

REQUEST FOR PROPOSALS

EDDIE COLLINS MEMORIAL PARK - POOL AND POOL HOUSE

ENGINEERING SERVICES

**VILLAGE OF MILLERTON
NEW YORK**

JENNIFER NAJDEK
MAYOR

September 11, 2024

Village of Millerton
Request for Proposals for
Professional Engineering Services

I. PURPOSE

The Village of Millerton is soliciting proposals from engineering consultants to provide professional services as required for the design and construction of a second phase of redevelopment at Eddie Collins Memorial Park. These services are to include, but not be limited to: Site reconnaissance; SEQR review; stormwater pollution prevention plan (SWPPP); septic system design and permitting, design development, construction documents, bidding support, construction administration/management, and limited grant administration.

A 2018 masterplan was divided into two phases to allow for funding and implementation over a period of time. The total projected cost for the entire masterplan is approximately \$11,750,500. The total project cost for Phase I was approximately \$2,238,000 with \$730,000 in funding through State grants and \$1,508,492 through private donations. The total cost for Phase II is estimated at \$9,500,000 and will include the centerpiece of the masterplan: a new pool and pool house (community center).

II. SUBMISSION OF PROPOSALS

The Village of Millerton will accept proposals for Professional Engineering Services relating to Eddie Collins Memorial Park - Pool and Pool house for the Scope of Services described at APPENDIX I.

All proposals must be submitted in a sealed package marked “RFP – Eddie Collins Memorial Park Pool and Pool house” and be received no later than 2:00 PM, Thursday, September 26, 2024. Please submit two (2) original hard copies and one electronic copy of the proposal to the address as follows:

Lisa Cope, Clerk
Village of Millerton
5933 N. Elm Avenue
Millerton, NY 12546
clerk@villageofmillerton-ny.gov

Proposers are urged to mail/deliver their proposal early. Late proposals will not be accepted and will be returned unopened to the vendor. Faxed copies will not be accepted.

Bids will be opened on September 26, at 2:00 PM at 5933 N. Elm Avenue Millerton, NY 12546.

Professional service firms, individuals, or teams that are or include NYS Certified MBE or WBE firms or individuals are strongly encouraged to submit proposals in response to this RFP. Consultants and firms are also encouraged to submit utilizing DBE sub-consultants where appropriate.

III. PROPOSAL REQUIREMENTS

The following information must be submitted as part of the proposal and provided in the following order.

- 1. Cover Letter (not to exceed 1 page).** Proposals shall include a cover letter on letterhead including the following:

Firm name, location, form of business, firm ownership and owners/principals and officers
Confirm business ability and professional licensing of the identified firm to legally provide professional engineering services being requested by the Village in New York State and the County of Dutchess, New York

Proposed Project Manager and primary Village Liaison

Identification of proposed Sub Consultants

Acknowledgement that Proposer will comply with contract terms.

State and itemize any exceptions taken to contract terms and conditions.

2. Statement of Qualifications & Relevant Experience (not to exceed 20 pages).

a. Proposed Project Staff and Qualifications

Identify the proposed project organization and key staffing with name, title and primary office location. Include a resume and summary of individual qualifications for key staff proposed to be assigned to the project with specific qualifications relevant to the Scope of Services.

b. Subcontractors: If the Proposer intends to use any subcontractors for the performance of services under this agreement, identify the subcontractor, provide resumes for their personnel, and the scope of their engagement.

c. Experience.

Include five examples of the publicly owned projects relevant to the scope of services completed by the proposed project staff within the last 5 years that demonstrate ability to provide services for this assignment.

Include a brief description of projects and services provided, and the duration of the appointment. For each project identify the year constructed, engineer's estimate, and actual final cost, and funding sources.

Include a contact person for each project identified.

d. References. Include names, addresses and telephone numbers from at least three current or former clients within the last five (5) years

e. Disclosure of any pending investigation of the firm, or enforcement or disciplinary actions taken within the past three years by the NYS Commissioner of Education or other regulatory bodies, or termination for cause by any municipality or public entity.

f. Any additional information the Proposer believes the Village should be familiar with prior to making a decision.

3. Project Specifics

A project scope of services, schedule and budget, organized by task, that includes a detailed estimate of the fee needed for the firm to complete the work

4. **Non-Collusive Bidding Certification Form.** Submit the signed and notarized form attached to this RFP.
5. **Contract pricing proposal.** A price proposal shall be submitted in a **separate sealed envelope** that includes the following:
 - a. Schedule 1 – Lump Sum price or estimated not to exceed price for each task identified in the Scope of Services as shown at Appendix I.
 - b. Schedule 2 -- Hourly Rate Schedule – Includes the inclusive hourly rates by staff/position level. The Village reserves the right to negotiate “lump sum” pricing, based on the hourly rates in the proposal, for particular grant funded projects, as may be required by the funding source. Projects with lump-sum pricing will be paid by milestones rather than at the hourly rate.
 - c. Schedule 3 - Identification of Activities that will be excluded from billing, such as:
 - a. Reviews of Invoices
 - b. Relationship Reviews
 - c. High level planning sessions
 - d. Reporting to the Board
 - d. Schedule 4 – Estimated Disbursements and Unit Costs

IV. QUESTIONS AND CLARIFICATIONS

Any questions or requests for clarifications with regard to this Request for Proposal and any proposed exceptions to terms and conditions should be submitted in writing to:

Village Clerk
Village Hall
5933 N Elm Avenue
Millerton, New York, 12546
clerk@villageofmillerton-ny.gov

Questions or requests for clarifications may be transmitted to the Village by US Mail, courier, e-mail or electronic facsimile, provided that email or facsimile must be confirmed as to receipt by the Village. All questions or requests for clarification must be received no later than the date specified in the Schedule.

Any changes to this RFP will be made by written addendum provided via email. No oral modification will be binding.

V. SELECTION PROCESS

The selection of the engineering firm for this project shall be in accordance with Dutchess County SWIMS Grant procurement requirements. The Village plans to select a firm whose proposal is determined most advantageous to the Village.

The evaluation of proposals will include qualifications, satisfactory experience in connection with similar services rendered on behalf of public entities of similar size and character to the Village, cost, and a description of how the Proposer will meet the Village’s needs.

By submission of its proposal, the Proposer authorizes the Village to investigate the qualifications of the Proposer under consideration, require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the work described in this RFP or information clarifying

their submissions.

In evaluating proposals, the Village shall give the following evaluation factors in the selection process:

1. The overall capacity of the consultant or firm and the range of services and experience with similar projects.
2. The technical skills and experience of the designated project manager and other individuals assigned to the project.
3. Project work plan – understanding and approach to the execution of the work.
4. Cost of Consultant or firm services. The total cost of providing services in relation to other factors. Applicant's ability and willingness to comply with procurement and cost documentation requirements as established with State and Federal funding sources.
5. Inclusion of Minority and Women Owned Business participation.
6. References.

VI. ETHICS, DISCLOSURE OF INTERESTS AND REPRESENTATIONS

Code of Ethics: The Village's Ethics Code is posted on the Town's website at <https://www.villageofmillerton-ny.gov/government.html>.

Prohibited interests: Officers and employees are prohibited from entering into certain contracts with the Village pursuant to Article 18 of the General Municipal Law. Except as expressly provided in § 802 of Article 18 of the New York State General Municipal Law, no Village officer or employee shall have an interest in a contract that is prohibited by § 801 of the General Municipal Law. Any contract willfully entered into by or with the Village in which there is an interest prohibited by that section shall be null, void, and wholly unenforceable to the extent provided by § 804 of the General Municipal Law.

Disclosure of interests: Except as expressly provided in § 802 of Article 18 of the General Municipal Law, any Village officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the Village, shall publicly disclose the nature and extent of that interest in accordance with § 803 of the General Municipal Law.

Representations: By submission of its Proposal, each Proposer represents and warrants:

- (a) That they are financially solvent and that they are experienced in and competent to perform the type of work to be furnished by them and meet all requirements set forth in the contract;
- (b) That they are familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or those employed therein;
- (c) That they and their subcontractors have no interest and will not acquire an interest, direct or indirect, that would conflict with the performance of the work under this Contract;
- (d) That neither they nor any of their owners, officers, partners, directors or shareholders have been the subject of a criminal investigation; and

(e) That the firm has not been terminated by a municipality or public entity for cause in the last five years relating to a failure to comply with Ethics laws or policies, Conflicts of Interest laws or policies, or violation of laws and regulations.

VII. CONTRACT

The Village reserves the right to award the contract to other than the Proposer presenting the lowest price. The Village may negotiate with one or more Proposers. No Proposer shall have any rights against the Village arising from such invitation or negotiations.

The Village reserves the right to reject any and all proposals. The contract resulting from this solicitation will be awarded to the qualified Proposer whose proposal the Village believes will be most advantageous to the Village. Discretion to award a contract rests with the Board of Trustees of the Village.

The Village is an equal opportunity employer. The successful Proposer must be in compliance with the provisions of Section 312 of the New York Executive Law which requires New York State Contractors to ensure equal employment opportunity to all persons without regard to race, color, religion, sex, national origin, age, disability or marital status, and to promote full realization of equal opportunity through a positive and continuing program.

The successful Proposer shall make its best effort to comply with DASNY's Non-Discrimination and Affirmative Action policies set forth in Appendix IV to this Agreement

The successful Proposer will be required to execute an agreement with the Village for professional services. Appendix "III", attached herein, contains the Village's proposed contract. Proposers are required to review the contract before submitting their proposal. Unless the submitted proposer specifically takes exception to clauses in the contract within the time provided in the Schedule for questions and clarifications, the successful Proposer will be expected to execute the contract with the Village as is. The Village reserves the right to reject exceptions.

The contract will include the Scope of Services included with this Request for Proposal as Exhibit B. Additionally, a pricing schedule and hourly rate schedule based upon quoted and agreed upon costs will become part of the contract.

The contract term will be one year from the effective date of the contract between the Engineer and the Village. The Village will have the option of two (2) additional 1-year extensions (three years total).

As a condition to execution of a contract, the successful Proposer shall provide evidence satisfactory to the Village of insurance in the form and amounts and from providers as required in the form of contract.

VIII. MISCELLANEOUS

FOIL. All proposals submitted in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York ("FOIL"). A Proposer may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission, which it has determined is a trade secret and which, if disclosed, would cause substantial injury to such organization's competitive position. This characterization shall not be determinative, and the Village assumes no responsibility for any disclosure or use of data submitted.

Property of Village. All materials submitted in response to this RFP will become the property of the

Village. The Village shall not be liable for any pre-contractual expenses incurred by the Proposers in the preparation of their proposals.

APPENDIX I

SCOPE OF SERVICES

PROJECT DESCRIPTION

The project site, Eddie Collins Memorial Park, is situated within the Village of Millerton along Route 22, northwest of the Village downtown.

The anticipated design phase shall be completed in 6 to 8 months to design Phase II of the masterplan. The anticipated construction start date is spring 2025. Design elements of this phase generally include a new pool house and community center, accessible short-course pool, pool mechanicals, pool deck, pool appurtenances (i.e. slide, play elements, diving boards, etc.), a septic system, utilities, stormwater conveyances, green infrastructure (rainwater harvesting, solar panels, etc.), electrical infrastructure (conduit runs from the pool site to Route 22 were installed in Phase I), lighting for the entire Park (some conduit runs were installed in Phase I to avoid future disturbance of new pavements), sidewalks, signage, and landscaping as generally illustrated in Attachments A and B. Regarding utilities, a new water service should be provided from the water main along Route 22 and a new electrical service and transformer will be required. Renovation of the existing bathhouse into a park/pool storage facility is also included in this phase. An architect local to Millerton has donated their services for the schematic design of the pool house and will continue to be involved in a limited manner. The selected consultant will take on the complete role and liability of architect of record for the pool house moving forward (design development through construction administration) while continuing to involve the design architect as a collaborator/reviewer.

It is expected that the selected consultant will take on the role of lead consultant and will coordinate directly with all subconsultants, the design architect, the Village, the Park Committee, regulatory agencies and grant agencies from design through construction administration.

SCOPE OF SERVICES

The selected consultant will undertake the following tasks:

1. Site Reconnaissance and SEQR Review

- a. Preparation of supplemental topographic survey as needed for the pool, pool house, and all elements noted in the project description. A copy of the previously prepared survey of the park prior to Phase I improvements will be provided by the Village (September 2020).
- b. SEQR was previously completed for the masterplan as a Type I action with a negative declaration in 2020. The design for the pool and pool house has changed enough to warrant a second SEQR review for this phase. The selected consultant will participate in Village Board meetings while also preparing the EAF, lead agency solicitation and a draft resolution.

2. Wetland Delineation and GPS Field Work (in Support of the Septic System Design)

- a. Preparation of a wetland delineation map for the site (particularly the wooded area west of the existing pool and septic system). The delineated wetland boundaries shall be marked with sequentially numbered pink surveyor's flagging or pink pin flags.
- b. Produce a wetland and stream delineation report of the findings, if requested by review agencies.
- c. Permitting is currently not included but may be added as an additional service if required; ideally, no wetlands are uncovered, or disturbance is avoided.

3. Stormwater Management Plan and Report

- a. It is estimated that this phase of the project will result in an overall land disturbance that will exceed 1 acre. As such, coverage under the NYSDEC State Pollutant Discharge Elimination System

(SPDES) General Permit for Stormwater Discharges from Construction Activities, GP-0-20-001, will be required for this project.

- b. The consultant shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and report in accordance with the requirements of the above noted general permit.
- c. The consultant shall prepare and submit the Notice of Intent (NOI) to NYSDEC prior to construction mobilization.

4. Septic System Soil Testing, Design and Permitting

- a. Soil testing; to be witnessed by Dutchess County Department of Health (DCDOH).
- b. Septic system design and permitting/approvals including coordination with and response to comments by DCDOH and NYSDEC.

5. Design Development

- a. Advancement of the schematic design and preparation of design development drawings and draft specifications. Removal of the existing pool and septic system are to be included in the drawings. Refer to Attachments A through C for schematic layouts and design elements.
- b. A detailed estimate of probable costs shall be prepared to correlate the design development drawings to anticipated funding.
- c. Preliminary coordination with regulatory agencies (DCDOH, NYSDEC, etc.) and grant agencies.

6. Construction Documents

- a. Upon Village and regulatory/grant agency endorsement of the design development drawings, the consultant shall develop final contract documents (drawings and specifications) suitable for public bidding purposes as four (4) contracts pursuant to New York General Municipal Law § 101, also known as Wicks Law: building/pool/site, electrical, mechanical, and plumbing. The consultant shall be responsible for both technical and front-end (divisions 00 and 01) specifications and for coordinating with all subconsultants to organize/assemble each bid set.
- b. A final detailed estimate of probable costs shall be refined to determine the base bid and potential alternate bid items.
- c. The consultant will be responsible for meeting all approvals from involved regulatory agencies (DCDOH, NYSDEC, etc.) and grant agencies prior to bidding.

7. Bid Phase Services

- a. The consultant will assist the Village with each contract during the project bid phase. These services should generally include the following: Solicitation of bids from contractors, bid document distribution, organizing and attending pre-bid meetings, responding to queries and requests for information (RFI), coordinating with all subconsultants and preparing of any necessary addenda. The Village will help to coordinate bid advertisements within the local paper. Bid document distribution will be provided by and organized through the consultant's office.
- b. Upon completion of the bid period, the consultant will attend the bid openings, provide bid tabulation summaries, review/evaluate the bids received and provide recommendations for the award of each of the four (4) contracts.
- c. The consultant will review/document MWBE participation for each contract while working with both the grant agencies to ensure participation requirements are met. This will include the preparation of MWBE participation waivers, if required.

8. Construction Administration/Management

- a. During the construction phase of the project, the consultant shall provide administration, oversight and management services to ensure that installation is advancing in accordance with

the contract documents. The selected consultant will be responsible for processing RFIs, shop drawings, and submittals; preparing change orders and field change directives; reviewing payment applications; attending, leading and documenting weekly construction meetings as the lead consultant; providing a minimum of once-weekly site visits/inspections (separately from the construction meetings); and provide construction management services to coordinate the multiple prime contracts for the poolhouse (building, mechanical, electrical and plumbing).

- b. Coordination with and preparation of any documents required by involved regulatory agencies (DCDOH, NYSDEC, etc.) through project close-out and certificate of occupancy.

9. SWPPP Assessments/Reports

- a. Once-weekly site assessments of construction activities in accordance with the New York State Department of Environmental Conservation (NYSEC) State Pollutant Discharge Elimination System (SPDES) General Permit will be required.
- b. Services will include evaluation of erosion and sediment control measures implemented, documentation of compliance and the identification of deficiencies in the implementation of the Storm Water Pollution Prevention Plan (SWPPP).

10. Grant Administration (Limited)

- a. This project has receiving funding from OPRHP and NY SWIMS. The Village will assume the role of administering and closing out each grant, but it is anticipated that the selected consultant will assist the Village in this regard. The consultant will be expected to provide quarterly MWBE utilization forms, existing and as-built boundary mapping (as required by OPRHP), as well as any documentation required for grant close-out (construction contract, payment applications, meeting agendas/minutes, before/after photos, etc.).

APPENDIX II

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

State of _____)
):ss
County of _____)

Company Name of Bidder: _____

Officer/partner/individual bidder's signature: _____

Print name: _____ Title: _____

Sworn to before me this ____ day
of _____, 20__.

Notary Public

APPENDIX III

FORM OF CONTRACT TERMS AND CONDITIONS

**AGREEMENT FOR PROFESSIONAL SERVICES
ENGINEERING SERVICES CONTRACT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement"), dated as of the ____ day of ____, 2023 between the **VILLAGE OF MILLERTON**, a municipal corporation of the State of New York, Village Hall, 5933 N Elm Avenue, Millerton, New York, 12546, hereinafter referred to as "Village," and _____, a professional _____ organized under the laws of the State of New York, having its principal office at _____, hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, pursuant to a request for proposals dated as of _____, 2024 ("RFP"), the Village has determined to enter into this Agreement providing for services of the Consultant for the purposes set forth in the request for proposals and as provided herein;

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. SCOPE OF SERVICES.

- a. The Consultant shall render the professional services described in the Scope of Services attached hereto and made a part hereof as **Exhibit B** (hereinafter referred to as the "Scope of Services").

- b. During the period from the date of this Agreement to the end of the Initial Term and any extension as provided in Section 3 hereof, the Consultant shall perform such additional services as Consultant as may be requested in writing by the Village, at the hourly rates and actual expenses specified herein (such additional services being referred to herein as "Additional Services"). Prior to undertaking any such Additional Services, the Consultant shall propose a budget and schedule for each proposed project, to be approved by the Village prior to commencing work. No work shall be considered Additional Services unless specifically agreed to in writing by the Village.

Section 2. CONSULTANT QUALIFICATIONS; REPRESENTATIONS; NO CONFLICTS.

- a. The Consultant represents and covenants that (i) it is experienced in performing professional engineering work of the types contemplated by the Scope of Services; (ii) at all times during the term of this Agreement the persons assigned to perform services have and will have the experience, knowledge, and licenses necessary to perform the services described herein; (iii) the Consultant is fully qualified to perform the Scope of Services, with capability to perform the Scope of Services and timely deliver a work product as required by this agreement, (iv) the Consultant will procure and maintain all licenses and permits necessary to perform the work described in this Agreement, and (v) the Consultant will comply with the provisions of the Labor Law and all State laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of this Agreement.

b. Unless otherwise authorized in writing in advance by the Village, the persons primarily responsible for performing work under this Agreement, including any subcontractors, shall be as set forth at **Exhibit E** and **Exhibit C**. Any subcontractors shall be bound by the provisions of this Agreement, such subcontractors and the form of any subcontract shall be subject to prior review and approval by Village in its discretion, and any such subcontract shall be deemed to include the Standard Clauses attached hereto as **Exhibit A**.

c. The Consultant represents and warrants that (i) the Consultant has all requisite power and authority to execute, deliver and perform this Agreement; (ii) this Agreement has been duly authorized by all necessary action on the part of the Consultant and has been duly executed and delivered by the Consultant and, assuming due execution and delivery by the Village, constitutes a legal, valid, binding and enforceable obligation of the Consultant; and (iii) the execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under the organization documents, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

d. The Consultant represents and warrants that it has not entered into any agreement for services with any other party with respect to any activities within or relating to the Scope of Services under this Agreement, other than such subcontracts as are specifically set forth at **Exhibit E**. The Consultant shall accept no other compensation, directly or indirectly, from any party, other than the Village, for any services connected with the work described in the Scope of Services. The Consultant represents that it has reviewed the Code of Ethics of the Village and will comply with its provisions, as it may be amended and in effect from time to time.

e. The Consultant represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent on or resulting from the award or making of this Agreement. The Consultant further represents and warrants that neither it nor any of its directors, officers, members, partners, associates or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services. In the event of breach of this provision the Village shall have the option to annul this Agreement without liability, or deduct from the Agreement consideration, or otherwise recover, the full amount of any such fee, commission, percentage, brokerage fee, gift or other consideration. Such remedies shall be in addition to and not in limitation of any other remedies available at law or in equity.

Section 3. TERM AND COMPLETION SCHEDULE. The Scope of Services shall commence upon the delivery by the Village of a notice to commence work under this Agreement (the "Commencement Date") and shall be completed within the initial term set forth at **Exhibit D** ("Initial Term"). The Scope of Services shall be completed within the period specified at **Exhibit D** except as extended by the Village in writing. Any extension granted shall be for work and payment purposes only and shall not result in any additional Consultant Costs other than those agreed to herein. This agreement may be extended for the optional extension periods set forth at **Exhibit D**,

upon approval by the Village Board. This agreement may be further extended by written addendum upon mutual agreement and as approved by the Village Board.

Section 4. REPORTS: RIGHT TO INSPECT. The Consultant shall report to the Village as specified at **Exhibit B**. The Village staff and its duly authorized representatives shall have the right at all times to inspect and receive copies of the work of the Consultant without additional charge.

Section 5. STANDARD CLAUSES. This Agreement is subject to the terms attached hereto as **Exhibit A** and incorporated herein by reference.

Section 6. DELIVERABLES. The Village will cooperate with the Consultant in providing those deliverables specifically listed herein as being necessary to their performance of the subject work. The Village will provide deliverables, if any, as specified in **Exhibit B**. In the event that such deliverables are not provided within six (6) weeks of the date hereof, the Consultant may request an extension on the term of this Agreement.

Section 7. FEES AND EXPENSES.

a. As compensation for the Services performed pursuant to this Agreement, including all expenses, the Village shall pay the Consultant its fees and expenses as set forth at **Exhibit C**, not to exceed the maximum amount set forth at **Exhibit C** ("Fees and Expenses").

b. The expenses provided for herein shall be limited to the expenses actually and reasonably incurred in connection with the performance of the Scope of Services, of the types listed at **Exhibit C**. Unless otherwise approved in advance by the Supervisor, the Village shall not pay for the following: (i) travel, except for travel outside of the county of Dutchess, when requested in writing by the Village and not including travel to and from Consultant to the Village unless approved in writing for a specific project; (ii) meal charges, except for actual and reasonable expenses which are required for business purposes, such as expenses incurred while hosting working group meetings or closings; or (iii) time spent in preparing bills.

Any reimbursement for travel, meals and lodging shall be made at the actual cost paid, but such reimbursement shall not exceed the prevailing maximum rates established by the New York State Comptroller or any lesser standard rates established from time to time by the Village for its own employees. Any travel must be approved in advance by the Supervisor. Disbursements and expenses shall be itemized by category. Unless otherwise agreed, expenses shall be billed at the same time as the services to which they relate.

Upon request, the Consultant shall provide the Village with detailed documentation substantiating all fees and disbursements. This documentation shall be maintained by the Consultant for a period of six years after the completion of the matter. During that period, the Village shall have the right to audit the Consultant's charges.

Section 8. PAYMENT.

a. Work within the Scope of Services shall be billed monthly in accordance with the schedule of hourly rates attached hereto at **Exhibit C** unless otherwise agreed in writing by the Village. Upon request, the Consultant shall provide monthly statements with respect to accrued fees and disbursements for any matters subject to a periodic retainer or cap.

b. For any Additional Services agreed by the Village and the Consultant to be unrelated to the Scope of Services set forth at **Exhibit B**, the Village shall pay for services rendered in accordance with the schedule of hourly rates attached hereto at **Exhibit C**. Prior to undertaking any such Additional Services, the Consultant shall inform the Village that such services will be billed as Additional Services, shall provide an estimate of the total fees and expenses to be charged for such Additional Services, and shall obtain the Village's written authorization prior to commencing such work. For such other services, the Consultant shall submit invoices not more often than once a month.

c. All statements shall provide (a) the name and position of each individual whose time is billed; (b) the billing rate for each individual; (c) the number of hours expended on behalf of the Village on any day that the individual performed services for the Village; (d) a brief description of the task(s) performed each day for which time is billed; and (e) the total number of hours billed for services rendered to the Village by each individual during the billing period. Copies of detailed documentation substantiating all disbursements and/or out-of-pocket expenses over \$25 shall be provided to the Village. Disbursements and expenses shall be itemized by category. Unless otherwise agreed, any authorized expenses shall be billed at the same time as the services to which they relate. Invoices shall be submitted to the Village at the notice address shown below, to the attention of the Village Treasurer. The Consultant shall maintain separate billing records with respect to each matter undertaken by the Consultant. At the Village's request, the Consultant shall submit invoices on forms provided by the Village.

The acceptance by the Consultant of final payment under this Agreement shall operate as and be a release to the Village from all claims and liability to the Consultant, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the Consultant under or in connection with this Agreement or for any part thereof.

Section 9. OWNERSHIP OF DOCUMENTS.

All documents, reports, opinions, source code, system documentation, and other materials prepared for or relating to the Services provided hereunder shall be at all times the sole and exclusive property of the Village, and shall be treated as confidential by the Consultant except as expressly authorized by the Village. All work product created in connection with this Agreement, including working papers, data, maps, drafts, and other information in whatever form shall at all times be and remain the property of the Village. Such documents are not intended or represented to be suitable for modification or adaptation by the Village or others on extensions of the project designed by Consultant or on any other project. Any such modification or adaptation without written verification by Consultant, as appropriate for the specific purpose intended, will be at Village's sole risk and without liability or legal exposure to Consultant or to Consultant's subconsultants.

Section 10. INDEPENDENT STATUS; TAXES.

- a. The Consultant and their employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the Village. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Village.
- b. Nothing in this Agreement shall impose any liability or duty on the Village for the acts, omissions, liabilities or obligations of the Consultant, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Consultant for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

Section 11. INSURANCE.

- a. The Consultant shall at all times maintain in force during the term of this Agreement, and shall provide evidence satisfactory to the Village, of the following policies of insurance:
 - i. Professional errors and omissions insurance with a U.S. domiciled company providing limits of not less than \$1,000,000 per claim, and in the aggregate, with extended reporting period or automatic coverage of not less than two years. If provided as an option, the Consultant shall agree to purchase an extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.
 - ii. Workers' compensation and other statutory coverage required by New York Law without regard to jurisdiction.
 - iii. Automobile Liability policies with the limits of not less than \$500,000 for each person or \$500,000 for each accident because of bodily injury, sickness or disease including death at any time resulting therefrom, sustained by any person, caused by accident or arising out of the ownership, maintenance or use of owned, non-owners, or hired automobiles with minimum limits of \$500,000 for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.
 - iv. Comprehensive General Liability Insurance shall be furnished with limits not less than \$1,000,000 Bodily Injury Liability for each person/each accident and \$500,000 Property Damage Liability for Each person/Each Accident.
 - v. Such other insurance as shall be required in writing by the Village at the Village's expense.
- b. Any policy required to be maintained under this section shall be from a company rated at least A/X by Best's Rating Service and properly licensed in the State of New York, and shall provide that

the policy shall not be canceled, materially changed, or not renewed without thirty (30) days' prior notice thereof to the Village.

c. Prior to the effective date of this contract, and as a condition precedent to this Agreement, the Consultant shall furnish the Village with certificates of insurance listing the Village as a certificate holder, and upon demand, shall provide such policies to the Village. At least thirty (30) days prior to expiration of any policy required by this Agreement, the Consultant shall furnish the Village evidence satisfactory to the Village of the continuation of such coverage in accordance with this Agreement.

Section 12. INDEMNIFICATION. The Consultant shall defend and indemnify the defend the Village, its agents, servants, officers and employees (collectively the "Indemnified Parties"), and save the Indemnified Parties harmless from any liability, damage, claims, demands, costs or loss, including reasonable attorneys' fees, arising directly and indirectly out of the Consultants' or its or its officers', employees', agents', contractors', subcontractors' or consultants' respective negligent acts or omissions pursuant to this Agreement, including without limitation negligent performance of services under this Agreement, and such indemnity may not be limited by reason or enumeration of any insurance coverage required, and excluding only such liabilities or costs attributable to the Owner's negligence. Negligent performance of services, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Section 13. RIGHT TO AUDIT AND RECORDS.

a. The Consultant shall maintain accurate and complete records detailing the back-up documentation required by this Agreement, and shall maintain such documents for a period of six years from document generation and shall allow the Village access thereto for inspection and photocopying at all reasonable times.

b. All receipts and disbursements are subject to audit by the Village, and the Consultant agrees to cooperate with any audit of this Agreement undertaken by the Village or any entity with jurisdiction to audit the Village, including without limitation any granting agency.

Section 14. COMPLIANCE WITH LAW. The Consultant shall comply with all Federal, State and local laws, rules and regulations applicable to performing the Services herein.

Section 15. DEFAULTS AND REMEDIES.

a. If either party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, such non-defaulting party may take any action available at law or in equity to enforce the terms of this Agreement, and may suspend work or terminate this Agreement upon thirty (30) days written notice to the defaulting party. If the default is not capable of being cured within thirty (30) days and the defaulting party has commenced cure within thirty (30) days and is diligently pursuing efforts to cure, such thirty (30) day period shall

be extended for a reasonable period of time.

b. If either party is required to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs. No remedy herein conferred upon or reserved to the Village is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

c. No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. It shall not be necessary to give any notice other than as expressly required under this Agreement. In the event any provision contained in this Agreement should be breached and thereafter duly waived by the party or parties so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

Section 16. EARLY TERMINATION. The Village shall have the right to postpone, suspend, abandon or terminate this Agreement with or without cause, and such action shall in no event be deemed a breach of contract. Upon termination by the Village without cause under this section, the Consultant shall be entitled to compensation for acceptable completed Services performed through the date of postponement, suspension, abandonment or termination, such Services to be verified by audit. In the event that this Agreement is terminated by the Village for any reason, then within ten (10) days after such termination, the Consultant shall make available to the Village all records, documents and data pertaining to Services rendered under this Agreement.

Section 17. NOTICES. Unless otherwise specified, all notices required or permitted for herein shall be in writing and sent by U.S. mail, postage prepaid, or by hand, by overnight courier, or by telecopy confirmed by any of the previous methods, addressed to the parties as indicated below or to such addresses as they may designate in writing from time to time:

To the Consultant at their address set forth on the execution page of this Agreement.

To the Village at:
Jenn Najdek, Mayor
Village Hall
5933 N Elm Avenue
Millerton, New York, 12546

With a copy to:
Victoria Polidoro, Esq.
Rodenhausen Chale & Polidoro LLP
55 Chestnut Street
Rhinebeck, NY 12572

Section 18. SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 19. AGREEMENT IS A LEGALLY BINDING CONTRACT. Each party hereto represents and warrants that this Agreement has been duly authorized and executed by it and constitutes its valid and binding agreement, and that any governmental approvals necessary for the performance of this Agreement have been obtained.

Section 20. NO THIRD PARTY BENEFICIARY. Nothing in this Agreement shall act to confer third party beneficiary rights on any person or entity not a party to this Agreement.

Section 21. NO RECOURSE. All covenants, stipulations, promises, agreements and obligations of the Village contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Village, and not of any member, director, officer, employee or agent of the Village in his individual capacity, and no recourse shall be had for the payment of any claim based under this Agreement against any member, director, officer, employee or agent of the Village.

Section 22. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

Section 23. ENTIRE AGREEMENT; GOVERNING LAW AND JURISDICTION; AMENDMENT. This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement may be amended only upon mutual written agreement signed by both parties.

Section 24. HEADINGS. The headings herein are solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 25. GRANT CONDITIONS. The Consultant acknowledges and agrees to comply with the conditions applicable to Village's consultant pursuant to the terms of the Grant Agreement (s) referred to at **Exhibit F**.

[Remainder of page intentionally left blank.]

**Execution Page for AGREEMENT FOR PROFESSIONAL SERVICES
ENGINEERING SERVICES CONTRACT**

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

VILLAGE OF MILLERTON

By: _____
Jenn Najdek, Mayor

_____,
as **Consultant**

By: _____
Title: _____

Notice
Address: _____

This Agreement consists of the Agreement (9 pages including this execution page), together with the following Exhibits:

- EXHIBIT A STANDARD CLAUSES FOR ALL MUNICIPAL CONTRACTS
- EXHIBIT B SCOPE OF SERVICES
- EXHIBIT C FEES AND EXPENSES
- EXHIBIT D TERM AND COMPLETION DEADLINES
- EXHIBIT E SUBCONTRACTS
- EXHIBIT F GRANT CONDITIONS

EXHIBIT A

STANDARD CLAUSES FOR MUNICIPAL CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the Municipality, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-ASSIGNMENT

CLAUSE. This contract may not be assigned, and no part or portion may be subcontracted, by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Municipality and any attempts to assign the contract without the Municipality's written consent are null and void.

2. WORKERS'

COMPENSATION BENEFITS. This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

3. NON-DISCRIMINATION

REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction,

alteration or repair of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors or any person acting on behalf of such contractor or subcontractor shall, by reason of race, creed, color, national origin, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract, as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

4. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the State or other contracting agency as defined in Section 312 is committed

to expend, or does expend, funds in return for labor, services, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (b) a written agreement in excess of \$100,000 whereby a contracting agency is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon, or (c) a written agreement in excess of \$100,000 whereby the owner of a State-assisted housing project is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a.) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation.

(b.) At the request of the Municipality, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that agency, union, or representative will affirmatively

cooperate in the implementation of the Contractor's obligations herein.

(c.) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

The Contractor shall include the provisions of (a), (b), and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the beneficial use of the Contractor in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the state contract. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to this Agreement; or (ii) employment outside New York State. The Municipality shall consider compliance by the Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Municipality shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Municipality shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as

otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Labor Department in accordance with the Labor Law. Additionally, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with subdivision 3-a of this Section 220 of the Labor Law shall be a condition precedent to payment by the Municipality of any sums due and owing to any person for work done upon the project.

6. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with General Municipal Law § 103-d, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Municipality a non-collusive bidding certification on Contractor's behalf.

7. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract amendment or modification thereto shall be rendered forfeit

and void. The Contractor shall so notify the Municipality within five (5) business days of such conviction, determination or disposition of appeal.

8. SET-OFF RIGHTS. The Municipality shall have rights of set-off. These rights shall include, but not be limited to, the Municipality's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Municipality with regard to this contract, or any other contract with the Municipality, including any contract for a term commencing prior to the term of this contract. This also includes amounts due and owing the Municipality for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Municipality and third parties in connection therewith.

9. RECORD-KEEPING REQUIREMENT. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts or other evidence directly pertinent to performance under this contract (the "Records") for a period of six (6) years following final payment or to the termination of this contract, whichever is later, and any extensions thereto. The Municipality and Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such Records during the contract term, extensions thereof and said six (6) year period thereafter during normal business hours at an office of the Contractor within the State of New York, or if no such office is available, at a mutually agreeable and reasonable venue within the State, for the purposes of inspection, auditing and copying. "Termination of the contract", as used in this clause 9, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Municipality shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the

Municipality's chief fiscal officer with a copy to its Records Access Officer, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Municipality's right to discovery in any pending or future litigation.

10. **LIABILITY.** Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Contractor, in connection with their services under this contract. Further, it is expressly understood that Contractor shall indemnify and save harmless the Municipality, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of Contractor under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided.

11. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal Supremacy clause requires otherwise.

12. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by General Municipal Law § 106-b.

13. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

14. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Municipality's receipt of the return

thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Municipality, in writing, of each and every change of address to which service of process can be made. Service by the Municipality to the last known address shall be sufficient.

15. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations and to procure all necessary licenses and permits.

16. **DISQUALIFICATION TO CONTRACT WITH PUBLIC ENTITY OR POLITICAL SUBDIVISION.** The Contractor has not been disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services.

17. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of New York State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the New York State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder

certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

18. **ETHICS.** The Municipality shall have the right to cancel or terminate this Agreement at any time if any work performed under the Agreement is in conflict with the provisions of the New York State Public Officers Law or the Municipality's ethics code.

19. **OSHA 10 HOUR CONSTRUCTION SAFETY AND HEALTH COURSE.** If this is a public work contract covered by Article 8 of the New York State Labor Law, it shall be required that on all public work projects of at least \$250,000.00, all laborers, workers and mechanics working on the site be certified as having successfully completed A MINIMUM OF 10 HOURS OF CONSTRUCTION AND HEALTH SAFETY TRAINING, as approved by the United States Department of Labor's Occupational Safety and Health Administration (OSHA). The Contractor, sub-contractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall provide proof of certification for successfully completing the course for each employee prior to performing any work on the project.

20. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit, the terms of this Exhibit shall control, except that to the extent required for the purpose of obtaining Federal Aid in connection with this contract, any contract provisions required for Federal Aid projects shall supersede any conflicting provisions.

21. **WICKS LAW PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law, where preparation of separate specifications is not required, the Contractor shall make no change of subcontractor or agreed-upon amount to be paid to each subcontractor without the approval of the owner in accordance with Section 101(5) of the General Municipal Law.

22. **NO WAIVER OF PROVISIONS.** The Municipality's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Municipality of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Municipality, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

23. **NO INVESTMENT ACTIVITIES IN IRAN.** A person that is identified on a list created pursuant to paragraph (b) of subdivision three of section 165-a of the State Finance Law as a person engaging in investment activities in Iran as described in such section, shall not be deemed a responsible Contractor to the extent provided pursuant to section 103 of the General Municipal Law. By signing this contract, the Contractor and each person signing on behalf of the Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief such Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

24. **ENTIRE AGREEMENT.** This contract, together with this Exhibit, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties hereto.

25. **SEXUAL HARASSMENT POLICY.** Pursuant to Labor Law § 201-G, the Municipality has adopted the form of Sexual Harassment Policy promulgated by the New York State Division of Human Rights, a copy of which is on file with the Clerk. By execution of this Agreement, the Contractor acknowledges receipt of the Sexual Harassment Policy and that it shall be bound by the terms of said policy.

Any violation of the Sexual Harassment Policy, the New York State Labor Law, or the New York State Human Rights Law by the Contractor, its contractors, subcontractors, officers, employees, or agents shall constitute an event of default under this Agreement.

26. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY

LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

EXHIBIT B

SCOPE OF SERVICES

Scope of Services: The Consultant agrees to furnish the services more specifically described at Exhibit B-1 and Exhibit B-2 attached hereto.

- a. Before undertaking any task, the Consultant shall submit to the Mayor, with a copy to the Clerk, a proposed scope with a maximum authorized amount for each task or project and obtain written authorization from the Mayor and, if the amount exceeds \$2,000, the Village Board of Trustees.
- b. The Consultant shall submit to the Village Board of Trustees a monthly progress report regarding the status of the services for each assigned project. The Consultant will attend meetings of the Village Board upon request.
- c. The Village reserves the right to assign any work or project to another consultant, and to require competitive quotations or proposals for any work or project.

Deliverables: The Village shall provide the following:

- a. Arrange for and provide access for the Consultant to enter upon public property as required for the Consultant to perform the services. To the extent included in the scope for a particular task, Consultant shall notify the Village of a need to enter onto private property and request instructions from the Village's Attorney in the event owner consent is not provided to Consultant.
- b. Furnish or loan to the Consultant upon request all plans, maps and contract data in the possession of the Village which relates and is necessary to the work to be performed by the Consultant.
- c. Pay all permit fees, application fees, etc. which may be required to progress the work.
- d. Examine all studies, reports, and other documents presented by the Consultant, obtain advice of an attorney, bond counsel, accountant and other consultants as the Village deems appropriate for such examination and render decisions pertaining thereto.
- e. In the event that Consultant is unable after notice and due diligence to progress the work because of an outstanding deliverable, Consultant may be entitled to a reasonable delay in the deadline for completion of the work. No increase in compensation shall be provided as a result of such delay unless expressly approved in writing by the Village. .

EXHIBIT B-1

DETAILED SCOPE OF SERVICES

EXHIBIT B-2

DETAILED SCOPE –RESPONSE TO RFP

EXHIBIT C

FEES AND EXPENSES

Lum Sum Task Based Fees: Fees for the tasks outlined in the Scope of Services are set forth at the attached **Exhibit C-1**.

Standard Fee Schedule: Hourly Rates are attached hereto at **Exhibit C-2**. Fees for each approved task shall be subject to the maximum approved amount for the services specified.

Additional Services: Any approved Additional Services are to be billed at the Hourly Rates specified above. All Additional Services require the advance written approval of the Village Board, subject to the maximum approved amount for the services specified. Services performed without such authorization are at the Consultant's risk and under no circumstances shall the Village be obligated for payment.

Project Billing: The Village and Consultant may agree on a case by case basis to a lump sum fee for a particular project scope of services identified in a supplemental agreement or proposal and approved by the Village Board; in such case, progress billing shall be based on satisfactory completion of tasks as specified in the supplemental agreement or proposal.

Consultant Project Manager and Project Team: Assigned personnel shall be as follows unless otherwise approved by the Village in its discretion:

[Identify Project Manager: _____]

[Identify other key team members: _____]

EXHIBIT C-1

**ITEMIZED FEE SCHEDULE INCLUDING TASK FEES< HOURLY
FEES, AND DISBURSEMENTS**

EXHIBIT D

TERM AND COMPLETION DEADLINES

Commencement Date: Date Specified in a Notice to Proceed

Initial Term: 1 year

Optional Extensions: The Village may elect to extend the term for two (2) additional one-year periods.

Completion Deadlines for Deliverables: TBD on a project and task basis in consultation with the Village; services are to be completed within the Term of this Agreement unless expressly approved in writing by the Village.

EXHIBIT E

SUBCONTRACTS

Consultant is not authorized to subcontract with any other person or entity for the purposes described in the Scope of Services without prior written authorization from the Village. In the event that Consultant is so authorized to subcontract for services, all subcontractors shall be bound by the provisions of this Agreement, including without limitation requirements for compliance with the Village's Ethics Policy, Standard Clauses, insurance and indemnity.

EXHIBIT F

GRANT CONDITIONS

The Consultant shall comply with the terms of the following grant agreements, to the extent such terms apply to a consultant of the Village:

1. New York Statewide Investment in More Swimming (NY SWIMS) dated as of _____, 202_ , a copy of which is attached hereto and incorporated by reference.

APPENDIX IV

NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY FOR THE PROJECT

It is the policy of the State of New York and DASNY, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minorities Group Members and women share in the economic opportunities generated by DASNY's participation in projects or initiatives, and/or the use of DASNY funds.

- 1) The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - a) Grantee shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - b) At the request of the AAO, the Grantee shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Grantee's obligations herein.
- 2) The Grantee is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.
- 3) Grantee represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the AAO and shall permit access to its books and records by DASNY, or its designee, for the purpose of ascertaining compliance with provisions hereof.
- 4) Grantee shall include or cause to be included, paragraphs (1) through (3) herein, in every contract, subcontract or purchase order with a Contracting Party executed in connection with the Project, in such a manner that said provisions shall be binding upon each Contracting Party as to its obligations incurred in connection with the Project.

NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in paragraph 2) herein, and developed by DASNY.

Affirmative Action Officer (“AAO”)

Shall mean DASNY’s Affirmative Action Officer or his/her designee, managing the affirmative action program for DASNY.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by DASNY and (ii) **any borrower or Grantee** receiving funds from DASNY pursuant to a loan or Grant document.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is (i) a least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing, (iii) an enterprise in which such minority ownership has and exercises DASNY to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Minority and Women-Owned Business Enterprise Participation

Minority and Women-owned Business Enterprise participation efforts are not limited to the efforts suggested herein, and the role of M/WBE firms should not be restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such efforts may include but not be limited to:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women’s trade associations;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;

- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on DASNY contract;
- (e) Utilizing the resources of DASNY Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate, and
- (g) The Contracting Party shall remit payment in a timely fashion.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing, (iii) an enterprise in which such women ownership has and exercises DASNY to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman- owned.