

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT NO. 2022-_____**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement"), dated as of the _____ day of _____, 2022 between the **VILLAGE OF MILLERTON**, a municipal corporation of the State of New York, 5933 N Elm Avenue, Millerton, NY12546, hereinafter referred to as "Village," and _____, a _____ organized under the laws of the State of New York, having its principal office at the address set forth on the execution page hereof, hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, the Village has determined that it is in the best interests of the Village to enter into this Agreement providing for services of the Consultant for the purposes set forth herein;

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

Section 1. SCOPE OF SERVICES.

- a. The Consultant shall render the professional services described in the Scope of Services attached hereto and made a part hereof as **Exhibit B** (hereinafter referred to as the "Scope of Services").
- b. During the period from the date of this Agreement to the end of the **Initial Term**, the Consultant shall perform such additional services as Consultant as may be requested in writing by the Village, at the hourly rates and actual expenses specified herein (such additional services being referred to herein as "Additional Services"). Prior to undertaking any such Additional Services the Consultant shall propose a budget and schedule for each proposed project, to be approved by the Village prior to commencing work. No work shall be considered Additional Services unless specifically agreed to in writing by the Village.

Section 2. CONSULTANT QUALIFICATIONS; REPRESENTATIONS; NO CONFLICTS.

- a. The Consultant represents and covenants that (i) it is experienced in performing professional engineering work of the types contemplated by the Scope of Services; (ii) at all times during the term of this Agreement the persons assigned to perform services have and will have the experience, knowledge, and licenses necessary to perform the services described herein; (iii) the Consultant is fully qualified to perform the Scope of Services, with capability to perform the Scope of Services and timely deliver a work product as required by this agreement, (iv) the Consultant will procure and maintain all licenses and permits necessary to perform the work described in this Agreement, (v) the Consultant will comply with the provisions of the Labor Law and all State laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of this Agreement and (vi) the Consultant will use that degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing in the same or similar locality. .
- b. Unless otherwise authorized in writing in advance by the Village, the persons primarily responsible for performing work under this Agreement, including any subcontractors, shall be as set

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forth at **Exhibit E** and **Exhibit C**. Any subcontractors shall be bound by the provisions of this Agreement, such subcontractors and the form of any subcontract shall be subject to prior review and approval by Village in its discretion, and any such subcontract shall be deemed to include the Standard Clauses attached hereto as **Exhibit A**.

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

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

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

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

Section 4. REPORTS; RIGHT TO INSPECT. The Consultant shall report to the Village as specified at **Exhibit B**. The Village staff and its duly authorized representatives shall have the right

at all times to inspect and receive copies of the work of the Consultant without additional charge.

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

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

Section 7. FEES AND EXPENSES.

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

b. The expenses provided for herein shall be limited to the expenses actually and reasonably incurred in connection with the performance of the Scope of Services, of the types listed at **Exhibit C**. Unless otherwise approved in advance by the Mayor, the Village shall not pay for the following: (1) travel, except for travel outside of the county of and Columbia, when requested in writing by the Village (2) meal charges, except for actual and reasonable expenses which are required for business purposes, such as expenses incurred while hosting working group meetings or closings; or (3) time spent in preparing bills.

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

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

Section 8. PAYMENT.

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

b. For any Additional Services agreed by the Village and the Consultant to be unrelated to the Scope of Services set forth at **Exhibit B**, the Village shall pay for services rendered in accordance with the schedule of hourly rates attached hereto at **Exhibit C** except as provided at **Exhibit C** for lump sum projects. Prior to undertaking any such Additional Services, the Consultant shall inform the Village that such services will be billed as Additional Services, shall provide an estimate of the total fees and expenses to be charged for such Additional Services, and shall obtain the Village's written

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authorization prior to commencing such work. For such other services, the Consultant shall submit invoices not more often than once a month.

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

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

Section 9. OWNERSHIP OF DOCUMENTS.

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

Section 10. INDEPENDENT STATUS; TAXES.

a. The Consultant and their employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the Village. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Village.

b. Nothing in this Agreement shall impose any liability or duty on the Village for the acts, omissions, liabilities or obligations of the Consultant, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Consultant for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

Section 11. INSURANCE.

a. The Consultant shall at all times maintain in force during the term of this Agreement, and shall provide evidence satisfactory to the Village, of the following policies of insurance:

i. Professional errors and omissions insurance with a U.S. domiciled company providing limits of not less than \$1,000,000 per claim, and in the aggregate, with extended reporting period or automatic coverage of not less than two years. If provided as an option, the Consultant shall agree to purchase an extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.

ii. Workers' compensation and other statutory coverage required by New York Law without regard to jurisdiction.

iii. Automobile Liability policies with the limits of not less than \$500,000 for each person or \$500,000 for each accident because of bodily injury, sickness or disease including death at any time resulting therefrom, sustained by any person, caused by accident or arising out of the ownership, maintenance or use of owned, non-owners, or hired automobiles with minimum limits of \$500,000 for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.

iv. Comprehensive General Liability Insurance shall be furnished with limits not less than \$1,000,000 Bodily Injury Liability for each person/each accident and \$500,000 Property Damage Liability for Each person/Each Accident.

v. Such other insurance as shall be required in writing by the Village at the Village's expense.

b. Any policy required to be maintained under this section shall be from a company rated at least A/X by Best's Rating Service and properly licensed in the State of New York, and shall provide that the policy shall not be canceled, materially changed, or not renewed without thirty (30) days' prior notice thereof to the Village.

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

Section 12. INDEMNIFICATION. The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, their sub-contractors, agents or employees, in the performance of services under this Agreement. For all matters arising out of the Contractor's professional services, the Consultant to the fullest extent permitted by law agrees to indemnify the Town and its officers, employees and agents (the "Indemnified Parties"), and save the Indemnified Parties harmless from any liability, damage, claims, demands, costs or loss, including reasonable attorneys' fees, to the extent caused by the negligent performance, breach of contract, or violation of any applicable law, rule or regulation by

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the Consultant or its officers, employees, agents, contractors, subcontractors or consultants in the performance of professional services under this Agreement including without limitation negligent performance of services under this Agreement. Negligent performance of services, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the Town beyond such as may legally exist irrespective of this Article or this Agreement. The foregoing provisions shall not be construed to indemnify the Indemnified Parties for such liability, damage, claims, demands, costs or loss attributable to their own negligence.

Section 13. RIGHT TO AUDIT AND RECORDS.

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

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

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

Section 15. DEFAULTS AND REMEDIES.

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

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

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

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

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

To the Consultant at their address set forth on the execution page of this Agreement.
With a copy to:

To the Village at:

Jenn Najdek, Mayor
Village of Millerton
5933 N Elm Avenue
Millerton, NY 12546

With a copy to:

Victoria L. Polidoro, Esq.
Rodenhausen Chale & Polidoro LLP
55 Chestnut Street
Rhinebeck, NY 12572

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

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

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

Section 21. NO RECOURSE. All covenants, stipulations, promises, agreements and obligations of the Village contained in this Agreement shall be deemed to be the covenants, stipulations, promises,

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agreements and obligations of the Village, and not of any member, director, officer, employee or agent of the Village in his individual capacity, and no recourse shall be had for the payment of any claim based under this Agreement against any member, director, officer, employee or agent of the Village.

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

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

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

Section 25. RISK ALLOCATION. For any claim, loss, damage or liability resulting from error, omission, or other professional negligence in the performance of services, the liability of Consultant to all parties of this Agreement will be limited to an aggregate sum not to exceed Consultant's available insurance proceeds, but in no case shall the Consultant's liability be less than \$1,000,000 should Consultant's insurance be depleted due to claims.

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**Execution Page for AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT NO. 2022-____
VILLAGE OF MILLERTON, NEW YORK**

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

VILLAGE OF MILLERTON

By: _____
Jenn Najdek, Mayor

_____,
as **Consultant**

By: _____
Its _____

Notice Address:

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

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

EXHIBIT "A"

**STANDARD CLAUSES FOR
MUNICIPAL CONTRACTS**

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EXHIBIT B

SCOPE OF SERVICES

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EXHIBIT B-1

SCOPE OF SERVICES—Proposal

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EXHIBIT C
FEES AND EXPENSES

Fixed Fees for Services:

Additional Services:

Consultant Project Team:

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EXHIBIT D

TERM AND COMPLETION DEADLINES

Commencement Date:

Initial Term: 3 months

Optional Extensions: N/A

Completion Deadlines for Deliverables: Services are to be completed within the Term of this Agreement unless expressly approved in writing by the Village.

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EXHIBIT E

SUBCONTRACTS

Consultant is not authorized to subcontract with any other person or entity for the purposes described in the Scope of Services without written authorization from the Village. In the event that Consultant is so authorized to subcontract for services, all subcontractors shall be bound by the provisions of this Agreement.

Approved Subcontract:

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Scope: As described at Exhibit B-1

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