

**AGREEMENT BETWEEN
PERMANENT MUNICIPAL BUILDING COMMITTEE
AND
GROTON UTILITIES
FOR ENGINEERING SERVICES
CONSTRUCTION SERVICES – ALJEN HEIGHTS WATER PROJECT**

AGREEMENT, made this 24 day of October, 2012, by and between the Permanent Municipal Building Committee, hereinafter called the Building Committee, and Groton Utilities hereinafter called the Consultant.

WITNESSETH, for the consideration hereinafter set forth, the parties hereto agree as follows:

Article 1

The Building Committee hereby engages the Consultant and the Consultant hereby accepts the engagement to perform certain Engineering Services in connection with the Aljen Heights Water Main project, hereinafter called the Project. Said Engineering Services are more particularly described as follows:

1. Following receipt of authorization to proceed from the Town of Ledyard, Groton Utilities (GU) will coordinate all bid activities with the Town. The Town shall distribute invitations to bid, bid sets and any addenda as well as place the legal advertisement in the newspaper. The Town will be the sole source for the distribution of bid documents.
2. GU will attend any and all mandatory pre-bid conferences with all bidders and the Town Representative. Shall answer any inquires regarding the plans and specifications during the bid process from potential bidders in strict accordance with the requirements of the Bid documents. Any necessary addenda needed during the bid process will be prepared by GU and provided electronically to the Town for distribution.
3. Will review all bids received as well as bidder qualifications and references of the three lowest bids and make a recommendation regarding the lowest bidders' ability to perform the work and to conform to the standards established in the bid documents will be made. GU will make a written recommendation for award to the Permanent Building Committee and the Town Purchasing Agent.
4. Will respond to and make recommendations concerning the suitability of any proposed alternate or substituted equipment, material or methods proposed to the Permanent Building Committee.

5. During the construction phase, the Engineering Firm will provide construction administration services customarily expected for a project of this scale and scope. This will include coordination of and communications with the contractor and on-site regular project observations. These will require the preparation and submission of written observation reports and minutes of project coordination meetings with the contractor. The Contractor shall be responsible for the minutes of the regularly scheduled Owner's Meetings.
6. GU will provide administrative services to review and approve shop drawings, material samples, subcontractor's qualifications and any other submission for compliance with the specifications. Also, evaluate any and all change orders and Applications for Payment; forward (if appropriate) to the Town for approval and signature. Review and comment on each set of the contractors meeting minutes for the regularly scheduled Owner's Meetings, attend scheduled evening Permanent Building Committee Meetings. Determine contract completion, recommend project acceptance, and perform other standard engineering services related to this project.
7. GU will provide daily on-site inspection services for all three projects and will make all as-built and service connection drawings and provide a CD for the Town's use.

Article 2

The Consultant will perform engineering services in connection with the Project as stated hereinabove.

The Consultant will perform such other tasks as may not be specifically enumerated here which are nevertheless required for the substantial completion of the work.

Article 3

The services required under this Agreement shall be completed expeditiously upon execution of this Agreement. The Consultant, however, shall not be responsible for any delays in the performance of his services caused by strikes, civil disturbances or any other cause beyond his reasonable control.

Article 4

Fees for the project shall be billed monthly based on time charge plus expense basis for work completed, payable monthly as accrued and shall not exceed a total budget of \$265,000. Time charges, expenses, and subcontractor expenses shall be made in accordance with the rate schedule specified in Exhibit A.

The total of all charges billed by the ENGINEER under this AGREEMENT shall not exceed **\$265,000** without prior written approval from the TOWN.

Notwithstanding any provisions of this AGREEMENT to the contrary, any payment called for under this AGREEMENT shall only be for service actually rendered prior to payment, and only for goods and materials actually delivered prior to payment.

Article 5

The Consultant shall indemnify and hold harmless the Building Committee against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the Consultant's performance of this Agreement. The Consultant shall obtain, and keep in force, professional liability coverage in the amount of \$1,000,000.

Article 6

This Agreement is made subject to all of the laws of the State of Connecticut.

Article 7

The Consultant's employees, servants, and agents shall be deemed not to be the Building Committee's employees for either worker's compensation or unemployment insurance purposes, or for any other purpose.

This Agreement may be amended in writing by mutual consent of the parties thereto.

Article 8

The following EPA Standards and requirements are incorporated into this agreement:

(A) Supersession. The municipality and the engineer agree that this and other appropriate clauses in this section, or their equivalent, apply to the state grant eligible work to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

(B) Privity of Subagreement. This subagreement is expected to be funded in part with funds from the State of Connecticut, Department of Environmental Protection (DEP). Neither the state nor any of its departments, agencies, or employees is or will be a party to this subagreement or any lower tier subagreement. This subagreement is subject to sections 22a-482-1 to 22a-482-4 of

the Regulations of Connecticut State Agencies in effect on the date of the grant award for the project.

(C) Changes to Subagreement.

(i) The municipality may at any time, by written order, make changes within the general scope of this subagreement in the services or work to be performed. If such changes cause an increase or decrease in the engineer's cost or time required to perform any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this subagreement shall be modified in writing. The engineer must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the engineer of the notification of change, unless the municipality grants additional time before the date of final payment.

(ii) No services for which additional compensation will be charged by the engineer shall be furnished without the written authorization of the municipality.

(iii) In the event that there is a modification of the Commissioner's requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in the agreement shall be reflected in an appropriate modification of this agreement.

(D) Termination of Subagreement.

(i) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party. However, no termination may be effected unless the other party is given not less than (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

(ii) This subagreement may be terminated in whole or in part in writing by the municipality for its convenience, provided that the engineer is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

(iii) If termination for default is effected by the municipality, an equitable adjustment in the price provided for in this subagreement shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work and any payment due to the engineer at the time of termination may be adjusted to cover any additional costs to the municipality because of the engineer's default. If termination for default is effected by the engineer; or if termination for convenience is effected by the municipality; the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the engineer for services rendered and expenses incurred prior to the

termination, in addition to termination and settlement costs reasonably incurred by the engineer relating to commitments which had become firm prior to the termination.

(iv) Upon receipt of a termination action pursuant to subparagraphs (D) (i) or (D) (ii) of this subdivision, the engineer shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the municipality all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the engineer in performing this subagreement, whether completed or in process.

(v) Upon termination under subparagraphs (D) (i) or (D) (ii) of this subdivision, the municipality may take over the work and may award another party a subagreement to complete the work under this subagreement.

(vi) If, after termination for failure of the engineer to fulfill contractual obligations, it is determined that the engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the municipality. In such event, adjustment of the price provided for in this subagreement shall be made as provided in subparagraph (D) (iii) of this subdivision.

(E) Remedies. Except as may be otherwise provided in this subagreement, all claims, counter-claims, disputes, and other matters in question between the municipality and the engineer arising out of or relating to this subagreement, or the breach thereof, will be decided by arbitration, if the parties mutually agree, or in a court of competent jurisdiction within the district in which the municipality is located.

(F) Price Reduction for Defective Cost or Pricing Data (This clause is applicable if the amount of the agreement exceeds \$100,000). The engineer warrants that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements and lower tier subagreements is based on current, accurate, and complete data supported by books and records. If the municipality or Commissioner determines that any price, including profit, negotiated in connection with this subagreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price, cost or profit shall be reduced accordingly, and the subagreement shall be modified in writing to reflect such reduction.

(NOTE--Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontractors, the engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by lower tier subcontractors.)

(G) Audit; Access to Records.

(i) The engineer shall maintain books, records, documents, and other evidence directly pertinent to performance on grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The engineer shall also maintain the financial information and data used by the engineer in the preparation or support of the cost submission required for any negotiated subagreement or change order in effect on the date of execution of this agreement and a copy of the cost summary shall be submitted to the municipality. The municipality and Commissioner or any of his or her duly authorized representatives shall have access to all such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The engineer will provide proper facilities for such access and inspection.

(ii) The engineer agrees to include subparagraphs (G) (i) to (G) (v) of this subdivision, inclusive, in all his contracts and all lower tier subcontracts directly related to project performance that are in excess of \$10,000, and to make subparagraphs (G) (i) to (G) (v) of this subdivision, inclusive, applicable to all change orders directly related to project performance.

(iii) Audits conducted under this subparagraph shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit department and shall meet the requirements of section 7-396a of the General Statutes.

(iv) The engineer agrees to the disclosure of all information and reports resulting from access to records under subparagraphs (G) (i) and (G) (ii) of this subdivision to any of the parties referred to in subparagraph (G) (i) of this subdivision, provided that the engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the engineer.

(v) The engineer shall maintain and make available records under subparagraphs (G) (i) and (G) (ii) of this subdivision during performance on grant funded work under this agreement and until three (3) years from the date of final grant payment for the project. In addition, those records which relate to any dispute appeal arising under a grant agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date of resolution of such appeal, litigation, claim, or exception.

(H) Covenant Against Contingent Fees. The engineer warrants that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the engineer for the purpose of securing business. For breach or violation of this warranty the municipality shall have the right to annul this agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(I) Gratuities.

(i) If the municipality finds after a notice and hearing that the engineer, or any of the engineer's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the municipality or the state, in an attempt to secure a subagreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this agreement, the municipality may, by written notice to the engineer, terminate this agreement. The municipality may also pursue other rights and remedies that the law or this subagreement provides. However, the existence of the facts on which the municipality bases such findings shall be in issue and may be reviewed in proceedings under subparagraph (E) of this subdivision.

(ii) In the event this subagreement is terminated as provided in subparagraph (I) (i) of this subdivision the municipality may pursue the same remedies against the engineer as it could pursue in the event of a breach of the subagreement by the engineer and, as a penalty, in addition to any other damages to which it may be entitled by law, may pursue exemplary damages in an amount (as determined by the municipality) which shall be not less than three, nor more than ten times the costs the engineer incurs in providing any such gratuities to any such officer or employee.

(J) Responsibility of the Engineer.

(i) The engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the engineer under this subagreement. The engineer shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.

(ii) The engineer shall perform the professional services necessary to accomplish the work required to be performed under this subagreement, in accordance with this subagreement and applicable requirements of the Commissioner in effect on the date of execution of the assistance agreement for this project.

(iii) Approval by the municipality or the Commissioner of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not, in any way, relieve the engineer of responsibility for the technical adequacy of his work. Neither the municipality's nor Commissioner's review, approval, acceptance, or payment for any of the services shall be construed as a waiver of any rights under this subagreement or of any cause of action arising out of the performance of this subagreement.

(iv) The engineer shall be and shall remain liable, in accordance with applicable law, for all damages to the municipality or the state caused by the engineer's negligent performance of any of the services furnished under this subagreement, except for errors, omissions, or other deficiencies to the extent attributable to the municipality, municipality-furnished data, or any third party. The

engineer shall not be responsible for any time delays in the project caused by circumstances beyond the engineer's control.

(v) The engineer's obligations under this subparagraph are in addition to the engineer's other expressed or implied warranties under this subagreement or state law and in no way diminish any other rights that the municipality may have against the engineer for faulty materials, equipment, or work.

(K) Payment.

(i) Payment shall be made in accordance with the payment schedule incorporated in this subagreement, as soon as practicable, upon submission of statements requesting payment by the engineer to the municipality. If no such payment schedule is incorporated in this subagreement, the payment provisions of subparagraph (K) (ii) of this subdivision shall apply.

(ii) The engineer may request monthly progress payments and the municipality shall make them, as soon as practicable, upon submission of statements requesting payment by the engineer to the municipality. When such progress payments are made, the municipality may withhold up to ten (10) percent of the vouchered amount until satisfactory completion by the engineer of work and services within a step called for under this subagreement. When the municipality determines that the work under this subagreement, or any specified task hereunder, is substantially complete and that the amount of retained percentages is in excess of the amount considered by the municipality to be adequate for its protection, it shall release to the engineer such excess amount.

(iii) No payment request made under subparagraph (K) (i) or (K) (ii) of this subdivision shall exceed the estimated amount and value of the work and services performed by the engineer under this subagreement. The engineer shall prepare the estimates of work performed and shall supplement them with such supporting data as the municipality may require.

(iv) Upon satisfactory completion of the work performed under this subagreement, as a condition precedent to final payment under this subagreement or to settlement upon termination of the subagreement, the engineer shall execute and deliver to the municipality a release of all claims against the municipality arising under or by virtue of this subagreement, other than such claims, if any, as may be specifically exempted by the engineer from the operation of the release in stated amounts to be set forth therein.

(L) Copyrights and Rights in Data.

(i) The engineer agrees that any plans, drawings, designs, specifications, computer programs (which are substantially financed by state funds), technical reports, operating manuals, and other work submitted with an engineering report, with a design or for construction with financing assistance, or which are specified to be delivered under this subagreement, or which are developed or produced and paid for under this subagreement (referred to in subparagraph (L) (ii) of this subdivision as "subject data"), and including all raw data obtained or generated by the

engineer during the course of his work under this subagreement, are subject to certain rights in the United States. These rights include the right to use, duplicate, and disclose such subject data, in whole or in part, in any manner for any purpose whatsoever, and to have others do so. If the material is copyrightable, the engineer may copyright it, subject to the rights of the state described herein, but the municipality and the state reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The engineer shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data; and

(ii) all such subject data furnished by the engineer pursuant to this subagreement are instruments of his services in respect to the project. It is understood that the engineer does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the municipality reuses the subject data without the engineer's specific written verification or adaptation, such reuse will be at the risk of the municipality without liability to the engineer. Any such verification or adaptation will entitle the engineer to further compensation at rates agreed upon by the municipality and the engineer.

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

For the Consultant:



Groton Utilities

10/23/2012
Date

For the Building Committee:



Permanent Municipal
Building Committee /Linda Davis, Mayor ProTem

10/24/2012
Date