

N2911

July 15, 2021

County of Carroll
Office of the Commissioners
95 Water Village Road
Ossipee, NH 03864

Re: ***General Services Agreement***
Professional Engineering Services
County of Carroll, New Hampshire

Dear Commissioners:

We are pleased to submit this Agreement whereby Underwood Engineers, Inc., hereinafter called the **Engineer**, would provide general professional engineering services as a consulting engineer for the County of Carroll, New Hampshire, hereinafter called the **Owner**. This Agreement is in response to the County's Water System Improvement Study. It is understood that the services to be rendered will be defined through separately issued requests defining a specific scope and budget. This General Services Agreement defines the General Conditions and billing rates.

REQUEST FOR SERVICES

The **Engineer** will furnish services only at the specific request of the **Owner** and only for the specific purpose contained in each request. Whenever possible, the **Owner** will transmit such requests to the **Engineer** in writing. The attached sample form (Attachment A) for an Engineering Service Request (ESR) may be used for this purpose. The ESR includes a description of the work (scope of work), budget and schedule.

ENGINEERING FEES AND CHARGES

Unless stated otherwise in the ESR, fees for engineering services will be on an hourly basis for the personnel involved. Such hourly fees will be based on the **Engineer's** standard technical payroll plus an allowance to cover overhead and profit. Expenses will be billed at cost, unless noted otherwise. Specialty consultants utilized by the **Engineer** will be charged to the **Owner** without mark-up unless noted otherwise in the ESR.

The current hourly rates are attached (Attachment B). Hourly rates will be in effect for one-year from the date of this Agreement. Adjustments to the rates will be as issued by the **Engineer** annually.

OTHER ENGINEERING SERVICES

On construction projects where federal or state funds are anticipated, the **Engineer** would prepare a separate Agreement utilizing the required contract documents to maintain eligibility. The scope and fee would cover only the particular project in question, outlining the work to be done, and specifying the fee applicable to each phase of the work.

If any legal proceedings are required by the **Engineer**, the fee for appearance in a court of law or quasi-judicial hearing shall be on a per diem basis. The per diem rate is computed on the basis of each half day at a court or hearing regardless if active testimony is given. The per diem rate is based on 1.5 x the hourly rate of the employee involved (4-hour minimum). An ESR would be prepared and authorized in advance of any legal work.

AGREEMENT

This letter Agreement and the attached General Provisions will represent the entire agreement between the **Owner** and the **Engineer**, with respect to the Project(s), and may only be modified in writing, signed by both parties. (**Note: Limitation of Liability, G.P., Section 5.7**)

BILLINGS AND PAYMENT

Billings for services will be made monthly and payment will be due the **Engineer** within 30 days of the billing date.

RENEWAL AND CANCELLATION

This Agreement shall extend for three (3) years from its effective date, but shall be automatically renewed on an annual basis on each anniversary of its effective date, unless canceled by either party by written notice as prescribed in the General Provisions. If the **Engineer** and the **Owner** mutually consent, this agreement or any renewal thereof may also be canceled, amended or superseded by a new agreement at times other than the anniversary date.

EFFECTIVE DATE OF AGREEMENT

This letter Agreement and General Provisions, if accepted by the **Owner**, shall become an Agreement effective on the date of acceptance by the **Owner**. The return of one signed and dated copy shall be interpreted by the **Engineer** as authorization to proceed with engineering services when requested.



Page 3 of 3
County of Carroll Commissioners
July 15, 2021

Respectfully submitted,

UNDERWOOD ENGINEERS, INC.
(Engineer)



Keith A. Pratt, P.E.
President



David J. Mercier, P.E.
Vice President

KAP/DJM
Enclosures

APPROVED AND ACCEPTED

COUNTY OF CARROLL,
NEW HAMPSHIRE
(Owner)

On This ____ Day of _____, 2021

By _____
Terry McCarthy, Chairman
County of Carroll Commissioners

Attest: _____



GENERAL PROVISIONS

Attached and made a part of a GENERAL SERVICES AGREEMENT dated _____ between:

County of Carroll, New Hampshire
(OWNER)
and
Underwood Engineers, Inc.
(ENGINEER)

in respect to the project (Project) described herein.

SECTION 1 – MEANING OF TERMS

1.1. As used herein the term "this Agreement" refers to the General Services Agreement to which these General Provisions are attached, as if they were part of one and the same document.

SECTION 2 – SERVICES OF ENGINEER

2.1. ENGINEER shall not be obligated to perform any prospective work unless and until OWNER and ENGINEER agree in writing as to the particulars of the Specific Project, including the scope of ENGINEER's services, time for performance, ENGINEER's compensation, and all other appropriate matters.

2.2. Each duly executed Scope of Work or Engineering Service Request (ESR) shall be subject to the terms and conditions of this Agreement.

2.3. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in ENGINEER having to certify, guarantee, or warrant the existence of conditions whose existence ENGINEER cannot ascertain within its services for that Specific Project. OWNER agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon ENGINEER signing any such certification.

SECTION 3 - OWNER'S RESPONSIBILITIES

3.1. The OWNER will furnish or make available to ENGINEER any or all of its records, maps, or other data which, in the judgment of ENGINEER, are pertinent to his work. The OWNER will authorize and assist ENGINEER in obtaining any such pertinent information from other public and private sources. When requested by ENGINEER, the OWNER will furnish all reasonable manual assistance of OWNER's forces in performing investigations requiring such assistance.

Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

3.2. OWNER shall provide all criteria and full information as to OWNER's requirements for the Project; designate a person to act with authority on OWNER's behalf in respect of all aspects of the Project; examine and respond promptly to ENGINEER's submissions; and give prompt written notice to ENGINEER whenever he observes or otherwise becomes aware of any defect in the work.

3.3. OWNER shall also do the following and pay all costs incident thereto:

- Guarantee access to and make all provisions for ENGINEER to enter upon public and private property, when required.
- Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project.
- Provide any auditing service required.

SECTION 4 – BUDGETS AND PAYMENTS

4.1. Suggested budgets, as used in this Agreement, are best estimates by ENGINEER. The budgets are based on available information and prior to any detailed research on the Project.



Budgets are not intended to be fixed prices but are reasonable estimates of average costs to complete projects of similar size.

4.2 Invoices for ENGINEER'S services shall be submitted on a monthly basis, mailed to OWNER at the address of OWNER indicated. All such invoices shall be payable within thirty (30) days after the date indicated on the invoice and shall, in the event that payment is not duly made, bear interest at 1% per month starting thirty (30) days from the date of original billing. It is further understood that if there be failure by OWNER to pay any invoice due to ENGINEER within ninety (90) days after the date of the invoice, ENGINEER may, without waiving any other claim or right against OWNER, and without liability whatsoever to OWNER, terminate its performance hereunder. After ninety (90) days from the date of invoice, the ENGINEER may also place unpaid balances in the hands of any agency or an attorney for collection. OWNER shall pay all costs and expenses of such collection, including reasonable attorney's fees and court costs, if any. Should it be necessary to institute legal proceedings for collection, it is understood and agreed that interest at the rate set forth above shall continue to accrue during the pendency of any such action and until such time as ENGINEER receives actual payment in full, whether by settlement, judgment, award or otherwise.

SECTION 5 – GENERAL CONSIDERATIONS

5.1. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

5.2. Indemnification: The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs,

including reasonable attorneys' fees and defense costs, to the extent caused by the ENGINEER's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the ENGINEER is legally liable. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable. Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

5.3. Construction Phase Engineering:

5.3.1. ENGINEER shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall ENGINEER have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

5.3.2. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

5.3.3. ENGINEER shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.

5.3.4. ENGINEER shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons



(except ENGINEER's own employees and its subconsultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by ENGINEER.

5.3.5. While at a Site, ENGINEER's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which ENGINEER has been informed in writing.

5.3.6. For each design performed or furnished, ENGINEER shall be responsible only for those construction phase services that have been itemized and expressly required of Engineer in writing through an ESR.

5.4. Ownership of Instruments of Service:

5.4.1. The OWNER acknowledges the ENGINEER's documents, including electronic files, as the work papers of the ENGINEER and are the ENGINEER's instruments of professional service. The ENGINEER retains the right to re-use the documents for any purpose.

5.4.2. In recognition of 5.4.1, final design and construction documents prepared under this Agreement shall become the property of the OWNER upon completion of the services and payment in full of all monies due to the ENGINEER. The OWNER shall not reuse or make any modification to the construction documents without the prior written authorization of the ENGINEER. The OWNER agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the OWNER or any person or entity that acquires or obtains the construction documents from or through the OWNER without the written authorization of the ENGINEER.

5.4.3. Under no circumstances shall the transfer of ownership of the ENGINEER's drawings, specifications, electronic files or other instruments of service be deemed a sale by the ENGINEER, and the ENGINEER makes no warranties, either express or implied, of merchantability and fitness for any particular purpose, nor shall such transfer be construed or regarded as any waiver or other relinquishment of the ENGINEER's copyrights in any of the foregoing, full ownership of which shall remain with the ENGINEER, absent the ENGINEER's express prior written consent.

5.5. Opinions of Cost: ENGINEER's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent ENGINEER's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If OWNER requires greater assurance as to probable Construction Cost, OWNER must retain an independent cost estimator.

5.6. Insurance: ENGINEER shall procure and maintain insurance to protect from claims for Worker's Compensation, General Liability, Automobile Liability, and Professional Liability. Upon request, the OWNER will be listed as additional insured with respect to applicable general liability insurance policies for a specific project.

5.7. Limitation of Liability: OWNER agrees to limit the liability of ENGINEER to OWNER due to negligent acts, errors or omissions by ENGINEER, such that the total aggregate liability to all those named shall not exceed \$50,000 or the total fee for services rendered on this project by ENGINEER, whichever is the greater.



5.8. Governing Law: The terms of this Agreement shall be governed by the laws of the State of New Hampshire.

5.9. Termination: The obligation to provide further services under this Agreement may be terminated by either party upon **thirty seven** days' written notice (or as indicated above for non-payment) ~~in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.~~ In the event of any termination, ENGINEER will be paid for all services rendered to the date of termination, all Reimbursable Expenses and termination expenses.

5.10. Successors and Assigns

5.10.1. OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement, and to the partners, successors, executors, administrators, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations of this Agreement.

5.10.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

5.10.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

5.11. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed

stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.12. Non-Exclusive Agreement: Nothing herein shall establish an exclusive relationship between OWNER and ENGINEER. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and ENGINEER may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

5.13. Dispute Resolution: In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the OWNER and the ENGINEER agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation.

The OWNER and the ENGINEER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.



ATTACHMENT A
ENGINEERING SERVICES REQUEST
AUTHORIZATION TO PROCEED

SAMPLE

To: Underwood Engineers, Inc. (**Engineer**)
25 Vaughan Mall
Portsmouth, New Hampshire 03801

ESR No.: #__
File No.:
Date: Month, Day, Year
Description: **Project Name**

From: _____ (**Owner**)

Owner's Contact(s) (this project): _____
Engineer's Contact(s) (this project): _____

Under agreement for Professional Services as Consulting **Engineer** for the **Owner** (General Services Agreement dated _____), **Engineer** is authorized to proceed with the following work:

Description:

Scope of Work:

Engineer will provide the following engineering services:

Owners Responsibility

Owner shall make available to the Engineer the following:

Work Not Included

The following is not included in the Scope of Work:

Budget Costs:

Task 1 – _____	\$0
Task 2 – _____	\$0
Task 3 – _____	\$0
Task 4 – _____	\$0
Task 5 – _____	\$0
TOTAL	\$0

Fees for engineering services will be on an hourly basis for the personnel involved. Such hourly fees will be based on the Engineer's technical payroll plus an allowance to cover overhead and profit. Fees also include reimbursement for transportation expenses (per mile), out-of-pocket travel expenses (tolls), prints, telephone calls and miscellaneous materials that may be required to complete the work.

ATTACHMENT A

Suggested budgets, as used herein, are best estimates by Underwood Engineers. The budgets are based on available information and prior to a detailed research on the Project. Budgets are not intended to be fixed prices but are reasonable estimates of average costs to complete projects of similar size. Budget will not be exceeded without written authorization.

Schedule:

Underwood Engineers, Inc. will begin work within __ days of authorization to proceed and provide the project deliverables within ___ days thereafter.

Approval:

Approval and authorization to proceed with the work:

_____	_____	_____	_____
<Client>	Date	Keith Pratt, P.E., President or	Date
<Title, Town>		W. Steven Clifton, P.E., Vice President	
		Underwood Engineers, Inc.	

UNDERWOOD ENGINEERS, INC.
Portsmouth, New Hampshire
STANDARD BILLING RATES
Effective through December 31, 2021



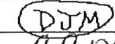
Labor Rates:

Principal-in-Charge	\$175 to \$230 per hour
Senior Project Manager	\$130 to \$190 per hour
Project Manager	\$100 to \$170 per hour
Senior Project Engineer	\$90 to \$150 per hour
Project Engineer	\$70 to \$130 per hour
Senior Resident Engineer	\$70 to \$130 per hour
Resident Engineer	\$50 to \$115 per hour
Technician	\$50 to \$115 per hour
Clerical	\$50 to \$80 per hour

Reimbursables

Mileage	IRS Reimbursable Rate
Field Supplies	At Cost
Postage	At Cost
Food & Lodging	At Cost
Subcontractors	At Cost
Miscellaneous Job Related Expenses	At Cost

Approved by Board of Directors: February 17, 2021

KAP 
WSC 
DJM 
CAM 