



Attachment C

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Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

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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 _____, 2020 (“Effective Date”) between **Riverfront Recapture, Inc.** (“Owner”) and _____ (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement shall be a part, is generally identified as follows:

_____ (“Project”)

Engineer’s services under this Agreement are generally identified as follows:

Engineer shall provide professional services in connection with _____. Such professional services are more particularly described in this Agreement.

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 in Exhibit C.
- C. Engineer may use and reasonably rely upon the written requirements, programs, instructions, reports, data, and information provided by the Owner in the Engineer’s performing or furnishing of services under this Agreement, subject to the Owner’s express limitations or reservations applicable to such furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of any relevant, material defect or nonconformance in Engineer’s services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering the services identified as _____ on Exhibit A-1 to this Agreement as of the Effective Date. No other services shall be provided

by the Engineer under this Agreement except with the prior express written authorization of the Owner in each case.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations hereunder within the specific periods of time for rendering services, or, as applicable, specific dates by which services are to be completed, as set forth in Exhibit A-1 (the "Contract Times").
- B. If, through no fault of Engineer or any other Responsible Party, 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 Contract Times shall be adjusted equitably.
- C. Owner shall make decisions and carry out its other responsibilities in a timely manner.
- D. If Engineer fails, through its own fault or the fault of any Responsible Party to complete the performance required in this Agreement within the Contract Times, as the Contract Times may be adjusted in accordance with this Agreement, then Owner shall be entitled 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 the requirements of the Owner and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis along with such supporting documentation as the Owner may reasonably require. Invoices are due and payable within 30 days of receipt thereof along with the required supporting documentation.

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:* Unless such payment is the subject of a good faith dispute between the parties hereto, if Owner fails to make any payment due Engineer for services and expenses (to the extent reimbursable hereunder) within 30 days after such payment is due and payable, then:
 - 1. Engineer may, after giving 10 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 other than amounts that are the subject of a good faith dispute between the parties. Owner waives any and all claims against Engineer for delay in the Project caused by 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: Not Applicable.*

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions of probable Construction Cost (to the extent required hereunder) 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.

5.02 *Designing to Construction Cost Limit* - DELETED.

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.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. Engineer, and all Consultants and Subconsultants performing any part of the Engineer's services hereunder shall perform such services in a manner (i) consistent with the terms, conditions and requirements of this Agreement; (ii) consistent with sound professional practices; (iii) in accordance and consistent with the "prevailing applicable professional or industry standards"; and (iv) as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project, and the terms, conditions and requirements of this Agreement.
- B. For the purposes of this Agreement the performance of services in accordance with the "prevailing applicable professional or industry standards" shall mean the performance of such services (i) by a person or persons having the degree of knowledge, skill, and judgment ordinarily possessed by members of the same profession, (ii) with the faithfulness, diligence and in the manner as would be undertaken by a reasonable prudent member of such profession under the same or similar circumstances in the same or similar location (the "Engineer's Standard of Care").
- C. The Engineer shall be solely responsible for all of its Consultants and all Subconsultants performing any part of the Engineer's services hereunder. By appropriate written

agreement, the Engineer shall require each of its Consultants, to the extent of the Engineer's Services to be performed by such Consultant, to be bound to the Engineer by terms of this Agreement, and to assume toward the Engineer all the obligations and responsibilities, which the Engineer, by this Agreement, assumes toward the Owner. Each consulting agreement shall preserve and protect the rights of the Owner under this Agreement with respect to the services to be performed by the Consultant so that subcontracting thereof will not prejudice such rights, and shall allow to the Consultant, unless specifically provided otherwise in the consulting agreement, the benefit of all rights, remedies and redress against the Engineer that the Engineer, by this Agreement, has against the Owner. Where appropriate, the Engineer shall require each Consultant to enter into similar agreements with Subconsultants.

- D. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services or Documents. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information upon which the Engineer reasonably relied as permitted under Section 2.01.
- E. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to prior notice to the Owner and a reasonable opportunity of no less than five days for the Owner to object to such Consultants. The Engineer shall not engage any Consultant as to which Owner has timely objected.
- F. *Reliance on Others:* Subject to the exercise of the Engineer's Standard of Care in doing so, Engineer and its Consultants may use or reasonably 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.
- G. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. The Engineer shall be responsible for the performance of the Engineer's services hereunder in compliance with and consistent with the Engineer's Standard of Care, this Agreement, and all Laws and Regulations. The Engineer shall make a good faith effort towards participation in this contract by Small Business Enterprises (SBE) and Minority Business Enterprises (MBE) (as such terms are defined in Section 7. The SBE goal is twenty-five (25) percent of the contract value, with twenty-five (25) percent of that amount (6.25 percent of the overall project) as the MBE goal.
 - 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 Engineer's exercise of the Engineer's Standard of Care in doing so, 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.
- H. 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 unless the conditions that are the subject of such dispute would have been ascertained by the Engineer in the course of the Engineer's performance of its services under this Agreement had the Engineer performed such services in compliance with the Engineer's Standard of Care.
- I. The general conditions for any construction contract documents prepared hereunder or in connection with the Project (the "General Conditions") shall be, as selected by the Owner in its discretion, either (i) a version of the EJCDC® C-700 "Standard General Conditions of the Construction Contract", prepared by the Engineers Joint Contract Documents Committee, and modified by the Owner; or (ii) a version of the AIA Document A201-2017 General Conditions of the Contract for Construction, as modified by the Owner, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- J. Engineer shall not at any time supervise, control, or have authority over the Contractor'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 the Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of the Contractor to comply with Laws and Regulations applicable to the Contractor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of the Contractor.
- K. Engineer neither guarantees the performance of the Contractor nor assumes responsibility for the Contractor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- L. Engineer shall not be responsible for the application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by or with the consent of the Engineer or its Consultants.
- M. 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.
- N. Engineer's services do not include providing legal advice or representation.
- O. 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 required pursuant to an Amendment to this Agreement.

6.03 *Use of Documents*

- A. The Engineer hereby agrees, represents and warrants that all Documents constitute “work made for hire”. All Documents are and shall be owned solely and exclusively by, and shall be the property of, the Owner free and clear of any claim or retention of rights thereto by the Engineer or the Engineer’s Consultants and the Owner will retain all common law, statutory and other reserved rights, including copyrights. To the extent that any or all of the Documents might be deemed to be other than “work made for hire”, the Engineer, effective upon the Effective Date, hereby conveys, assigns, transfers and sets over to the Owner absolutely and exclusively, all intellectual property rights that Engineer holds including, but not limited to, copyrights, in and to the Documents whether such Documents are now existing or as may hereafter be prepared or created under this Agreement. All Documents may be used by the Owner, in whole or in part, or in modified form, for any purpose, including the completion of development of the Project and for future renovation, maintenance, repair or replacement thereof (in each case, a “Permitted Use”). The Engineer shall obtain from its Consultants the conveyance, assignment, transfer and setting over of rights as to those Documents developed and to be developed by such Consultant for the Project. If a claim is asserted against Engineer resulting from the Owner’s use of the Documents other than a Permitted Use, Owner shall defend and indemnify Engineer with respect to such claims.
- 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.

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 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, Riverfront Land, Inc., _____** and their respective officers, employees and officials to be listed as additional insureds on the general liability insurance policy, contractor's pollution liability insurance, and umbrella/excess liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain the insurance customarily maintained by the Owner.
- 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 as deemed necessary by the Owner to protect Owner's interests.
- D. Engineer shall deliver to the Owner a certificate of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished on or before the execution of this Agreement 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 provide 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 maintained by the Engineer under this Agreement 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 Owner.
- G. At any time, Owner may request that Engineer or its Consultants 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. The Owner shall be responsible to reimburse the Engineer for any resulting increases in Consultant's insurance premiums.

6.06 *Suspension and Termination*

- A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon 7 days written notice to Engineer.
 2. *By Engineer:* Engineer may suspend services under this Agreement for nonpayment as set forth in Section 4.02B.1 or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.
- B. *Termination:* This Agreement may be terminated:
1. For cause,
 - a. By written notice of termination by either party 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 or any person or entity for whom or which the terminating party is responsible.)
 - b. by Engineer:
 - 1) upon 10 days written notice if the Engineer's services for the Project are delayed or suspended by the Owner for more than 90 consecutive days for reasons other than the fault of the Engineer or any other Responsible Party, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 2) Engineer shall have no liability to Owner solely 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 the notice of termination begins, within 7 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.
 2. For convenience, by Owner effective upon Engineer's receipt of notice of termination from Owner or effective on such later date as set forth in such notice.
- 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 termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled to invoice Owner and to receive payment for all services performed or furnished in accordance with this Agreement through the effective date of termination, Reimbursable Expenses incurred through the effective date of termination and the Engineer's reasonable costs directly attributable to the termination.

2. In the event of termination by Owner for cause, the Engineer shall be responsible for the Owner's losses, costs, expenses (including reasonable attorney's fees), damages and liabilities arising directly from the Engineer's breach of this Agreement and the Owner may offset the same against any amounts payable to the Engineer hereunder.

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 the Contractor, 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 except as may be expressly set forth herein.

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. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify the Owner and, thereafter, if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations, appropriate governmental officials.
- B. 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.
- C. 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, in its reasonable discretion, and without liability for consequential or any other damages due to such suspension, suspend performance of services on the affected portion of the Project until such investigative or remedial action is completed and any Constituents of Concern have been remediated or otherwise abated as required by applicable Laws or Regulations.

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, Riverfront Land, Inc.,** _____ and their respective officers, officials, committee members, directors, members, partners, agents, consultants, and employees (each, an "Indemnitee"), from and against (i) all claims, suits and/or legal actions of any type by third parties, including, without limitation, claims for loss of or damage to property, personal or bodily injury, including death, and claims for losses of any type, and from all judgments or decrees recovered therefore and from reasonable expenses for defending such claims, suits or legal actions, including without limitation reasonable court costs and attorneys' fees, and (ii) reasonable loss, cost and expense (including all reasonable attorney's fees and court costs) of the Owner for damage or destruction to the Project or other real or personal property of any Indemnitee to the extent that the foregoing result or arise from the negligent acts or omissions, breach of contract, or violation of Laws and Regulations of or by the Engineer or any other Responsible Party, and/or design defects directly caused by the Documents.
- B. The Engineer's indemnification obligations set forth in this Section 6.11 shall not include liability for damage arising out of bodily injury to persons or damage to property to the extent caused by or resulting from the negligence of the Indemnitee seeking indemnification, such Indemnitee's agents or employees.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of seven 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.
- F. *Execution in Counterparts:* This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument. Signed copies of this Agreement may be faxed or e-mailed with the same force and effect as if the originally executed Agreement had been delivered

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. *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.
15. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
16. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, plans, models, and other materials and work product prepared or furnished by or on behalf of the Engineer under this Agreement, including, without limitation, such materials and work product as are produced by the Consultants and Subconsultants, whether in printed or electronic format.
17. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
18. *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.
19. *Engineer*—The individual or entity named as such in this Agreement.
20. *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.
21. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders and permits of any and all federal, state and local governmental bodies, agencies, authorities, and courts having jurisdiction.
22. *Minority Business Enterprise (MBE)* - Any Small Contractor (A) fifty-one per cent or more of the capital stock, if any, or assets of which are owned by a person or persons who (i) exercise operational authority over the daily affairs of the enterprise, (ii) have the power to direct the management and policies and receive the beneficial interest of the enterprise, (iii) possess managerial and technical competence and experience directly related to the principal business activities of the enterprise, and (iv) are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n, or are individuals with a disability, or (B) which is a nonprofit corporation in which fifty-one per cent or more of the persons who (i) exercise operational authority over the enterprise, (ii) possess managerial and technical competence and experience directly related to the principal business activities of the enterprise, (iii) have the power to direct

the management and policies of the enterprise, and (iv) are members of a minority, as defined in this subsection, or are individuals with a disability.

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 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 and approved for reimbursement by the Owner in advance of incurrence of such expenses.
27. *Responsible Party* - The Engineer, any Consultant, Subconsultant or any other person or entity for whom or which any of them is legally liable.
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. *Small Business Enterprise (SBE)* - Any contractor, subcontractor, manufacturer, service company or nonprofit corporation (A) that maintains its principal place of business in the state, (B) that had gross revenues not exceeding twenty million dollars in the most recently completed fiscal year prior to such application, and (C) that is independent. "Small contractor" does not include any person who is affiliated with another person if both persons considered together have a gross revenue exceeding twenty million dollars.
32. *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.

33. *Subconsultants* - Individuals or entities who have a direct or indirect contract with a Consultant to perform a portion of the Engineer's services and, unless otherwise expressly indicated, refers to subconsultants of all tiers performing any part of the Engineer's services (other than Consultants).
34. *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.
35. *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. The Work shall not be deemed to be Substantially Complete until such time as the governmental agency or authority having jurisdiction has issued a certificate of occupancy or equivalent document providing that the Work has been completed as required by applicable Laws and Regulations.
36. *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.
37. *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.
38. *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, machinery, equipment 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.
39. *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.

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 - Not Used.
- E. Exhibit E, Notice of Acceptability of Work - Not Used.
- F. Exhibit F, Construction Cost Limit - Not Used.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. Not Used.
- 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 or modified 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.

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

Owner: RIVERFRONT RECAPTURE, INC.

Engineer: _____

By: []

By: []

Print name: []

Print name: []

Title: []

Title: []

Date Signed: []

Date Signed: []

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

[]

State of: []

Address for Owner's receipt of notices:

Riverfront Recapture, Inc.
50 Columbus Blvd
Hartford, CT 06106

Address for Engineer's receipt of notices:

Designated Representative (Paragraph 8.03.A):

Marc Nicol

Title: Director of Park Planning & Development

Phone Number: 860 713 3131 x 334

E-Mail Address: mnicol@riverfront.org

Designated Representative (Paragraph 8.03.A):

Title: _____

Phone Number: _____

E-Mail Address: _____

This is **EXHIBIT A**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** effective [,].

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 and in Exhibit A-1 hereto.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Engineer's responsibilities under the Study and Report Phase are set forth on Exhibit A-1 hereto.
2. For any reports, assessments or studies to be provided by the Engineer under this Agreement, such reports, assessments and studies shall be first provided to the Owner in draft form for review and comment.

The Engineer shall thereafter revise the report, study or assessment, as applicable in response to Owner's comments, as appropriate, prepare the document in final and deliver the final document to the Owner within Ten (10) days after receipt of Owner'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 and reviewed the same with the Owner and other stakeholders as may be required by the Owner.

A1.02 Preliminary Design Phase

A. Subject to the prior written authorization of the Owner to proceed with services for the Preliminary Design Phase, after acceptance by Owner 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 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 during or

Exhibit A – Engineer's Services

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

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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 and otherwise comply with the Engineer's Standard of Care.
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. As requested by the Owner, Engineer shall 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, if requested by Owner, 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.
8. Perform or provide the following other Preliminary Design Phase tasks or deliverables: [] ***[List any such tasks or deliverables here.]***
9. Furnish one (1) review copy of the Preliminary Design Phase documents and any other Preliminary Design Phase deliverables to Owner within ten (10) days of authorization to proceed with this phase, and review them with Owner. Within ten (10) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
10. Provide an option of probable construction cost based on the 90% complete Preliminary Design Phase documents.

Exhibit A – Engineer's Services

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

11. Revise the Preliminary Design Phase documents and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner one (1) copy of the revised Preliminary Design Phase documents and any other deliverables within ten (10) 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 and Owner has accepted the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. Subject to the written authorization of the Owner to proceed with services for the Final Design Phase, 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 Engineer's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; consult 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: [] **[List any such tasks or deliverables here.]**
 10. Furnish for review by Owner, its legal counsel, and other advisors, 2 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 10 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 10 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 2 copies of revised documents to Owner within 10 days after receipt of Owner's comments and instructions. This process shall continue until such time as the Owner, and other stakeholders whose approval is deemed necessary by the Owner, are satisfied with such documents.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner and Owner has accepted 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.
- C. 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 []. 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. Subject to the written authorization of the Owner to proceed with some or all of the services for the Bidding or Negotiation Phase, 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.
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.
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: [] ***[List any such tasks or deliverables here.]***

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

A1.05 *Construction Phase* - Any Construction Phase services to be performed by the Engineer for the Project shall be authorized under, and performed pursuant to the terms and conditions set forth in an Amendment to this Agreement.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner in advance, Engineer shall provide the services of the types listed below which services, unless included in Basic Services under this Agreement, shall be Additional Services. Provided such services are properly authorized, Engineer will be paid for Additional Services by Owner as indicated in Exhibit C.
1. Other than as required as part of Basic Services, services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of

Exhibit A – Engineer's Services

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existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

2. Services performed after the Owner's acceptance of the final Drawings and Specifications as a result of 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..
3. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer provided Owner expressly indicated to Engineer that Engineer could rely on the completeness and correctness of such information.
4. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
5. 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.
6. Furnishing services of Consultants for other than Basic Services.
7. 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.
8. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

Exhibit A – Engineer's Services

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

- 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.
9. 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).
10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating (not including opinions of probable cost), 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.
11. 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.
12. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
13. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
14. Providing Construction Phase services more than sixty days 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.
15. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
16. 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.
17. 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.
18. Preparation of operation, maintenance, and staffing manuals.
19. Unusually protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
20. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

Exhibit A – Engineer's Services

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21. 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.
22. 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 unless the Engineer or any other Responsible Party is a party to such litigation, arbitration, lien or bond claim, or other legal or administrative proceeding.
23. Overtime work requiring higher than regular rates unless overtime work is required due to the fault of the Engineer or any other Responsible Party.
24. Providing construction surveys and staking to enable Contractor to perform its work; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
25. Providing more extensive services than are customarily required to enable Engineer to issue notices or certifications requested by Owner.
26. Unusually 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).
27. Additional or extended services required to be performed by the Engineer to the extent arising from (a) emergencies or acts of God endangering the persons performing Work at the Project site, (b) damage to the Work by fire or other causes during construction, (c) a significant and unusual amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours due to no fault of the Engineer or any other Responsible Party, or (f) default by Contractor.
28. 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.
29. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
30. 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.

[INSERT EXHIBIT A-1 (specific scope of services) HERE]

This is **EXHIBIT B**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** effective as of [_____, ____].

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, except to the extent that the Agreement provides that the responsibilities described below are assigned to the Engineer, Owner shall at its expense:

- A. Provide Engineer with all criteria and information known and in Owner's possession 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 plan for 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 of Owner's design and construction standards, if any, Owner's standard forms, General 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 Drawings, Specifications, 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 information in Owner's possession pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site upon which Engineer is entitled to rely.
- 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 for the Project as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data may include the following as necessary for the Project and only to the extent not included in the Engineer's services hereunder:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Utility and topographic mapping and surveys.

Exhibit B – Owner's Responsibilities

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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.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Except to the extent included in the Engineer's services hereunder, 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. Except to the extent included in the Engineer's services hereunder, Owner to provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. 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 constructibility review.
- I. 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

Exhibit B – Owner's Responsibilities

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the duties, responsibilities, and limitations of authority of such other party to the extent that the duties, responsibilities, and authority of Engineer will be impacted.

- J. 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.
- K. Inform Engineer in writing of any specific requirements of Owner's safety or security programs that are applicable to Engineer, as a visitor to the Site.
- L. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer and render in writing timely decisions pertaining thereto.
- M. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- N. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- O. Place and pay for advertisement for Bids in appropriate publications.
- P. 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.
- Q. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required and to the extent approved by the Owner.

Exhibit C

Payments to Engineer for Services and Reimbursable Expenses

This is **EXHIBIT C**, consisting of [] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services effective as of [].

Payments to Engineer for Services and Reimbursable Expenses

COMPENSATION PACKET BC-1: Basic Services – Lump Sum/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 – Lump Sum Method of Payment (Tasks ____) and Standard Hourly Rates (Task ____)*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:

1. Task 1 - A Lump Sum amount of \$ _____.00.
2. Task 2 - A Lump Sum amount of \$ _____.00.
3. Task 3 - A Lump Sum amount of \$ _____.00.
4. Task 4 - A Lump Sum amount of \$ _____.00.
5. Task 5 - A Lump Sum amount of \$ _____00.
6. The Lump Sums set forth above for any of the Tasks include compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in each Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
7. In addition to the Lump Sums (and the Standard Hourly Rates in regard to Task []), Engineer is also entitled to reimbursement from Owner for the Reimbursable Expenses identified on and in accordance with the rates set forth on Appendix 1 .
8. The portion of a Lump Sum amount billed each month for Engineer’s services will be based upon Engineer’s reasonable estimate of the percentage of the total services covered by such Lump Sum that are actually completed in accordance with this Agreement during the billing period. If any Reimbursable Expenses are

Exhibit C – Appendix 1: Reimbursable Expenses Schedule.

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Page 1

expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

9. For Tasks _____, compensation shall be based on the Engineer’s Standard Hourly Rates. The amounts billed for Engineer’s services for these Tasks 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 Engineer’s Consultants’ charges. 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. Engineer’s Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2 and Consultants’ Standard Hourly Rates are attached to this Exhibit C as Appendix 2.

B. *Expansion of Basic Services* To the extent that the Engineer receives proper written authorization from the Owner to proceed with any of the Tasks described below, the compensation to be paid to Engineer for the performance of such Tasks in accordance with the terms and conditions of this Agreement shall be as set forth below unless otherwise mutually agreed by the Owner and the Engineer.

Task Description	Not to Exceed Hourly Fees	Lump Sum Fees

C. *Other Provisions Concerning Payment*

1. *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.
2. *Audit Rights:* To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of Engineer's records associated with the Project available to Owner at cost.

3. **Field Equipment Billing Rates:**

To the extent that any of the equipment listed below is required to be used by the Engineer to perform services that are authorized under this Agreement, in addition to the compensation described above in this Section 2.01, the Engineer shall receive payment for the use of such equipment at the applicable billing rates set forth below:

[REDACTED]

COMPENSATION PACKET AS-1:

Additional Services – Lump Sum/Standard Hourly Rates

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

C2.05 Compensation for Additional Services – Compensation for Additional Services shall be based on a mutually agreed Lump Sum amount or, if the parties are unable to reach agreement on a Lump Sum amount, the Standard Hourly Rates Method of Payment will apply.

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 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.24, (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.

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. 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 1.1.
3. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

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 [].
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 Engineer's records associated with the Project available to Owner at no cost.

This is **Appendix 1 to EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** effective as of [] .

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: []

This is **Appendix 2 to EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** effective as of [] .

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:

The Standard Hourly Rates for services performed on or after the date of the Agreement (which rates shall be effective for the duration of the Contract) are:

<u>BILLING CATEGORY</u>	<u>HOURLY RATE</u>
--------------------------------	---------------------------

This is **EXHIBIT G**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** effective as of [].

Insurance

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

G6.05 Insurance

A. The minimum limits of liability for the insurance required to be maintained by the Engineer under Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$ 1,000,000
 - 2) Bodily injury by disease, each employee: \$ 1,000,000
 - 3) Bodily injury/disease, aggregate: \$ 1,000,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$ 1,000,000
 - 2) General Aggregate: \$ 2,000,000
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$15,000,000
 - 2) General Aggregate: \$15,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$ 5,000,000
 - 2) Annual Aggregate \$ 7,000,000

Other (specify): Pollution Liability Insurance \$5,000,000 Per Occurrence
\$5,000,000 Annual Aggregate

B. *Additional Insureds:*

Exhibit G – Insurance.

The Owner, Riverfront Land, Inc., [] and such other persons or entities as are required by the Owner or any funding source for the Project shall be listed on Engineer's general liability, automobile liability, Contractor's Pollution Liability policy and umbrella/excess liability policies as additional insureds as provided in Paragraph 6.05.A.

C. *Consultants:*

The Engineer's Consultants shall maintain the same insurance as is required of the Engineer under this Agreement with the same minimum coverage limits unless otherwise agreed by the Owner on a case by case basis.

This is **EXHIBIT H**, consisting of [] page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** effective as of [] .

Dispute Resolution

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

H6.09 *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 to be administered in accordance with the Construction Industry Rules of the American Arbitration Association. effective at the Effective Date. 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 90 days. If such mediation is unsuccessful in resolving a Dispute, then either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

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:

ENGINEER:

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____