

**AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES
BETWEEN
THE TOWN OF CHELMSFORD, MASSACHSETTS
AND
WESTON & SAMPSON ENGINEERS, INC.
FOR
SPRING 2022 SEWER SYSTEM EVALUATION SURVEY (SSES) – PROJECT #1**

THIS AGREEMENT made this ____day of _____, 2022 between WESTON & SAMPSON ENGINEERS, INC., a Massachusetts corporation with a usual place of business at 55 Walkers Brook Drive, Reading, MA, hereinafter called the “ENGINEER,” and the TOWN OF CHELMSFORD, acting by its Sewer Department, with a usual place of business at 9 Alpha Road, Chelmsford, MA, hereinafter called the “TOWN.”

The ENGINEER and the TOWN, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The ENGINEER shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the **Spring 2022 Sewer System Evaluation Survey (SSES) – Project #1** (the PROJECT), in accordance with the Scope of Services set forth in Attachment A.

2. Contract Price

The TOWN shall pay the ENGINEER for the performance of this Agreement, subject to any additions and deductions provided for herein, in current funds, the sum of \$349,900.

3. Commencement and Completion of Work

- A. It is agreed that time is of the essence of this Agreement. The ENGINEER shall commence and prosecute the work under this Agreement upon execution hereof and shall perform the work on or before December 31, 2022.
- B. Time as Essential Condition: It is understood and agreed that the commencement of and completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Agreement wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Agreement any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

C. Progress and Completion: The ENGINEER shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure completion within the stipulated number of calendar days.

4. Performance of the Work

A. Direction of the Work: The ENGINEER shall supervise and direct the Work, using his best skills and attention, which shall not be less than such state of skill and attention generally rendered by the engineering/design profession for projects similar to the Project in scope, difficulty and location. The ENGINEER shall be solely responsible for coordinating all portions of the Work under the Agreement.

B. Responsibility for the Work:

- (1) The ENGINEER shall be responsible to the TOWN for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the ENGINEER. Consistent with the standard of care referenced in paragraph A. above, the ENGINEER shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work or services furnished by him or his consultants and subcontractors. The ENGINEER shall perform his work under this Agreement in such a competent and professional manner that detail checking and reviewing by the TOWN shall not be necessary.
- (2) The ENGINEER shall not employ additional consultants not named in his proposal to the TOWN, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the TOWN. Such written consent shall not in any way relieve the ENGINEER from his responsibility for the professional and technical accuracy and coordination of all data, designs, drawings, specifications, estimates and other work or services furnished under this Agreement.
- (3) All consultants must be registered and licensed in their respective disciplines if registration and licensure are required under the applicable provisions of Massachusetts law.
- (4) The ENGINEER and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement, including those of the Massachusetts Department of Transportation and the Department of Environmental Protection.

- (5) The ENGINEER shall not be relieved from his obligations to perform the Work in accordance with the requirements of this Agreement either by the activities or duties of the TOWN in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the ENGINEER.
- (6) Neither the Town's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

C. Deliverables, Ownership of Documents: One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the ENGINEER shall become the property of the TOWN upon payment in full therefor to the ENGINEER. Ownership of stamped drawings and specifications shall not include the ENGINEER's certification or stamp. Any re-use of such documents without the ENGINEER's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the ENGINEER or to the ENGINEER's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as an act in derogation of the ENGINEER's rights under this Agreement.

D. Notices, Compliance With Laws:

- (1) The ENGINEER shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority relating to the performance of the Work. The ENGINEER shall provide the TOWN with reproductions of all permits, licenses and receipts for any fees paid. The TOWN represents that it has disclosed to the ENGINEER all orders and requirements known to the TOWN of any public authority particular to this Agreement.
- (2) If the ENGINEER observes that any of the TOWN's design schemes, outlines or goals are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the TOWN in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) In the performance of the Work, the ENGINEER shall comply with all applicable federal, state and local laws and regulations, including those relating to workplace and employee safety.

5. Site Information Not Guaranteed; Contractor's Investigation

The TOWN shall furnish to the ENGINEER available surveys, data and documents relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the TOWN. All such information is furnished only for the information and convenience of the ENGINEER and is not guaranteed. It is agreed and understood that the TOWN does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished, and the ENGINEER must satisfy himself as to the correctness of such information. If, in the opinion of the ENGINEER, such information is inadequate, the ENGINEER may request the TOWN's approval to verify such information through the use of consultants or additional exploration. In no case shall the ENGINEER commence such work without the TOWN's prior written consent. Such work shall be compensated as agreed upon by TOWN and ENGINEER.

6. Payments to the Contractor

- A. The TOWN shall make payment to the ENGINEER, monthly, upon approval of the ENGINEER's requisitions therefor. All requisitions shall be in the same proportionate amount of the Contract Price as the proportion of the work completed to the total scope of work.
- B. If there is a material change in the scope of work, the TOWN and the ENGINEER shall mutually agree to an adjustment in the Contract Price. Delay of one year or more by the TOWN plus a significant change in the estimated construction cost will be considered a change in the scope of work.
- C. If the TOWN authorizes the ENGINEER to perform additional services, the ENGINEER shall be compensated in an amount mutually agreed upon, in advance, in writing. Except in the case of an emergency, the ENGINEER shall not perform any additional services until such compensation has been so established.

7. Reimbursement

Except as otherwise included in the Contract Price or otherwise provided for under this Agreement, the ENGINEER shall be reimbursed by the TOWN: (a) at 1.1 times the actual cost to the ENGINEER of consultants retained to obtain information pursuant to Article 5 hereof or otherwise. No such reimbursement shall be made unless the rates of compensation have been approved, in advance, by the TOWN; (b) at 1.1 times the actual cost of additional or specially authorized expense items, as approved by the TOWN.

8. Final Payment, Effect

The acceptance of final payment by the ENGINEER shall constitute a waiver of all claims by the ENGINEER arising under the Agreement.

9. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

10. Indemnification

- A. General Liability: The ENGINEER shall indemnify and hold harmless the TOWN from and against any and all claims, damages, losses, and expenses, including attorney's fees, to the extent arising out of the performance of this Agreement and to the extent the same relate to matters of general commercial liability, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent or wrongful acts or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.
- B. Professional Liability: The ENGINEER shall indemnify and hold harmless the TOWN from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement and to the extent the same relate to the professional competence of the ENGINEER's services, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent acts, negligent errors or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.

11. Insurance

- A. The ENGINEER shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this Agreement in a minimum amount of \$1,000,000.00.
- B. The coverage shall be in force from the time of the agreement to the date when all construction work for the Project is completed and accepted by the Town. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after completion.

Since this insurance is normally written on a year-to-year basis, the ENGINEER shall notify the TOWN should coverage become unavailable.

- C. The ENGINEER shall, before commencing performance of this Agreement, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all its employees and

shall continue such insurance in full force and effect during the term of the Agreement.

- D. The ENGINEER shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in the event of loss or destruction until the final fee payment is made or all data are turned over to the TOWN.
- E. The ENGINEER shall also maintain public liability insurance, including property damage, bodily injury or death, and personal injury and motor vehicle liability insurance against claims for damages because of bodily injury or death of any person or damage to property.
- F. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance, whether by the insurers or by the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.
- G. Upon request of the ENGINEER, the TOWN reserves the right to modify any conditions of this Article.

12. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

13. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The TOWN shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the ENGINEER. In the event that the Agreement is terminated pursuant to this subparagraph, the ENGINEER shall be reimbursed in accordance with the Agreement for all work performed up to the termination date.

14. Mediation

All claims, disputes or controversies arising between the OWNER and the ENGINEER shall be submitted to non binding mediation prior to and as a condition precedent to the commencement of any litigation between those parties. The American Arbitration Association, or such other person or mediation service shall conduct the non binding mediation as the parties mutually agree upon. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this AGREEMENT and the American Arbitration Association or such other person or mediation service as the parties mutually agree upon. The costs of mediation shall be borne equally by the parties. All statements of any nature made in connection with the non binding mediation shall be privileged and will be inadmissible in any subsequent court or other proceeding involving or relating to the same claim.

15. Miscellaneous

- A. Royalties and Patents: The ENGINEER shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the TOWN harmless from loss on account thereof, except that the shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified by the TOWN; but if the ENGINEER believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the TOWN, and thereafter the TOWN insists on the use of the design, process or product specified.
- B. Assignment: The ENGINEER shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the TOWN.
- C. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the TOWN by its authorized representatives who, however, incur no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

ENGINEER:

TOWN:

By: 

By: _____

Name: Kent M. Nichols, P.E.
Type or Print

Title: _____

Title: Vice President

ATTACHMENT A

SCOPE OF SERVICES

SCOPE OF SERVICES

1.1 The work of this contract is generally of a scheduled nature and will be coordinated with the TOWN with a minimum of twenty-four (24) hour notice unless otherwise agreed upon by the TOWN.

1.2 Flow Isolation

The ENGINEER will conduct night-time flow isolation on as many as 98,400 linear feet (lf) of sewers in Meter Areas 3, 16, 17, and 19, as defined in the *Annual Plan for the Infiltration/Inflow (I/I) and Operation and Maintenance (O&M) Program*, dated May 7th, 2019. Manhole-to-manhole sewer segments will be isolated by plugging flows at upstream manholes with weir measurements taken at downstream manholes. Work will generally be performed during the hours of midnight to 6 a.m. and during a high groundwater and dry weather period. The ENGINEER will monitor local groundwater levels throughout the duration of the springtime investigation work using US Geological Survey (USGS) groundwater data. Observed infiltration from manholes will be noted at the time of flow isolation and deducted from line section measurements.

1.3 Light Cleaning and Closed-Circuit Television (CCTV) Inspection

The ENGINEER will light clean as many as 98,400 lf of sewers in Meter Areas 3, 16, 17, and 19, as defined in the *Annual Plan for the I/I and O&M Program*, dated May 7th, 2019.

The ENGINEER will CCTV inspect, videotape and record as many as 98,400 lf of sewers in Meter Areas 3, 16, 17, and 19, as defined in the *Annual Plan for the I/I and O&M Program*, dated May 7th, 2019, to locate problem areas and sources of I/I within manhole-to-manhole segments of sewer. The work will be conducted in the Spring when groundwater levels are typically at their highest.

1.4 Physical Survey of Manholes

The ENGINEER will conduct a topside physical survey of as many as 470 sewer manholes in Meter Areas 3, 16, 17, and 19, as defined in the *Annual Plan for the I/I and O&M Program*, dated May 7th, 2019, for defects and I/I. A written log will be furnished for each manhole inspected. The manhole survey will document location, structural defects, I/I sources, size, depth, materials of construction, deposition of solids, and other pertinent information. When manholes are observed to be depressed or can otherwise collect runoff, an estimate of drainage area for that manhole will be provided.

1.5 Database Development

The ENGINEER will develop a pipeline and manhole database with information collected during the PROJECT. The information may include sewer system information such as pipe lengths and diameters, street names, sewer manhole investigation reports, and other pertinent information relating to the PROJECT. A database will be provided to the TOWN on an external hard drive upon completion of the PROJECT. The database shall be in Microsoft Access format (current edition).

1.6 Subconsultant Oversight

The ENGINEER shall be responsible for coordination, scheduling, invoicing, and payments with any subconsultants or subcontractors employed on the PROJECT, as well as review of their work product. The TOWN shall have the right to accept or decline any subconsultant or subcontractor not deemed to provide satisfactory work. Cost adjustments resulting from any change in subconsultant or subcontractor shall be addressed through amendments to this contract as necessary.

1.7 Summary Report

The ENGINEER will submit a detailed summary report to the TOWN that will describe the areas in which work was performed, summarize the work completed to date and include recommendations and a prioritization analysis for rehabilitation of those pipeline and manhole defects and sources of infiltration and inflow that have been identified during this investigation. Estimated construction costs will also be provided. For those sources of I/I that will require additional investigation work, the report will include a plan and a cost estimate to conduct the investigation. The report will also identify additional program activities and future goals that could be addressed as a part of the ongoing *Annual Plan for the I/I and O&M Program*.

RESPONSIBILITIES OF THE TOWN

The TOWN, without cost to the ENGINEER, shall do the following in a timely manner so as not to delay the services of the ENGINEER:

- 2.1 Designate in writing a person to act as the TOWN 's representative with respect to work to be performed under this AGREEMENT, such person to have complete authority to transmit instructions, receive information, interpret and define the TOWN'S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this AGREEMENT.
- 2.2 Arrange for access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform its work under this AGREEMENT.
- 2.3 Pay for police details as necessary for the PROJECT. The ENGINEER or their subcontractor will schedule any necessary details and will be responsible for payment of any improperly cancelled details.

- 2.4 Provide site for temporary stockpiling of sediment removed during sewer cleaning. Disposal of such materials shall be the responsibility of the subcontractor. Complaints of odor due to stockpiled sediment may result in the loss of authorization to utilize site. If authorization to use the site is lost, this AGREEMENT will be amended to provide for appropriate storage and disposal of the sediment.

- 2.5 Provide water supply for use in cleaning of sewers as required to perform the work of this PROJECT. Authorization by the TOWN will be required prior to all water supply usage and only the TOWN's Water Division personnel will operate water system hydrants and valves.