

CONTRACT FOR SERVICES

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement"), dated as of the date this Agreement is executed by the City of Long Beach, between (i) City of Long Beach, a municipal corporation having its principal office at One West Chester Street, Long Beach, New York 11561 (the "City") acting on behalf of the City Department of Public Works, having its principal office at same (the "Department") and (ii) Camp Dresser McKee & Smith, an engineering firm having its principal office at 60 Crossways Park Drive, Suite 340, Woodbury, NY 11797 (Firm or the "Contractor").

WITNESSETH:

WHEREAS, the City desires to hire the Contractor to perform the services described in this Agreement; and

WHEREAS, the Contractor desires to perform the services described in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. The term of this Agreement shall commence on the date on which this Agreement is executed by the City (the "Commencement Date") and terminate on August 2020 (the "Expiration Date") unless sooner completed, terminated or extended in accordance with its terms

2. Services.

(a) The City of Long Beach requested proposals from qualified professional consulting engineering firms to prepare plans, specifications, and contract documents for replacement of the secondary anaerobic digester cover at the City's Wastewater Treatment Plant. The intent is to replace the existing digester cover with a new structure. The contractor will provide the City with alternatives to replacing the existing cover with an in-kind unit. Alternatives will be provided with cost estimates for each cover system proposed. The City will choose the alternative that is cost effective and is consistent with the parameters of the original design intent. Construction Administration and Inspection Services are incorporated as well.

(b) If Firm is authorized, in writing, by the Department, to provide extra services, and the requirements for such extra services are not due to the fault or negligence of Contractor, the Contractor shall be compensated for the additional

costs of the extra services in accordance with the terms and conditions contained herein.

3. Payment.

Amount of Consideration. The amount to be paid to Firm as full consideration for Firm services under this Agreement is \$96,760.00 dollars and shall be payable as set forth in the " Payment Schedule" annexed hereto as Exhibit "B".

4. Ownership and Control of Work Product

(a) Copyrights.

(i) Upon execution of this Agreement, any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items, shall become the exclusive property of the City.

(ii) Any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials, and they shall be used by the Contractor for no other purpose without the prior written permission of the City.

(iii) The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

(iv) The Contractor represents and warrants that the Copyrightable Materials: (1) are wholly original material not published elsewhere (except for material that is in the public domain); (2) do not violate any copyright law; (3) do

not constitute defamation or invasion of the right of privacy or publicity, and (4) are not an infringement of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

(b) Patents and Inventions. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(c) Pre-existing Rights. In no case shall 4(a) or 4(b) above apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

(d) Infringements of Patents, Trademarks, and Copyrights. The Contractor shall indemnify and hold the City harmless against any claim for any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement. The Contractor shall indemnify and hold the City harmless regardless of whether or not the infringement arises out of compliance with the scope of services/scope of work.

(e) Antitrust. The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State of New York or of the United States relating to the particular goods or services procured by the City under this Agreement.

4. Independent Contractor. Firm is an independent contractor of the City. Firm shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a City employee, (ii) commit the City to any obligation, or (iii) hold itself, himself, or herself out as a City employee or Person with the authority to commit the City to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

5. No Arrears or Default.

Contractor is not in arrears to the City upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the City, including any obligation to pay taxes to, or perform services for or on behalf of, the City.

6. Compliance with Law.

(a) Generally. Contractor shall comply with any and all applicable Federal, State and local Laws and regulations. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. Contractor acknowledges that Contractor's Information in the City's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the City shall make reasonable efforts to notify Contractor of such request prior to disclosure of the Information so that Contractor may take such action as it deems appropriate.

(c) Protection of Client Information. Contractor acknowledges and agrees that all information that Contractor acquires in connection with performance under this Agreement shall be strictly confidential, used solely for the purpose of performing services to or on behalf of the City, and shall not be disclosed to third parties except (i) as permitted under this Agreement, (ii) with the written consent of the City (and then only to the extent of the consent), or (iii) upon legal compulsion.

7. Minimum Service Standards. Regardless of whether required by Law:

(a) Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) Contractor shall deliver services under this Agreement in a professional manner consistent with the care and skill ordinarily used by members of Contractor's profession practicing under similar conditions at the same time and in the same locality. Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

8. Indemnification; Defense; Cooperation.

(a) The Contractor shall indemnify and hold harmless the City, the Department and its officers, employees, and agents (the "indemnified Parties") from and against and all losses, claims, demand, causes of action and expenses (including reasonable costs and reasonable attorneys' fees) for bodily injury to or death of any third party, or damage to or destruction of any property of any third party ("Losses"), caused by the negligent act, error or omissions of the Contractor or Contractor's subconsultants during the period of performance under this Agreement, except to the extent caused by the negligent acts or willful misconduct of the City, the Department or its officers, employees, or agents.

9. Insurance.

(a) Types and Amounts. The contractor shall obtain and maintain throughout the term of this Agreement, at its own expense (i) one or more policies for commercial general liability insurance, which policy(ies) shall name "City of Long Beach" as an additional insured and have a minimum single combined limit of liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate coverage, (ii) if contracting in whole or part to provide professional services, one or more policies

for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate coverage, (iii) compensation insurance for the benefit of the Contractor's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law, and (iv) such additional insurance as the City may from time to time specify.

(b) Acceptability; Deductibles; Sub-consultants. All insurance obtained and maintained by the contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed to do business in New York State and acceptable to the City and which is (ii) in form and substance acceptable to the City. The contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The contractor shall require any sub-consultant hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the contractor under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the Department. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the contractor shall provide written notice to the Department of the same and deliver to the Department renewal or replacement certificates of insurance. The contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the City reserves the right to consider this Agreement terminated as of the date of such failure.

10. Termination

(a) Generally. This Agreement may be terminated (i) for any reason by the City upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the City immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the City and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all

Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

11. Accounting Procedures; Records. Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles. Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

12. Limitations on Actions and Special Proceedings against the City. No action or special proceeding shall lie or be prosecuted or maintained against the City upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief Firm shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the City Manager for adjustment and the City shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. Firm shall send or deliver copies of the documents presented to the City Manager under this Section to each of (i) the Department and the (ii) the Corporation Counsel (at the address specified above for the City) on the same day that documents are sent or delivered to the City Manager. The complaint or necessary moving papers of Firm shall allege that the above-described actions and inactions preceded the Firm's action or special proceeding against the City.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

13. Work Performance Liability. Firm is and shall remain primarily liable for the successful completion of all work in accordance with this Agreement irrespective of whether Firm is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the City.

14. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original

jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court of the State of New York, County of Nassau and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

15. All Legal Provisions Deemed Included; Severability; Supremacy; Construction

In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

16. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.


17. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

18. Executory Clause. Notwithstanding any other provision of this Agreement,

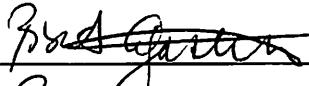
(a) The City shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all City approvals have been obtained, including, if required, approval by the City Council, and (ii) this Agreement has been executed by the City Manager (as defined in this Agreement).

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, Contractor and the City have executed this Agreement as of the date first above written.

By  _____
Name: Keith F. Kelly, PE _____
Title: Partner _____
Date: 9/11/19 _____

CITY OF LONG BEACH

By:  _____
Name: Robert Agostisi _____
Title: ^{Acting} City Manager _____
Date: 9/16/19 _____

PLEASE EXECUTE IN BLUE UNK

STATE OF NEWYORK)
) ss.:
CITY OF LONGBEACH)

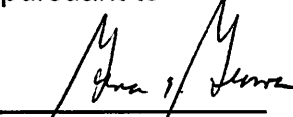
On this 17th day of September in the year 2019 before me personally came Keith F. Kelly to me known, and known to me to be the person described herein and who executed the above instrument; and he duly acknowledged that he executed the same.


NOTARY PUBLIC

JAYNE CICCONI
Notary Public, State of New York
No. 01C16206399
Qualified in Nassau County
Commission Expires May 18, 2021

STATE OF NEWYORK)
) ss.:
CITY OF LONG B?ACH)

On the 17 day of Sept in the year 2019 before me personally came Robert Agostisi to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Nassau; that he or she is a City Manager of the City of Long Beach, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the City Charter City of Long Beach.


NOTARY PUBLIC

GINA T. GUMA
Notary Public, State of New York
No. 01C U4650362
Qualified in Nassau County
Commission Expires January 31, 2022

EXHIBIT A

Detailed Scope of Services

SECONDARY DIGESTER COVER REPLACEMENT WASTEWATER TREATMENT PLANT (WWTP) DATE

Scope of Services

Work on this project shall be divided into three parts and categorized as follows:

- Part 1 – Design (Prepare Plans and Specifications)
- Part 2 – Construction Administration Services
- Part 3 – Construction Inspection

EXHIBIT B

Payment Schedule

The amount to be paid to the Contractor as full consideration for services under this Agreement, **including** any extra services that may be so authorized, shall be payable as set forth below. Notwithstanding the foregoing, the maximum amount to be paid to Contractor for services under this Agreement shall not exceed.

Payments shall be made to contractor in arrears and shall be contingent upon (i) contractor submitting a claim voucher (the "Voucher") in a form satisfactory to the City , that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the City supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the City Comptroller or his or her duly designated representative (the "Comptroller").

Part 1 Design (Preparation of Plans and Specifications)

Under this task the Consultant shall perform all work required to detail plans, specifications and cost estimate in such a manner that they can be used for initiating Construction. The maximum hourly rate (including multiplier) that is permitted to be utilized is \$175.00/hr.

Part 2 Construction Administration Services

Under this task the Consultant shall perform all work described herein necessary for the successful award and completion of this Waste Water Treatment Project. The maximum hourly rate (including multiplier) that is permitted to be utilized is \$175.00/hr.

Part 3 Construction Inspection

Under this task the City, at its discretion, may elect to utilize the design firm to provide construction inspection services. The Consultant shall provide the city with the cost for part time inspection for the period of four months (120 days). Part-time construction, for the purpose of this proposal is defined as 60 hours for the duration of the project details such as estimates of the direct technical labor, overhead and profit expenses, multiplier utilized, and rates of key personnel shall be included. The City reserves the right to select and negotiate the procurement of inspection services with the selected design consultant or seek proposals upon completion of the design phase.

Timing of Claims for Payment. Contractor shall submit claims no later than one (3) months following the City's receipt of the services that are the subject of the claim and no more frequently than once a month.

Payments in Connection with Termination or Notice of Termination. Unless a provision of this Agreement expressly states otherwise, payments to the Firm following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after the Firm received notice that the City did not desire to receive such services.



**REQUEST FOR PROPOSALS
CITY OF LONG BEACH, NEW YORK 11561
SECONDARY DIGESTER COVER REPLACEMENT
WASTEWATER TREATMENT PLANT (WWTP)
JUNE 2019**

I. INTRODUCTION

The City of Long Beach is requesting proposals for engineering services in connection with the above referenced project.

The engineering services required will include the following categories of work, as listed in the Scope of Services:

- Part 1 – Design (Prepare Plans and Specifications)
- Part 2 – Construction Administration Services
- Part 3 – Construction Inspection

If your firm is interested in responding to this Request for Proposal, your Proposal must be submitted to:

Mr. John A. Mirando, P.E.
Commissioner of Public Works
City of Long Beach
Department of Public Works-Room 404
One West Chester Street
Long Beach, New York 11561

By 4:00 P.M. Friday, July 19, 2019 and shall be based upon the General Information and Scope of Services attached.

II. GENERAL INFORMATION

A. Submission Period

Respondents must submit their Proposals on or before 4:00 P.M. Friday, July 19, 2019 (the Submission Deadline). The City of Long Beach City Council expects to select a firm for the Project (the "Awardee") from among the respondents at the August 6 or August 20, 2019, regularly scheduled meeting.

B. Preparation of Proposal

The Consultant shall demonstrate that it has relevant experience in performing projects of comparable value and scope to the type contemplated by this RFP. Each Proposal shall be prepared concisely, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation.

C. Number of Copies of Proposal

Six copies of the proposal must be submitted to the City.

D. Inquiries and Submission of Proposal

Questions about the RFP and the submission of Proposals shall be directed in writing to:

Mr. Joseph Febrizio
Deputy Commissioner of Public Works
Department of Public Works – Room 404
City Hall
One West Chester Street
Long Beach, New York 11561
(516)431-1000 ext. 1011
(516)431-5008 (fax)
jfebrizio@longbeachny.org

All Proposals must be received at the above address before the end of the submission period, either by hand delivery, courier or by certified mail in a sealed envelope, to the above office. The cost proposal shall be provided in a separate sealed envelope.

Questions or requests for any clarifications about the RFP will only be accepted up until Friday, July 12, 2019.

E. Longevity of Proposals

A proposal may be withdrawn at any time prior to the date specified as the Submission Deadline. However, no Proposer may withdraw or cancel a Proposal for a period of forty-five (45) days following the Submission Deadline, nor shall the successful proposer withdraw or cancel or modify the Proposal, after having been notified that the Proposal has been accepted by the City, except at the request of the City or with the City's written consent.

F. Selection of Awardee

The City Selection Committee will evaluate each Proposal with emphasis on the following factors:

- *Expertise* and technical approach of the Proposal, explaining the degree to which the respondent's interpretation of the work meets the needs and goals of the City (20 points)
- Demonstrated relevant *experience* in performing projects of comparable value and scope to the type contemplated by this RFP including familiarity with Federal, State, and Local requirements (20 points)
- References, reputation and strength of current team financials (20 points)
- Quality of the Proposal/*Understanding* – adherence to Section III. Requirements (following) to include conciseness, clarity and readability (20 points)
- *Scheduling* to meet the timeline imposed (20 points)

The Committee may opt to interview the consultant in a 15 to 20 minute interview. Final selection of the Consultant will be made solely by the City Council

G. Right of Rejection by the City

Notwithstanding any other provisions of this RFP, the City reserves the right to select the respondent that best meets the requirements of the RFP, and not necessarily to the lowest priced proposal. Further, the City, reserves the right, for any or no reason and in its sole and absolute discretion, to (1) amend, in whole or part, (2) withdraw or cancel this RFP, and (3) accept or reject any or all Proposals prior to execution of the contract for the Project for any or no reason and with no penalty to the City.

H. Notice of Award

The City shall inform the Awardee that they have been selected by means of a Notice of Award issued by the City. Neither the selection of a respondent as the Awardee nor the issuance of a Notice of Award shall constitute a binding commitment on behalf of the City to enter into any contract with the Awardee, as any binding arrangement must be set forth in definitive documentation negotiated between and signed by the Awardee and the City.

I. Contract Negotiations

The City intends to enter into contract negotiations with the firm or firms selected, who shall be required to enter into a written contract (hereinafter, the "Contract") with the City in a form satisfactory to the City Council. The terms of the Agreement will be similar to the draft agreement included herein in Appendix B.

The City reserves the right to negotiate the terms and conditions of the Contract(s) with the selected Proposer(s), if any. These negotiations could include all aspects of services and fees. Neither the selection of a Proposer nor the negotiation of the Contract with such Proposer(s) shall constitute a binding commitment on behalf of the City to enter into a Contract with such Proposer(s), as any binding arrangement must be set forth in the Contract signed by both parties and is subject to all requisite approvals.

J. Schedule

The Consultant shall be prepared to start work within ten (10) days of notice of award, and must anticipate completion of plans and specifications to meet the following proposed schedule:

Submit Draft/Final Plans and Specifications:	Sept. 2019
Advertise:	Oct. 2019
Bids Due:	Nov. 2019
Award:	Dec. 2019
Initiate Construction:	Jan/Feb. 2020

K. Technical Proposal Submission Elements and Necessary Qualifications

Each Technical Proposal shall include a Cover Letter, Executive Summary, Technical Approach and a Qualifications Section.

The Executive Summary shall provide a description of the key points of the Proposal, specifically addressing why your firm is qualified to provide the engineering services in connection with the scope of services in this RFP. This section must include the name, email address, telephone number and facsimile number of the key contact person for this proposal.

The Technical Approach shall include: proposed staffing for the project, schedule, plans for accomplishing the work, and proposed ideas for the design.

The Qualifications Section shall include background information on your firm including but not limited to:

1. Firm Overview
2. Please provide the resumes of the individuals who would comprise your operational team and the principal-in-charge. Describe only the people who would actually work on this City Project. Specify the role each would play, as well as what backup coverage would be available in time of conflicting engagements. Provide an organizational chart.
3. A list of any sub-consultants who may be used to perform the work.
4. Additional information pertinent to the City requirements.
5. References: Names, Titles, addresses and phone numbers of key contacts for five (5) clients, particularly those for whom the respondent has undertaken projects similar to this Project.
6. The Non-Collusive Proposal Submission Certification signed by a duly authorized representative of the Proposer, set forth in Appendix A, attached hereto and made a part hereof.

L. Fee Proposal

The consultant shall submit a Fee Proposal, which provides fees for Parts 1, 2, and 3 as indicated. **The cost proposal is required to be submitted in a separate sealed envelope.**

The Fee Proposal shall also include a list of hourly rates, anticipated man-hours for field and office time, and multiplier utilized. The maximum hourly wage rate (including multiplier) that is permitted to be utilized is \$175.00/hr.

The consultant will be required to submit fees for Parts 1, 2, and 3 only. The fees for Parts 1, 2, and 3 will incorporate, but not be limited to, all costs associated with printing, reimbursables (travel, phone, fax, mailings, etc.), soil borings (as necessary), markouts, filing fees, permits, meetings, etc.



60 Crossways Park Drive, Suite 340
Woodbury, NY 11797
tel: 516 496-8400

July 19, 2019

Mr. John A. Mirando, P.E.
Commissioner of Public Works
City of Long Beach
Department of Public Works – Room 404
One West Chester Street
Long Beach, NY 11561

Subject: Request for Proposal: Secondary Digester Cover Replacement Wastewater Treatment Plant (WWTP) – Price Proposal

Dear Mr. Mirando:

Attached please find Camp Dresser McKee & Smith's (CDM Smith's) fee proposal sheet for the above reference project. As indicated on the sheet, CDM Smith has included two adder items for additional electrical and instrumentation design in the event Option 3 (Membrane Cover) is selected and for optional concrete inspection of the interior of the digester tank during construction. As requested in the in RFP, the following table summarizes the hours and rates for the proposed services. The proposed multiplier for Office Services is 3.0 and for Field Services (Construction Inspection) is 2.45.

Hour and Rate Summary (Base Scope)

Staff Description	Rate	Estimated Hours
Christopher A. Korzenko, PE, BCEE, PMP	\$175	20
William Nylic, PE, PMP	\$151	98
Vincent Apa, PE, BCEE	\$175	44
Paul Bedigian, PE	\$175	114
Paul Damon, PE	\$175	8
Process Designer	\$150	223
Design Drafting	\$133	80
Michael Caggiano	\$120	60

Hour and Rate Summary (Adder for Electrical and Instrumentation Design)

Staff Description	Rate	Estimated Hours
Matthew Lick, PE	\$152	50
Jeffery Donaldson, PE	\$175	20
Electrical Designer	\$127	80



Mr. John A. Mirando, P.E.

July 19, 2019

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Hour and Rate Summary (Adder for Structural Concrete Inspection)

Staff Description	Rate	Estimated Hours
Paul Bedigian, PE	\$175	56

We appreciate the opportunity to submit this proposal. Should you have any questions or comments, please feel free to contact me at your earliest convenience.

Sincerely,



Christopher A. Korzenko, P.E., BCEE, PMP
Officer-in-Charge
Camp Dresser McKee & Smith





**CITY OF LONG BEACH, NEW YORK 11561
REQUEST FOR PROPOSALS
CITY OF LONG BEACH, NEW YORK 11561
SECONDARY DIGESTER COVER REPLACEMENT
WASTEWATER TREATMENT PLANT (WWTP)
JUNE 2019**

FEE PROPOSAL SHEET

1. Cost for Part 1 – Design (Prepare Plans and Specifications)

\$68,090

(in figures)

2. Cost for Part 2 – Construction Administration Services

\$24,170

(in figures)

3. Cost for Part 3 – Construction Inspection

\$7,600

(in figures)

Submitted By: Camp Dresser McKee & Smith
(Name of Company)

Name of Authorized Representative:

Christopher A. Korzenko, , PE, BCEE, PMP
(Print Name)

Signature of Authorized Representative:

Date: 7/19/2019

Note 1: The pricing submitted above is for the design and construction services associated with Options 1 and 2. Should Option 3 be selected (membrane system), an adder of \$21,640 will be required for the additional electrical and instrumentation design.

Note 2: Should the City choose to have an internal structural inspection of the concrete walls performed during the construction of the new cover, an adder of \$9,800 will be required for this additional service.

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain during the performance of the Contract the following insurance coverage in the amounts specified:

1. **Commercial General Liability and Property Damage insurance covering the liability of the consultant including Contractual insurance defending indemnifying and holding harmless the City, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this agreement with a combined single limit (bodily injury/property damage) of \$2,000,000.00 per occurrence.**
2. **Professional Liability, \$1,000,000.00 per claim, \$2,000,000, aggregate.**
3. **Automobile Liability and Property Damage, Bodily Injury and Property Damage \$1,000,000.00 per occurrence.**
4. **Professional document / Valuable papers insurance in the minimum amount of \$100,000.00.**
5. **Professional errors and omissions insurance in the minimum amount of \$1,000,000.**
6. **Workers Compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to State Workers Compensation Law 220(2).**

The City shall be named as additional insured on these policies and the provider will be subject to the approval of the Corporation Counsel.

At the time of execution of the Contract, the Awardee shall furnish the City with certificates of insurance evidencing the required coverage. All certificates of insurance shall provide that the policies shall not be changed or cancelled unless thirty (30) day's prior written notice is given to the City and the Commissioner of Public Works.



SECONDARY DIGESTER COVER REPLACEMENT
WASTEWATER TREATMENT PLANT (WWTP)
JUNE 2019

III. REQUIREMENTS

A. SCOPE OF WORK

The City of Long Beach is requesting proposals from qualified professional consulting engineering firms to prepare plans, specifications, and contract documents for replacement of the secondary anaerobic digester cover at the City Wastewater Treatment Plant. The intent is to replace the existing digester cover with a new structure. The contractor will provide the City with alternatives to replacing the existing cover with an in-kind unit. Alternatives will be provided with cost estimates for each cover system proposed. The City will choose the alternative that is cost effective and is consistent with the parameters of the original design intent. Construction Administration and Inspection services are incorporated as well.

DESCRIPTION

The primary and secondary digesters were recently cleaned by SpectraServ. As part of the project, repairs were performed on the gas lines that serve the primary digester. The primary digester was taken offline for this work. As part of the start-up to put the primary digester back in service there was a routine gravity transfer from the secondary to the primary digester. During this operation the vacuum relief valve failed causing the secondary digester roof to buckle inward and the guide wheels to come off the tracks. Plant personnel isolated the secondary digester, made the area safe, and took the unit offline. The primary is on-line and functioning.

The digester covers were replaced in 1988 by James McCullagh Inc., 75 East Bethpage Road, Plainview, New York. The engineer of record was Dvirka and Bartilucci Consulting Engineers, 330 Crossways Park Drive, Woodbury, New York. As-builts for the project are available for review in the Office of the Department of Public Works, City Hall, Room 404, One West Chester Street, Long Beach, New York 11561.

B. Project Classification

Classifications under New York State Environmental Quality Review Act (SEQR) Part 15, Title 17 of the Official Compilation of Codes, Rules and Regulations of New York State (17 NYCRR Part 15) is assumed to be a Type II Project.

C. Policy and Procedures

All plans and specifications must be prepared in compliance with relevant local, state, and federal rules and regulations. The Consultant shall prepare for and attend all meetings as directed by the City and as described herein. The Consultant will be responsible for the preparation of all meeting minutes and the minutes shall be submitted to the City within one (1) week of the meeting date.

When specifically authorized in writing to begin work, the Consultant shall render all services and furnish all materials and equipment necessary to provide the City with Reports, Plans,

Estimates and other data specifically described under Parts 1 through 3.

The Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by the Consultant under this Contract. The Consultant shall, without undue delays and without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other services. Before beginning each of the items described below the consultant shall meet with the City to discuss and more accurately define the work to be performed.

D. Scope of Services - Categorization of Work

Work on this project shall be divided into three parts and categorized as follows:

- Part 1 – Design (Prepare Plans and Specifications)
- Part 2 – Construction Administration Services
- Part 3 – Construction Inspection

Part 1 – Design (Prepare Plans and Specifications)

1.1 Scope of Work (Detailed)

The work shall include preparing plans and specifications that addresses replacement of the secondary digester cover. Scaled Plan, Section, Detailed, Elevation, Floor Plan, Construction, Mechanical, Structural, Electrical, etc. drawings will be provided for replacement of the unit. The Consultant shall provide digester cover alternatives, cost estimate for each alternative, and a recommendation,

The digester covers were replaced in 1988 by James McCullagh Inc., 75 East Bethpage Road, Plainview, New York. The engineer of record was Dvirka and Bartilucci Consulting Engineers, 330 Crossways Park Drive, Woodbury, New York. As-builts for the project are available for review in the Office of the Department of Public Works, City Hall, Room 404, One West Chester Street, Long Beach, New York 11561

Contract sheet drawings shall include as a minimum:

- Tile Sheet
- Index and legend
- Typical sections
- Plan and profile
- Mechanical
- Electrical
- Structural
- Construction sign text
- Miscellaneous details

8 ½" x 11" MATERIALS SHALL INCLUDE COPIES OF:

- **Contract Documents**
- **Specific Specifications**
- **Special Notes**
- **Item listing**
- **Price Analyses for items**
- **Requisite copies of plans and specifications as delineated in this proposal.**

The consultant will be responsible to answer all questions, in writing, that pertain to the bid during the bid process as well as prepare addendums (as necessary) in the event of changes to the plans and/or specifications.

Part 2 – Construction Administration Services

2.1 General

The Awardee must have a demonstrated record of experience administering construction activities of projects of size and scope. If authorized by the City, the Services shall include the following:

- **Hold a pre-construction meeting.**
- **Assist the City in evaluating the past performance of the apparent low bidders and their ability to perform the tasks delineated.**
- **Provide a written recommendation to the City regarding the award of construction contracts.**
- **Review construction schedule and cost breakdown.**
- **Respond to questions related to the intent of the design**
- **Shop drawing review**
- **Interpretation of design drawings and specifications**
- **Review and preparation of change orders.**
- **Review and approve all proposed deviations and substitutions to the contract drawings**
- **Review all laboratory, shop, mill, material, and equipment test reports.**
- **Review Contractor payment requests**
- **Review As-Built drawings**
- **Supply certification of quantities or units of materials, and supply certification that all work was constructed in accordance with the plans and specifications or any amendments thereto.**

Part 3 – Construction Inspection

3.1 General

The City, at its discretion, may elect to utilize the design firm to provide construction inspection services. The Consultant shall provide the City with the costs for part-time inspection for the period of four months (120 days). Part-time construction, for the purposes of this proposal is defined as 60 hours for the duration of the project. Details such as estimates of direct technical labor, overhead and profit expenses, multiplier utilized, and rates of key personnel shall be included. The City reserves the right to select and negotiate the procurement of inspection services with the selected design consultant or seek proposals upon completion of the design phase. The hours (60) will be utilized for the following:

- Site visits during critical phases of the work. Provide inspection record to report work at site during site visit.
- Conduct progress meetings (minimum one per month for the duration of the project).

E. Standard Practices

All drawings and specifications submitted to the City for final acceptance shall be accompanied by all necessary applications, certificates or approvals from City, County, State, Federal or other municipal departments having jurisdiction over any phase of the work. Submission to such agencies shall be made by the consultant in the name of the City.

Notwithstanding any of these provisions, the consultant shall, in all cases, conform to any special requirements of other governmental agencies where such conformity is a required condition for funding, grant approval, or submission/approval of applications and the like.

Copies of all correspondence received and sent by the consultant relative to this work shall be provided to the Commissioner of Public Works.

The consultant shall prepare and distribute minutes of all meetings held relevant to this work.

The consultant, on a monthly basis, shall prepare a letter reporting on its monthly activities, progress and any unresolved problems that are impeding the performance of the work.

F. Consultant Liability

The consultant shall be responsible for all damage to life and property due to activities of the consultant, its sub-contractors, agents or employees, in connection with his services under this agreement. The consultant specifically agrees that its sub-contractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Further, it is expressly understood that the consultant shall indemnify and hold harmless the City from claims suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the consultant under this agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this provision, shall include, in addition to negligence founded upon tort, negligence based upon the consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work.

Nothing in this provision or in the agreement shall create or give to third parties any claim or right of action against the consultant or the City beyond such as may legally exist irrespective of this provision of this agreement.

G. Extra Work

If the consultant is of the opinion that any work that the consultant has been directed to perform is beyond the scope of their agreement and constitutes extra work, the consultant shall promptly notify the Commissioner of Public Works of that fact, in writing. Extra work shall not be initiated without approval, in writing, from the City Manager and/or the City Council.

H. Ownership of Documents

All completed original tracings and the original master specification sheets shall constitute the property of the City but may, during the course of the performance of the work required by this agreement, remain in custody of the consultant unless otherwise directed by the Commissioner of Public Works.

I. Independent Contractor

The consultant, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as nor claim to be an officer or employee of the City by reason hereof, and that he will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including, but not limited to, Workmen's Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

The consultant shall not engage, on a full-time or part-time or other basis during the period of this agreement, any professional or technical personnel who are or have been at any time during the period of the agreement in the employ of the Federal Highway Administration or the Public Works organization of any State, County or City or City except regularly retired employees, without the consent of the public employer of such person.

J. Additional Conditions

All materials submitted in response to this RFP will become the property of the City.

The City reserves the right to conduct discussions with, and to request additional information from, one or more respondents. No respondent shall have any rights against the City as a result of such discussions.

The City reserves the right to negotiate separately with any source whatsoever.

The City reserves the right to waive any irregularity in any Proposal received or any other aspect of this procurement.

Each proposal prepared in response to this RFP will be prepared solely at the cost and expense of the respondent with the express understanding that there will be no claim whatsoever for reimbursement from the City.

Submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to become the Awardee, and to enter into a contract to undertake or complete the Project.

News releases or other public announcements relating to this RFP shall not be made by any party receiving this RFP without the prior written approval of the City.

The City and its respective officials and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the City does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the webpage on which the RFP is posted, or in connection with any other

electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

K. Deliverables

The consultant will be required to provide the City with fifteen (15) sets of final plans and specifications. Ten (10) will be provided on CD. Five hard copies of the final plans and specification will be required, i.e., two full size and three 11" x 17". The consultant will be required to provide three (3) draft sets of plans and specifications at the 30% and 60% completion for review as well.

APPENDIX A

NON-COLLUSIVE PROPOSAL SUBMISSION CERTIFICATION
(ONE PAGE)

NON-COLLUSIVE PROPOSAL SUBMISSION CERTIFICATION

By submission of this proposal, each proposed and each person signing on behalf of any proposal certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposed and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
3. No attempt has been made or will be made by the proposed to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

I, the undersigned, attest under penalty of perjury that I am an authorized representative of the Proposer and that the foregoing statements are true and accurate.

Name of Proposer:

Signature of Authorized
Representative: _____

Title _____

Date _____

APPENDIX B

CONTRACT FOR SERVICES

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement"), dated as of the date this Agreement is executed by the City of Long Beach, between (i) City of Long Beach, a municipal corporation having its principal office at One West Chester Street, Long Beach, New York 11561 (the "City") acting on behalf of the City Department of Public Works, having its principal office at same (the "Department") and (ii) _____ (Firm or the "Contractor").

WITNESSETH:

WHEREAS, the City desires to hire the Contractor to perform the services described in this Agreement; and

WHEREAS, the Contractor desires to perform the services described in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. The term of this Agreement shall commence on the date on which this Agreement is executed by the City (the "Commencement Date") and terminate on _____ (the "Expiration Date") unless sooner completed, terminated or extended in accordance with its terms

2. Services.

(a) The services to be provided by Contractor Group under this Agreement, for engineering services to prepare a contract for public bidding for bulkhead repair/replacement., prepare plans and detailed drawings for submittal and approval to all regulatory agencies detailed and shall consist of those specific work divisions and deliverables related to this project as more particularly described in the City of Long Beach Request for Proposal and proposal submitted by Firm _____ (month of submittal), attached hereto and hereby made Exhibit "A".

(b) If Contractor is authorized, in writing, by the City Manager, to provide extra services, and the requirements for such extra services are not due to the fault or negligence of Contractor, the contractor shall be compensated for the additional costs of the extra services in accordance with the terms and conditions contained herein.

3.

(a) Amount of Consideration. The amount to be paid to Firm as full consideration for Firm services under this Agreement is _____ (insert payment amount here) and shall be payable as set forth in the "Payment Schedule" annexed hereto as Exhibit "B".

4. Ownership and Control of Work Product

(a) Copyrights.

(i) Upon execution of this Agreement, any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items, shall become the exclusive property of the City.

(ii) Any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials, and they shall be used by the Contractor for no other purpose without the prior written permission of the City.

(iii) The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

(iv) The Contractor represents and warrants that the Copyrightable Materials: (1) are wholly original material not published elsewhere (except for material that is in the public domain); (2) do not violate any copyright law; (3) do not constitute defamation or invasion of the right of privacy or publicity, and (4) are not an infringement of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

(b) Patents and Inventions. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for

determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(c) Pre-existing Rights. In no case shall 4(a) or 4(b) above apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

(d) Infringements of Patents, Trademarks, and Copyrights. The Contractor shall indemnify and hold the City harmless against any claim for any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement. The Contractor shall indemnify and hold the City harmless regardless of whether or not the infringement arises out of compliance with the scope of services/scope of work.

(e) Antitrust. The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State of New York or of the United States relating to the particular goods or services procured by the City under this Agreement.

4. Independent Contractor. Firm is an independent contractor of the City. Firm shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a City employee, (ii) commit the City to any obligation, or (iii) hold itself, himself, or herself out as a City employee or Person with the authority to commit the City to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

5. No Arrears or Default.

Contractor is not in arrears to the City upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the City, including any obligation to pay taxes to, or perform services for or on behalf of, the City.

6. Compliance with Law.

(a) Generally. Contractor shall comply with any and all applicable Federal, State and local Laws and regulations. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. Contractor acknowledges that Contractor's Information in the City's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the City shall make reasonable efforts to notify Contractor of such request prior to disclosure of the Information so that Contractor may take such action as it deems appropriate.

(c) Protection of Client Information. Contractor acknowledges and agrees that all information that Contractor acquires in connection with performance under this Agreement shall be strictly confidential, used solely for the purpose of performing services to or on behalf of the City, and shall not be disclosed to third parties except (i) as permitted under this Agreement, (ii) with the written consent of the City (and then only to the extent of the consent), or (iii) upon legal compulsion.

7. Minimum Service Standards. Regardless of whether required by Law:

(a) Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which Contractor operates. Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

8. Indemnification; Defense; Cooperation.

(a) To the fullest extent permitted by law, the Consultant shall indemnify the City, and its councilmembers, officers, and employees from and against all liabilities, regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or its employees, agents, or subcontractors. Liabilities subject to the duty to indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Consultant shall have no obligation to indemnify where such liabilities are caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

9. Insurance.

The Firm shall not commence work under this contract until he has obtained all insurance required under this paragraph and copies of such insurance have been provided to and approved by the City of Long Beach, New York. Said insurance premiums are to be paid up front and not by installments; the Firm shall not allow any subcontractor to commence work on his subcontract until the subcontractor has obtained the same insurance coverage.

The required insurance coverage is as follows:

(1) Workmen's Compensation Insurance – in accordance with the Laws of the State of New York.

(2) Comprehensive General Liability Insurance- to protect the Firm and any subcontractor performing work in connection with this contract from claims for damages for bodily injury (personal injury, sickness or disease, including death resulting there from, as well as injury claimed to be sustained resulting from false arrest, detention and/or imprisonment, malicious persecution, liable, slander and/or wrongful entry), as well as from claims for property damage which may arise from operations connected with this contract, by anyone directly or indirectly employed by with of them and the amounts of such insurance shall be as follows:

- (a) \$2,000,000 per occurrence
- (b) \$3,000,000 annual aggregate

(3) Umbrella Form, or Excess Follow Form: \$2,000,000

(4) The parties to this agreement specifically agree that _____ (insert firm name here) shall purchase a contract of general liability, and umbrella/excess Follow Form coverage, in accordance with the terms set forth above, naming the City of Long Beach, along with its officials, employees and volunteers, as an additional named insureds. In addition, to further protect the City, its officials, employees and volunteers, _____ (insert Firm name here) shall purchase a hold-harmless endorsement.

(5) In the event that a claim arises against the City as a result of _____ (insert firm name here) services under this agreement, and it shall be found that _____ (insert firm name here) services caused the claimant's damages and it shall be found the _____ (insert firm name here) failed to purchase the insurance coverage specified in the contract, _____ (insert firm name here) shall be liable to the City for full indemnity for any judgment rendered against the City, including the costs of defense of the claim, but only to the extent that _____ (insert firm name here) services caused the claimant's damages which the City was

obligated to pay. Nothing in this paragraph, however, limits or should be construed as limiting _____(insert firm name here)obligations with respect to its subcontractors, as set forth in Section 8 of this Agreement.

10. Termination

(a) **Generally.** This Agreement may be terminated (i) for any reason by the City upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the City immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the City and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "**Cause**" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

11. **Accounting Procedures: Records.** Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("**Records**"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles. Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

12. **Limitations on Actions and Special Proceedings against the City.** No action or special proceeding shall lie or be prosecuted or maintained against the City upon any claims arising out of or in connection with this Agreement unless:

(a) **Notice.** At least thirty (30) days prior to seeking relief Firm shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the City Manager for adjustment and the City shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. Firm shall send or deliver copies of the documents presented to the City Manager under this Section to each of (i) the Department and the (ii) the Corporation Counsel (at the address specified above for the City) on the same day that documents are sent or delivered to the City Manager. The complaint or necessary moving papers of Firm shall allege that the above-described actions and inactions preceded the Firm's action or special proceeding against the City.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

13. Work Performance Liability. Firm is and shall remain primarily liable for the successful completion of all work in accordance with this Agreement irrespective of whether Firm is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the City.

14. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court of the State of New York, County of Nassau and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

15. All Legal Provisions Deemed Included; Severability; Supremacy; Construction

In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

16. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

17. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

18. Executory Clause. Notwithstanding any other provision of this Agreement,

(a) The City shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all City approvals have been obtained, including, if required, approval by the City Council, and (ii) this Agreement has been executed by the City Manager (as defined in this Agreement).

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, Contractor and the City have executed this Agreement as of the date first above written.

By : _____

Name: _____

Title: _____

Date: _____

CITY OF LONG BEACH

By: _____

Name: _____

Title: City Manager

Date: _____

PLEASE EXECUTE IN BLUE INK

STATE OF NEW YORK)
) ss.:
CITY OF LONG BEACH)

On this ____ day of _____ in the year 2017 before me personally came _____ to me known, and known to me to be the person described herein and who executed the above instrument; and he duly acknowledged that he executed the same.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss.:
CITY OF LONG BEACH)

On the ____ day of _____ in the year 2017 before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Nassau; that he or she is a City Manager of the City of Long Beach, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the City Charter City of Long Beach.

NOTARY PUBLIC

EXHIBIT A

Detailed Scope of Services

SECONDARY DIGESTER COVER REPLACEMENT WASTEWATER TREATMENT PLANT (WWTP) JUNE 2019

Scope of Services

Work on this project shall be divided into three parts and categorized as follows:

- Part 1 – Design (Prepare Plans and Specifications)
- Part 2 – Construction Administration Services
- Part 3 – Construction Inspection

EXHIBIT B

Payment Schedule

The amount to be paid to the Contractor as full consideration for services under this Agreement, **including** any extra services that may be so authorized, shall be payable as set forth below. Notwithstanding the foregoing, the maximum amount to be paid to Contractor for services under this Agreement shall not exceed.

Payments shall be made to contractor in arrears and shall be contingent upon (i) contractor submitting a claim voucher (the "Voucher") in a form satisfactory to the City, that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the City supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the City Comptroller or his or her duly designated representative (the "Comptroller").

Part 1 Design (Preparation of Plans and Specifications)

Under this task the Consultant shall perform all work required to detailed plans, specifications and cost estimate in such a manner that they can be used for initiating Construction. The Contractor shall be paid on a basis of X times the actual salary of the technical personnel engaged in the work.

Part 2 Construction Administration Services

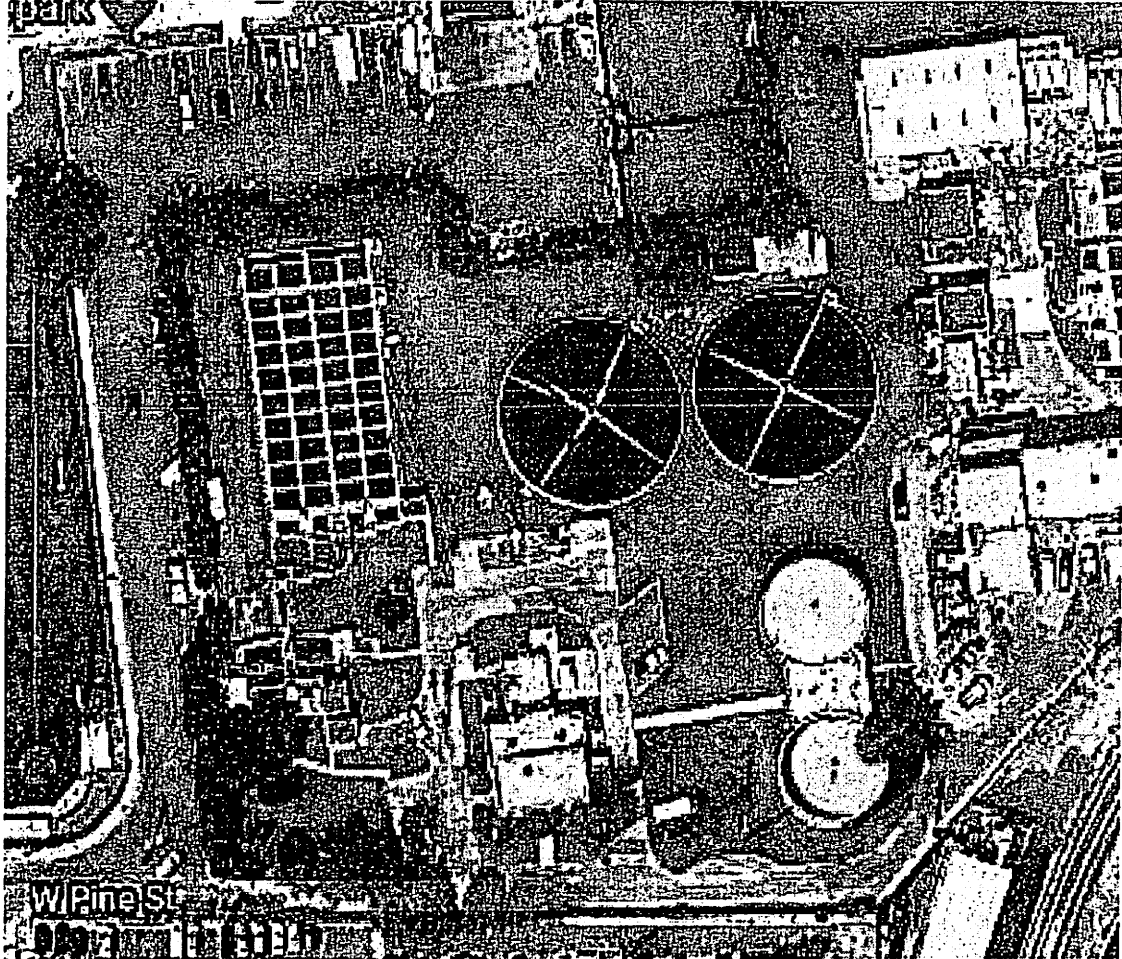
Under this task the Consultant shall perform all work described herein necessary for the successful award and completion of this road improvement project. The Contractor shall be paid on a basis of X times the actual salary of the technical personnel engaged in the work.

Part 3 Construction Inspection

Under this task, the City, at its discretion, may elect to utilize the design firm to provide construction inspection services. The Consultant shall provide the City with the costs for part time inspection for the period of four months (120 days). Part-time construction, for the purposes of this proposal is defined as 60 hours for the duration of the project. Details such as estimates of direct technical labor, overhead and profit expenses, multiplier utilized, and rates of key personnel shall be included. The City reserves the right to select and negotiate the procurement of inspection services with the selected design consultant or seek proposals upon completion of the design phase.

Timing of Claims for Payment. Contractor shall submit claims no later than one (3) months following the City's receipt of the services that are the subject of the claim and no more frequently than once a month.

Payments in Connection with Termination or Notice of Termination. Unless a provision of this Agreement expressly states otherwise, payments to the Firm following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after the Firm received notice that the City did not desire to receive such services.



LOCATION MAP
SECONDARY DIGESTER COVER REPLACEMENT
WASTEWATER TREATMENT PLANT (WWTP)
JUNE 2019
Not to scale