and costs associated with the litigation.

SECTION 25: NO CONTINGENT FEES

25.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement, For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 26: GOVERNING LAW; CONSENT TO JURISDICTION

26.1 This Agreement shall be construed in accordance with, and governed by, the laws of the State of Connecticut. The parties submit to the jurisdiction of any Connecticut State or federal court in any action or proceeding arising out of, or relating to, this Agreement. Depending on the applicable jurisdiction, venue of any action to enforce this Agreement shall be in the Superior Court for the Judicial District of Middlesex at Middletown or in the U.S. District Court for the District of Connecticut

SECTION 27: HEADINGS

27.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 28: SEVERABILITY

28.1 If any provision of this Agreement or the application thereof to any person or situation shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 29: CONFLICT

29.1 In the event of a conflict between the terms of this Agreement and any terms or conditions in any attached documents, the terms in this Agreement shall prevail.

SECTION 30: BINDING AUTHORITY

30.1 Each person signing this Agreement on behalf of Consultant individually warrants that he or she has full legal power to execute this Agreement on behalf of the Consultant, and to bind and obligate Consultant with respect to all provisions contained in this Agreement.

SECTION 31: SURVIVAL OF PROVISIONS

31.1 Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforced by either party.

SECTION 32: ENTIRE AGREEMENT

32.1 This Agreement and its attachments constitute the entire agreement between CONSULTANT and TOWN, and all negotiations and oral understandings between the parties are merged herein.

32.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 33: WAIVER

33.1 The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

ATTACH AS "**Exhibit A**" ---Consultant Organizational Chart

ATTACH AS "**Exhibit B**" ---Basis for Compensation Rates and Schedules

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF CLINTON CT AND _____
FOR GENERAL ENGINEERING CONSULTING SERVICES.**

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement on the respective dates under each signature: Town of Clinton through its Board of Selectman, signing by and through its First Selectman, authorized to execute same by The Board of Selectman action on the _____ day of _____, 2019 : and _____ authorized to execute same.

TOWN of CLINTON, through its
Board of Selectman

ATTEST:

By: _____
Christine Goupil, First Selectman

, Town Clerk

Approved as form and legality

(TOWN SEAL)

By: _____
John Bennet, Town Attorney
_____ day of _____, 2019

(CONSULTANT)

By: _____

_____ day of _____, 2019

Witness:

Print Name
