

PROFESSIONAL SERVICES AGREEMENT

Sewer District Formation Support
Town Law Article 12-A with Mandatory Referendum

This Agreement is by and between

Town of Salem (“CLIENT”)
214 Main Street
Salem, NY 12865

and,

Delaware Engineering, D.P.C. (“ENGINEER”)
28 Madison Avenue Extension
Albany, New York 12203

Who agree as follows:

The CLIENT hereby engages the ENGINEER to perform the services described in Part I ("Services") and the ENGINEER agrees to perform the Services for the compensation set forth in Part II. Work shall be conducted pursuant to the Standard Terms and Conditions provided in Part III. The ENGINEER shall be authorized to commence the Services upon execution of this Agreement. The CLIENT and the ENGINEER agree that this signature page, together with Parts I-III and any attachments referred to therein, constitute the entire agreement between them relating to continuing Project assignments (Agreement).

APPROVED FOR CLIENT

APPROVED FOR ENGINEER

By: _____

By:  _____

Printed Name: _____

Printed Name: Mary Beth Bianconi

Title: _____

Title: Partner

Date: _____

Date: July 12, 2023

PART I ENGINEER'S RESPONSIBILITIES

Background:

The hamlet area of the Town of Salem (CLIENT) is a densely populated area comprised of residences, businesses, schools, public offices, etc. The Hamlet area is currently served by a municipal water supply; however, there is currently no public sewer system. Each property owner is responsible for their own on-site treatment system.

The Town has noted a multitude of problems stemming from the lack of public sewer system. The small lot sizes with strict spatial constraints make it difficult for property owners to update or install new on-site septic systems that meet regulatory standards. This has caused the health department to place water usage restrictions on business owners, causing economic strain, and slowing potential business development. Town staff have noted the presence of what appears to be illicit discharges from on-site septic systems into Beaver Brook and White Creek, creating the potential for significant contamination of the local waterways.

The Town has attempted to bring a municipal sanitary sewer system to the Hamlet area on multiple occasions with no success due to the lack of support and funding opportunities. In an effort to revive the project and pursue new funding opportunities available, the Town engaged with Delaware Engineering, DPC (ENGINEER) to advance a Preliminary Engineering Report (PER) that evaluates viable alternatives for wastewater treatment and sanitary sewer collection systems to serve the residents and businesses within the Hamlet area of the Town (the former Village of Salem). The Town Sewer Committee agreed upon a service area that includes approximately 345 users, and generally encompasses the Hamlet area.

The capital improvement costs for the recommended alternatives from the PER including construction (inflated to 2026), contingency (20%), and soft costs (15%), were determined to be approximately **\$21,635,000** in 2026 dollars. To finance the project, it is recommended that the Town pursue all available funding options.

Many programs that provide grant and low-cost financing for wastewater system projects such as that contemplated by the Town require that in addition to having a PER, the State Environmental Quality Review (SEQR) is conducted, the State Historic Preservation Office (SHPO) is consulted, the Sewer District is formed, and a bond resolution is in place to provide the collateral against which grants and low-cost financing are issued and secured prior to application for financing.

To that end, the scope of work provided herein is to support the SEQR and SHPO processes as well as formation of the sewer district. It is noted that typically, an attorney familiar with the district formation and bonding processes is also engaged by the municipality. ENGINEER recommends the CLIENT secure the services of an attorney, and budget \$10,000 for these services in addition to the costs for professional engineering services outlined herein.

Scope of Services:

ENGINEER proposes to conduct professional services in support of CLIENT sewer district

formation as follows:

1. SEQR Support
 - a. Prepare Part 1 of the Long EAF and assist with Coordinated Review
 - b. Prepare draft Parts 2 and 3 of the Long EAF and assist with adoption of findings (see Assumptions)
2. SHPO Coordination
 - a. Prepare filing through the CRIS system to obtain feedback from the SHPO regarding the project
 - b. Secure SHPO sign off to submit applications for funding (see Assumptions)
3. Prepare Map Plan and Report
 - a. Using the PER as the basis, prepare a Map Plan and Report in conformance with Town Law Section 209(c) for use by the CLIENT in scheduling a public hearing for the Sewer District formation
4. Hearing Support
 - a. Attend a public hearing and provide support to the CLIENT in the form of a presentation, handouts, and discussion of sequence of events
5. Referendum Support
 - a. CLIENT has indicated that the resolution to create the Sewer District will be submitted to mandatory referendum vote; thus, ENGINEER will assist CLIENT in the Referendum Process
 - i. Prepare Fact Sheets and web information for distribution by the Town
 - ii. Attend two information sessions, present information, respond to public comments
 - b. Assist CLIENT with vote process as needed (see Assumptions)
6. Office of the State Comptroller (OSC) Review Support
 - a. If the Referendum vote results in the creation of the Sewer District, the action is subject to review by the OSC which is a document review process; thus, ENGINEER will assist CLIENT in the OSC review process
 - i. Prepare and submit application materials on behalf of CLIENT
 - ii. Respond to OSC requests for additional information
 - b. Assist CLIENT with OSC review process as needed (see Assumptions)
7. Grant and Financing Applications
 - a. Once OSC approval is obtain, CLIENT will be eligible to apply for grants and low-cost financing; thus, ENGINEER will support CLIENT with such applications
 - i. Prepare and submit applications or work with others as appropriate
 1. CWSRF
 2. BIL
 3. WIIA
 4. USDA
 5. CDBG
 6. NBC
 - b. Assist CLIENT with Grants and Financing as needed (see Assumptions)

Schedule:

In order to take advance of the general election that will be conducted in November of 2023, the

following schedule is required:

Tentative Project Schedule

Action	Timeframe Start to Complete	Anticipated or Target Date
Public Engagement and Education	5 months	June – November 2023
Initiate and conduct SEQR (28-day lead agency circulation in the notice)	2 months	June 21, 2023 – July 19, 2023
Town Board Adopts Map Plan and Report for District Formation and Schedules Public Hearing (10-day notice)	Point in Time	July 19, 2023
Town Board conduct Public Hearing on District Formation SPECIAL MEETING	Point in Time	July 31, 2023
Town Board Adopts District Formation Resolution Subject to Mandatory Referendum	Point in Time	August 4, 7, 8, or 9*
<u>Referendum Vote</u>	<u>Point in Time</u>	<u>November 7, 2023</u>
Assuming a positive vote, submit to NYSOSC	4-6 months	November 2023 – April 2024
Receive OSC Approval, District Formed, Adopt Bond Resolution	Point in Time	April or May 2024
Secure BAN	1 month	May 2024
Apply to EFC for CWSRF/BIL Financing	2 months	June 2024
NYSOCR CDBG and WIIA Applications	Point in Time	Summer 2024
Design and permitting	12 months	June 2024 – June 2025
Close on SRF Financing	Point in Time	December 2024
Bidding and Award	3 months	Fall 2025
Construction	24 months	Fall 2025 – Fall 2027
Start-up and Close Out	3 months	Winter 2028

**In conformance with §91 and §94 of the Town Law, if the adoption of the resolution submitted to mandatory referendum occurs not sooner than 90 and not greater than 105 days from the date of the general town election, the proposition is on the ballot on election day. In 2023, Election Day is November 7th.*

Assumptions:

1. A SEQR Neg Dec is anticipated. If a Pos Dec is issued and an EIS required, ENGINEER will provide a supplemental scope and cost
2. SHPO filing is documentary and does not include a Phase 1A/1B or any other study at this time.

3. CLIENT will engage with an attorney skilled with District formation and the OSC review and legal services associated with these actions will be provided by that attorney
4. CLIENT may engage with others to support grants and financing which is welcome; however, ENGINEER will prepare at a minimum CWSRF, BIL and WIIA applications and support others.

**PART II
COMPENSATION**

The total compensation for the efforts of the ENGINEER shall be \$44,500 payable on a milestone basis as follows:

Milestone	Compensation
SEQR/SHPO	\$2,000
MPR	\$2,500
Hearing	\$5,000
Referendum Process	\$15,000
OSC Process	\$12,500
Grants and Financing	\$7,500
TOTAL	\$44,500

It is recommended that CLIENT engage with an attorney with experience in district formation and the OSC process and that a budget of \$10,000 for these services is considered at least initially.

Billing rates are provided in this agreement for information only. Invoices will include a description of milestone achieved and a running total of accumulated compensation.

DELAWARE ENGINEERING, D.P.C.
2023
HOURLY RATE SCHEDULE

Personnel	Rate
Admin, Billing Clerk, Project Coordinator	\$80 - \$100
Communications	\$150 - \$170
Designer, Technician, Construction Inspector I	\$90 - \$115
Designer, Technician, Construction Inspector II	\$120 - \$140
Designer, Technician, Construction Inspector III	\$145 - \$160
Designer, Technician, Construction Inspector IV	\$165 - \$195
Engineer/Scientist/Planner I	\$100 - \$135
Engineer/Scientist/Planner II	\$135 - \$160
Engineer/Scientist/Planner III	\$160 - \$180
Engineer/Scientist/Planner IV	\$180 - \$225
Principal Engineer/Scientist/Planner	\$220 - \$240

Reimbursable Expenses:

1. Mileage @ Federal Rate
2. Travel Expenses (Lodging, Meals) @ Federal Per Diem Rate
3. Telecommunications @ Cost
4. FedEx, UPS, US Postal, Courier @ Cost
5. Subcontract Management @ Cost plus 10%
6. Other allowable costs @ Cost (Plan Reproductions, Photographs, etc.)

1. STANDARD OF CARE. Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CLIENT are specifically objected to.

2. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CLIENT. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

3. SAFETY. ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. DELAYS. If events beyond the control of CLIENT or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, ENGINEER shall be entitled to an equitable adjustment in compensation.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon 30 days written notice to the other party. CLIENT shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination. In the event either party defaults in its obligations under this Agreement (including CLIENT'S obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. OPINIONS OF CONSTRUCTION COST. Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CLIENT only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CLIENT.

7. RELATIONSHIP WITH CONTRACTORS. ENGINEER shall serve as CLIENT'S professional representative for the Services, and may make recommendations to CLIENT concerning actions relating to CLIENT'S contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CLIENT'S contractors.

8. CONSTRUCTION REVIEW. For projects involving construction, CLIENT acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CLIENT agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

9. INSURANCE. ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER'S business requirements. Certificates evidencing such coverage will be provided to CLIENT upon request. For projects involving construction, CLIENT agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER'S coverages referenced above shall, in such case, be excess over contractor's primary coverage.

10. HAZARDOUS MATERIAL. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ENGINEER and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. ENGINEER agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CLIENT acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. CLIENT shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize ENGINEER to execute such documents as CLIENT'S agent. CLIENT waives any claim against ENGINEER and agrees to defend, indemnify, and save ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER'S discovery of unanticipated hazardous materials or suspected hazardous materials.

11. INDEMNITIES. To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless CLIENT from and against loss, liability, and damages sustained by CLIENT, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of ENGINEER, its agents or employees.

To the fullest extent permitted by law, CLIENT shall defend, indemnify, and save harmless ENGINEER from and against loss, liability, and damages sustained by ENGINEER, its agents, employees, and representatives by reason of claims for injury or death to persons, damages to tangible property, to the extent caused directly by any of the following: (a) any substance, condition, element, or material or any combination of the foregoing (I) produced, emitted or released from the Project or tested by ENGINEER under this Agreement, or (b) operation or management of the Project. CLIENT also agrees to require its construction contractor, if any, to include ENGINEER as an indemnitee under any indemnification obligation to CLIENT.

12. LIMITATIONS OF LIABILITY. No employee or agent of ENGINEER shall have individual liability to CLIENT. CLIENT agrees that, to the fullest extent permitted by law, ENGINEER'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER'S negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the limits of insurance under this Agreement. If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

13. ACCESS. CLIENT shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

14. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CLIENT for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at the CLIENT'S risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when CLIENT provides deliverables in electronic media to another entity. CLIENT agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. CLIENT shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, ENGINEER shall be advised and the inconsistency shall be corrected at no additional cost to CLIENT. Following the expiration of this 30-day period, CLIENT shall bear all responsibility for the care, custody and control of the electronic media. In addition, CLIENT represents that it shall retain the necessary mechanisms to read the electronic media, which CLIENT acknowledges to be of only limited duration. CLIENT agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CLIENT or others acting through CLIENT.

15. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

16. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

17. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

18. DISPUTE RESOLUTION. Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute can not be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

19. NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

20. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CLIENT'S contractors, if any.

21. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

22. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.