

17 November 2022

Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550

**ATTENTION: SUPERVISOR GILBERT PIAQUADIO**

**RE: PROFESSIONAL SERVICES – ENGINEER FOR THE TOWN**

Dear Supervisor Piaquadio,

We'd like to extend our sincere gratitude for retaining MHE as your Engineer for the Town this past year. As always, it is our pleasure to work with you and the other Town Officials in providing quality professional services. Thank you for your continued relationship and support and we are looking forward to the year 2023.

For the upcoming year, we will provide Engineering Services as outlined in our Annual Municipal Agreement, with an increase in hourly costs for Regular Town Engineering Services as well as Reimbursable Services. Rates for Principals are as follows:

General Town Engineering Services	\$103/Hour
Engineering Services, reimbursed by the Applicant	\$185/Hour


We have prepared our annual Standard Municipal Engineering Agreement outlining our updated Standard Hourly Rate Schedule which provides a breakdown of all proposed rates for professional services we provide to the Town, as attached hereto, for review.

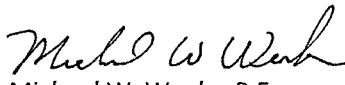
Special projects will continue to be subject to an individual proposal and engineering services agreement based on a negotiated lump sum fee or in accordance with the attached Standard Municipal Fee Schedule.

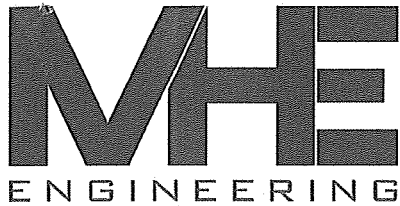
As always, should you or the Town's Counsel have any questions we are happy to discuss in further detail.

Respectfully submitted,

**MHE Engineering, D.P.C.**

  
Patrick J. Hines  
Principal

  
Michael W. Weeks, P.E.  
Principal



**AGREEMENT FOR ENGINEERING SERVICES**

**Between the**

**Town of Newburgh**

**and**

**MHE Engineering, D.P.C.**

**For Professional Services**

**Related to**

**Municipal Engineering Services**

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

**TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of 1 January 2023 ("Effective Date of the Agreement") between  
Town of Newburgh ("Owner") and  
MHE Engineering, D.P.C. ("Engineer").

Other terms used in this Agreement are defined in Article 7.

From time-to-time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Exhibit A to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope and basis of compensation for each Task Order. With respect to the scope of Engineer's services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, "Engineer's Services for Task Order," prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, "Engineer's Services for Task Order," as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

## ARTICLE 2 – OWNER’S RESPONSIBILITIES

### 2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer’s services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer’s services, the Work, the performance of any Constructor, or in Owner’s performance of its responsibilities under this Agreement.

## ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

### 3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for **1 year** from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, and such other documentary submission requirement as the Owner reasonably requires or all vendors, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity 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, then Owner agrees to obtain an independent cost estimate.

### 5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *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 any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by

others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures*

1. Engineer and Owner shall comply with applicable Laws and Regulations.
  2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date of the Task Order to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
    - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, 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 document.
- G. The general conditions for any construction contract documents prepared hereunder are to be in accordance with the Owner's standard contract forms, general conditions, unless expressly indicated otherwise in the specific Task Order.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.



- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as

appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.
- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of

payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

#### 6.06 *Suspension and Termination*

##### A. *Suspension*

- 1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
- 3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

##### B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

- 1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
- 2. By Engineer:
  - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of

the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.

- c. Engineer shall have no liability to Owner on account of such termination.
  - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.
- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
- 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  - 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Specific Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
  - 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

#### 6.11 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.12 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *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.

- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders*: The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *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.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
  1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
  3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
  4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
  6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.



15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.
22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such

construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.

38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Suggested Form of Task Order***

A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

### **8.02 *Exhibits Included:***

A. Exhibit A, Task Orders

B. Exhibit B, Owner’s Responsibilities. This Exhibit applies to all Task Orders.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, “Payments to Engineer,” of the specific Task Order.

D. Exhibit D, DELETED

E. Exhibit E, DELETED

F. Exhibit F, DELETED

G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.

H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.

I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.

J. Exhibit J, DELETED

K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

### **8.03 *Total Agreement***

A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

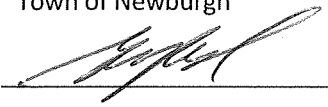
B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and

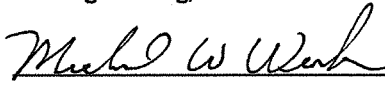
supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.04 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.**

OWNER: Town of Newburgh  
By:   
Print Name: Gil Piaquadio  
Title: Town Supervisor  
Date Signed: \_\_\_\_\_

ENGINEER: MHE Engineering, D.P.C.  
By:   
Print Name: Michael W. Weeks, P.E.  
Title: Principal  
Date Signed: 11/17/2022

Address for Owner's receipt of notices:  
1496 Route 300  
Newburgh, NY 12550  
\_\_\_\_\_

Address for Engineer's receipt of notices:  
33 Airport Center Drive  
Suite 202  
New Windsor, NY 12553  
\_\_\_\_\_

## TASK ORDER

This is Task Order  
No. \_\_\_\_\_, consisting of  
\_\_\_\_\_ pages.

### Task Order **SAMPLE NOT PART OF AGREEMENT**

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In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [ ] ("Agreement"), Owner and Engineer agree as follows:

#### 1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

#### 2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are as follows:

[FILL IN SCOPE OF SERVICES]

- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

#### 3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:

set forth as Additional Services in Part 2—Additional Services, of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

---

#### Exhibit A – Engineer's Services

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**4. Owner's Responsibilities**

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: *[State any additions or modifications to Exhibit B for this Specific Project here.]*

**5. Payments to Engineer**

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

**6. Consultants retained as of the Effective Date of the Task Order: None**

**7. Other Modifications to Agreement and Exhibits: None**

**8. Attachments: None**

**9. Other Documents Incorporated by Reference: None**

**10. Terms and Conditions**

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [ ] .

OWNER:

ENGINEER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated 1/1/2023.

## **Owner's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

### **B2.01 Specific Responsibilities**

#### **A. Owner shall:**

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - a. Property descriptions.

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#### **Exhibit B– Owner's Responsibilities**

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- b. Zoning, deed, and other land use restrictions.
  - c. Utility and topographic mapping and surveys.
  - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
  - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
  6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
    - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
    - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
    - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
  7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
  8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

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**Exhibit B– Owner's Responsibilities**

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

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**Exhibit B– Owner's Responsibilities**

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This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated 1/1/2023.

## **Payments to Engineer for Services and Reimbursable Expenses**

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER'S RESPONSIBILITIES**

#### *C2.01 Basis of Compensation*

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The two following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
  1. Lump Sum (plus any expenses expressly eligible for reimbursement)
  2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)

#### *C2.02 Explanation of Compensation Methods*

##### *A. Lump Sum*

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges).
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. *Standard Hourly Rates*

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
5. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Reimbursable Expenses*

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount **includes** the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Standard Hourly Rate methods of compensation include the identified in Appendix 1.
- C. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of 1.2.
- D. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of 1.2.
- E. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 *Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding at a rate of 1.5 times the witness's standard

hourly rate as shown on the Municipal Standard Fee Schedule in Exhibit C. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

**C2.05 Other Provisions Concerning Payment**

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
  - 1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - 2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated 1/1/2023.

**MUNICIPAL (NON-CHARGEABLE) FEE SCHEDULE**

**A. HOURLY RATES\*:**

<b>Firm Representative</b>	<b>Hourly</b>
Principal	\$ 103.00
Associate	\$ 102.00
Senior Engineer / Designer	\$ 101.00
Senior Structural Engineer	\$ 101.00
Senior Architect	\$ 101.00
Senior Project Manager	\$ 101.00
Project Engineer / Designer	\$ 97.00
Project Manager	\$ 97.00
Staff Engineer / Designer	\$ 92.00
Engineering Technician II	\$ 89.00
Engineering Technician I	\$ 79.00
CAD Tech II	\$ 90.00
CAD Tech I	\$ 85.00
Field Representative**	\$ 78.00
Engineering Intern	\$ 50.00
Intern Support	\$ 38.00
Administrative Services	\$ 92.00
Clerical/Secretarial	\$ 52.00

\*\* See #5 below

**B. GENERAL CONDITIONS:**

1. Fees for services or tasks for engineering design, field construction observation, surveys, etc. will be computed based on the firm representative(s) performing the services and the hours expended, unless a lump sum agreement has been executed.
2. In addition to the above fees, all out-of-pocket and traveling expenses, reproduction charges, mailing charges, and other disbursements are chargeable, plus a 20% service charge, unless any such charges are specifically noted as included in the agreement. Mileage will be chargeable at the approved Federal rate.
3. Without a prior appointment, services of personnel cannot be assured for any certain day.
4. Reproduction charges are based on \$0.15 per photocopy (8.5" x 11") and in-house \$3.60 per D size plan (24' x 36") and \$5.25 per E size plan (30" x 42"), unless otherwise stipulated by agreement.
5. Field Representative rate is based on an 8-hour daytime work period, weekdays. Other time periods will be billable at an overtime rate (1-1/2 rate).

Municipal Non-Chargeable Fee Schedule – 2023

## MUNICIPAL STANDARD FEE SCHEDULE

### A. HOURLY RATES:

<b>Firm Representative</b>	<b>Hourly</b>
Principal	\$ 185.00
Associate	\$ 175.00
Senior Engineer / Designer	\$ 170.00
Senior Structural Engineer	\$ 170.00
Senior Architect	\$ 170.00
Senior Project Manager	\$ 165.00
Project Engineer / Designer	\$ 140.00
Project Manager	\$ 138.00
Staff Engineer / Designer	\$ 113.00
Engineering Technician II	\$ 104.00
Engineering Technician I	\$ 95.00
CAD Tech II	\$ 106.00
CAD Tech I	\$ 104.00
Field Representative**	\$ 93.00
Engineering Intern	\$ 65.00
Intern Support	\$ 45.00
Administrative Services	\$ 95.00
Clerical/Secretarial	\$ 60.00

\*\* See #5 below

### B. GENERAL CONDITIONS:

1. Fees for services or tasks for engineering design, field construction observation, surveys, etc. will be computed based on the firm representative(s) performing the services and the hours expended, unless a lump sum agreement has been executed.
2. In addition to the above fees, all out-of-pocket and traveling expenses, reproduction charges, mailing charges, and other disbursements are chargeable, plus a 20% service charge, unless any such charges are specifically noted as included in the agreement. Mileage will be chargeable at the approved Federal rate.
3. Without a prior appointment, services of personnel cannot be assured for any certain day.
4. Reproduction charges are based on \$0.15 per photocopy (8.5" x 11") and in-house \$3.60 per D size plan (24' x 36") and \$5.25 per E size plan (30" x 42"), unless otherwise stipulated by agreement.
5. Field Representative rate is based on an 8-hour daytime work period, weekdays. Other time periods will be billable at an overtime rate (1-1/2 rate).

Municipal Standard Fee Schedule – 2023

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated 1/1/2023.

## Insurance

---

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

### G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraphs 6.05.A and 6.05.B of the Agreement are as follows, unless and except as specifically modified by a specific Task Order:
1. By Engineer:
    - a. Workers' Compensation: Statutory
    - b. Employer's Liability –
      - 1) Bodily injury, each accident \$ 1,000,000.00
      - 2) Bodily injury by disease, each employee \$ 1,000,000.00
    - c. General Liability –
      - 1) General Aggregate: \$ 2,000,000.00
      - 2) Each Occurrence (Bodily Injury and Property Damage): \$ 1,000,000.00
    - d. Umbrella Liability --
      - 1) Each Occurrence: \$ 4,000,000.00
      - 2) General Aggregate: \$ 4,000,000.00
    - e. Automobile Liability –
      - 1) Combined Single Limit (Bodily Injury and Property Damage):  
Each Accident \$ 1,000,000.00
    - f. Professional Liability –
      - 1) Per Claim \$ 5,000,000.00
      - 2) Aggregate \$ 5,000,000.00

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#### Exhibit G - Insurance

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This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated 1/1/2023 .

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### H6.09 *Dispute Resolution*

- A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution method of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated 1/1/2023 .

## **Limitations of Liability**

---

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

I6.11.

*A Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Specific Project, Engineer's or its Consultants' services, or the specific Task Order, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$50,000 or the total compensation received by Engineer under the specific Task Order, whichever is greater. Higher limits are available for an additional fee.
  2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, the Task Order, or the Specific Project, from any cause or causes, including but not limited to:
- B. Indemnification by Owner and Engineer subject to the limitations on liability in Section 16.IIA1 about:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless each other and their respective officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Engineer or their respective officers, directors, members, partners, agents, employees, subcontractor, consultants, or others retained by or under contract to the Owner or Engineer with respect to this Agreement or to the Specific Project.

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**Exhibit I – Limitations of Liability**

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## TASK ORDER

This is Task Order **No.23-01**,  
consisting of 2 pages.

### **Task Order : General Engineering "Town Engineer"**

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In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated \_\_\_\_\_ ("Agreement"), Owner and Engineer agree as follows:

#### **1. Background Data**

- a. Effective Date of Task Order: 1 January 2023
- b. Owner: Town of Newburgh
- c. Engineer: MHE Engineering, D.P.C.
- d. Specific Project (title): General Engineering Services

#### **2. Services of Engineer**

- A. The specific services to be provided or furnished by Engineer under this Task Order are as follows:

The Engineer will perform general engineering consulting services to the municipality on various matters which may develop during the year, and provide support services to various departments, the Town Board, Planning Board and other boards within the municipality, including attendance at meetings. These services are designated as "General Town" (non-reimbursable) type services. Such services shall be provided under the direction of the Supervisor of the Town, consistent with the professional standard of care.

- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.
- C. For Capital Projects or other Special Projects, professional services will be provided though the execution of project specific Professional Service agreements.

#### **3. On-Site Services**

- A. Engineer's assigned principal shall be present at Owner's offices and facilities for up to 12 hours per week, subject to normal vacation and sick leave scheduling.

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#### **Exhibit A – Engineer's Services**

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#### 4. Estimate of Costs of Compensation

- A. The estimate of costs of compensation for services of Engineer for the one-year term is \$89,000.00 or \$7,416.66 per month. Engineer shall notify the Town Supervisor of monthly variations from the estimate and provide separate notice when the annual estimate is to be exceeded through continued performance of services.

#### 5. Payments to Engineer

- A. Owner shall pay Engineer for services rendered under this Task Order as follows:

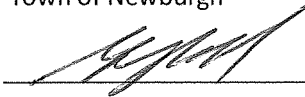
Services shall be provided at an hourly rate in accordance with the Non – Chargeable Standard Hourly Rates of Exhibit C. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

#### 6. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner, retroactive to the Effective Date.

OWNER: Town of Newburgh

By:

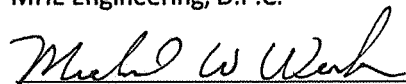
  
\_\_\_\_\_

Print Name: Gilbert Piaquadio

Title: Town Supervisor

ENGINEER: MHE Engineering, D.P.C.

By:

  
\_\_\_\_\_

Print Name: Michael W. Weeks, P.E.

Title: Principal

## TASK ORDER

This is Task Order **No.23-02**,  
consisting of 2 pages.

### **Task Order : Planning Board and Zoning Board Reviews**

---

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated \_\_\_\_\_ ("Agreement"), Owner and Engineer agree as follows:

#### **1. Background Data**

- a. Effective Date of Task Order: 1 January 2023
- b. Owner: Town of Newburgh
- c. Engineer: MHE Engineering, D.P.C.
- d. Specific Project (title): Planning Board and Zoning Board Reviews

#### **2. Services of Engineer**

- A. The specific services to be provided or furnished by Engineer under this Task Order are as follows:

In the event the Engineer is appointed by the Planning Board and/or Zoning Board to provide consulting services, the Engineer will perform engineering services in support of the project submittals, including assistance with zoning and municipal code compliance, reviews of plans, reports and general environmental submittals, coordination with special consultants retained by the Board, project meetings, technical worksessions, site reviews and evaluations, etc. Services performed shall be under the direction of the Chairperson of the Board, consistent with the professional standard of care. It is understood that design of projects submitted to the Board is by other professionals, and MHE is not the design professional of record for the project, but rather a consultant to the Client, and the Engineer will make reviews of such services and make recommendations regarding acceptance to the municipal Board. It is the design professional of record's responsibility to provide the detailed designs needed to comply with all applicable codes and regulations. Services of the Engineer under this Section These services are designated as "chargeable" (reimbursable by the applicant) type services. Engineer acknowledges that the Planning Board and Zoning Board will each have separate authority to suspend or terminate this Task Order in accordance with the terms of the Agreement.

- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

---

#### **Exhibit A – Engineer's Services**

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**3. Payments to Engineer**

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Services shall be provided at an hourly rate in accordance with the Municipal Standard Hourly Rates of Exhibit C. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

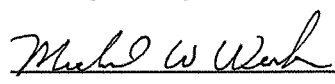
**4. Terms and Conditions**

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

OWNER: Town of Newburgh

ENGINEER: MHE Engineering, D.P.C.

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Print Name: Gilbert Piaquadio

Print Name: Michael W. Weeks, P.E.

Title: Town Supervisor

Title: Principal

## TASK ORDER

This is Task Order **No.23-03**,  
consisting of 2 pages.

### **Task Order : Construction Services For Approved Planning Board Projects**

---

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated \_\_\_\_\_ ("Agreement"), Owner and Engineer agree as follows:

#### **1. Background Data**

- a. Effective Date of Task Order: 1 January 2023
- b. Owner: Town of Newburgh
- c. Engineer: MHE Engineering, D.P.C.
- d. Specific Project (title): Construction Services for Planning Board Projects

#### **2. Services of Engineer**

- A. The specific services to be provided or furnished by Engineer under this Task Order are as follows:

For Approved Planning Board projects, the Engineer will perform general construction phase review, appropriate to the stage of construction, of work performed post-approval during the construction phase of projects approved by the Planning Board. Infrastructure reviews shall include, but not necessarily be limited to, roadways and other paved areas; water, sewer and stormwater improvements; miscellaneous site improvements, soil erosion & sediment control measures and MS4 compliance (where applicable). It is understood that the intent of such reviews by the Engineer is for general conformance with the layout and requirements of the approval granted by the Planning Board. Further, it is understood that the project owner/developer has the obligation to cause more detailed reviews related to the quality, completion and code compliance for all work performed, intended to protect the interests of the project owner, and comply with all governmental regulations. Services by the Engineer under this Section are designated as "chargeable" (reimbursable by applicant) type services. At no time shall the Engineer act to supervise the construction activities, nor shall the Engineer provide guidance regarding the means, methods, techniques or safety compliance related to the construction.

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#### Exhibit A – Engineer's Services

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- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

**3. Payments to Engineer**

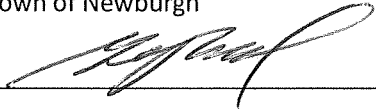
- A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Services shall be provided at an hourly rate in accordance with the Municipal Standard Hourly Rates of Exhibit C. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

**4. Terms and Conditions**

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

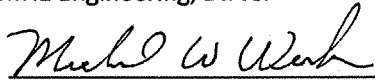
OWNER: Town of Newburgh

By:  \_\_\_\_\_

Print Name: Gilbert Piaquadio

Title: Town Supervisor

ENGINEER: MHE Engineering, D.P.C.

By:  \_\_\_\_\_

Print Name: Michael W. Weeks, P.E.

Title: Principal

---

**Exhibit A – Engineer's Services**

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# TASK ORDER

This is Task Order **No.23-04**,  
consisting of 2 pages.

## Task Order : Building Code Reviews

---

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated \_\_\_\_\_ ("Agreement"), Owner and Engineer agree as follows:

### 1. Background Data

- a. Effective Date of Task Order: 1 January 2023
- b. Owner: Town of Newburgh
- c. Engineer: MHE Engineering, D.P.C.
- d. Specific Project (title): Building Code Reviews

### 2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are as follows:

If requested, Engineer will provide assistance to the Building Department in the process of approving plans, and providing on site building construction reviews for purposes of determining construction compliance and assisting the Building Department with issuance of a Certificate of Occupancy. Engineer's personnel will perform the reviews to comply with those inspections listed in the local Municipal Code. These reviews are in addition to the Special Inspections required by the NY State Building Code, and the off-site and site reviews required by the Planning and Zoning regulations. Engineer maintains NYS Certified Building Inspectors on staff, as well a Licensed Professional Engineers well versed in the Building Code who will serve as the Town's designated representative to provide construction reviews associated with the inspections required by the building department. Engineer will perform the above referenced reviews, subject to appropriate scheduling by the Applicant and the Applicant's Contractors. Engineer will prepare field reports documenting the site reviews. It is understood the Owner / Applicant will provide third Party Special Inspectors for those items required per the NY State Building Code. In addition to field reviews, Engineer will provide plan reviews to determine general conformance with the NY State Building Code. It is understood the Client will maintain, as a minimum, a qualified individual within the Building Department for purposes of providing appropriate signature on official documents (i.e., building permits and Certificate of Occupancy), as Engineer's personnel are unauthorized to undertake this obligation.

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#### Exhibit A – Engineer's Services

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- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

### 3. Payments to Engineer

- A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Services shall be provided at an hourly rate in accordance with the Municipal Standard Hourly Rates of Exhibit C. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.


### 4. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

OWNER: Town of Newburgh

ENGINEER: MHE Engineering, D.P.C.

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Print Name: Gilbert Piaquadio

Print Name: Michael W. Weeks, P.E.

Title: Town Supervisor

Title: Principal