



December 1, 2020

The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



Robert R. Scott, Commissioner

**LETTER OF DEFICIENCY #DWGB 20-032**  
 Certified Mail #7019 1120 0001 7107 7303

Donald Vaughan  
 Abenaki Water Co  
 32 Artisan Ct, Ut 2  
 Gilford, NH 03249  
 Also via email: [dvaughan@newenglandservicecompany.com](mailto:dvaughan@newenglandservicecompany.com)

Subject: Carroll - Public Water System: Rosebrook Water (PWS ID: 0382010)

Dear Mr. Vaughan.:

The records of the NH Department of Environmental Services ("NHDES") show that the Rosebrook Water water system (the "Water System") is classified as a public water system ("PWS"), as defined by RSA 485:1-a. A PWS is defined as any water system supplying 15 or more services, or 25 or more people for 60 or more days per year. The Water System serves approximately 408 connections and 1020 people on a year round basis. As owner of the Water System, Abenaki Water Company ("Abenaki") is required to comply with NH Administrative Rule Env-Dw 100-1200, *New Hampshire Drinking Water Rules*, for the purpose of providing safe and reliable drinking water.

Per Env-Dw 720, *Inspections; Significant Deficiencies*, PWS's with a public water supply source are subject to periodic inspections or sanitary surveys by NHDES staff to evaluate the adequacy of the source(s), storage facilities, equipment, operation, and maintenance for the protection of public health. In addition, Env-Dw 717, *Groundwater Monitoring and Treatment*, lists significant deficiencies applicable to PWS's served by groundwater. Env-Dw 720 and Env-Dw 717 require a PWS owner to correct significant deficiencies identified during a sanitary survey within 120 days of receiving notice from NHDES of a significant deficiency, unless a shorter deadline has been established.

On March 29, 2019, NHDES staff conducted a sanitary survey inspection of the Water System. The Sanitary Survey Deficiency Letter, sent to Abenaki by mail on June 7, 2019, identified four significant deficiencies and the required actions to correct the deficiencies. One of the four deficiencies was subsequently corrected.

The three following significant deficiencies have not been corrected according to NHDES records:

**Significant Distribution Deficiency**

The Water System's pressure exceeds the regulatory limit specified in Env-Dw 404.01(a), *Design Standards for Large Public Water Systems*. More specifically, the *Recommended Standards for Water Works* requires the working pressure to be between 60 to 80psi and for pressure reducing valves to be in place if the static pressure exceeds 100psi. *To correct the deficiency, permanently address the system's pressure exceedances to maintain a normal working pressure between 60 and 90psi, with a minimum working pressure of 35 psi and a maximum static pressure of 100 psi.*

**Significant Treatment Deficiency**

During the inspection, there was no chemical containment at the well station for the storage of chemicals or at the bulk mixing tank. Chemical containment is required for operator safety and for preventing potential groundwater contamination should a spill occur. *The Recommended Standards for Water Works*, as referenced in Env-Dw 404.01(a), requires that chemical containment be provided for 100% of the volume of the largest container. *To correct the deficiency, install containment for all tanks used for storing or mixing chemicals and chemical pumps.*

[www.des.nh.gov](http://www.des.nh.gov)

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095  
 (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

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**Operation and Maintenance Inadequate**

Both of the chemicals used for treatment at the Water System, soda ash and NaOCl, are mixed in the same tank. Due to the chemical mixing, the recording of the daily quantities for NaOCl, required per Env-Dw 503.10, *Public Water System Operational Requirements*, are more of an estimate than an accurate quantity. Additionally, the mixing tank makes it difficult to hold a consistent chlorine residual. *To correct the deficiency, each chemical feed system should operate on its own to allow for accurate chemical recordings and should have separate storage, piping and pumping equipment, in addition to separate injection points.*

In the Sanitary Survey Deficiency Letter, NHDES noted that correction of the deficiencies or submission of a Corrective Action Plan (“CAP”) was required within 30 days, and also noted the requirement that NHDES be notified in writing when the deficiencies had been corrected.

On June 21, 2019, NHDES staff sent an email to representatives of the Water System with an outline of information needed for a CAP to correct the deficiencies. The Water System responded by email on June 23, 2019 with dates for anticipated correction contingent on decisions pending with the NH Public Utility Commission (“PUC”). On August 26, 2020 and September 9, 2020, NHDES sent emails to representatives to establish proposed deadlines for the submission of design plans and project bidding for correction of the deficiencies, barring any other approved deadlines. On September 1, 2020 and September 18, 2020, NHDES received emails from representatives regarding Abenaki’s inability to commit to the proposed deadlines with the lack of decisions from the PUC. On November 17, 2020, NHDES spoke with you to explain that PUC’s review cannot prolong correction of the significant deficiencies to protect public health and safety. To date, NHDES has not received a proposed CAP for correction of the deficiencies.

Per Env-Dw 717.22(d) and Env-Dw 720.14(a)(1), the failure to correct the deficiencies within 120 days of being notified of the deficiencies, or be in compliance with an approved CAP, has resulted in the Water System incurring a treatment technique violation requiring public notice of the violation. **This Letter of Deficiency shall serve as formal notice of this violation.**

NHDES believes the violations can be corrected and future violations prevented by taking the following actions:

DEADLINE	ACTION
January 11, 2021	Provide public notice to consumers for the <b>failure to correct the noted significant deficiencies</b> within 120 days from the date of the sanitary survey and provide proof of public notice to NHDES, per the instructions on the template at <a href="http://www.des.nh.gov">www.des.nh.gov</a> . Click on “A to Z List”, and select “Public Notice (for Public Water Systems)”, “Sanitary Survey” heading, “Sanitary Survey Significant Deficiency.”
	<b>Continue to perform public notice every 3 months*</b> for as long as the deficiency is unresolved and submit proof of public notice to NHDES, in accordance with the instructions provided on the public notice template available as indicated above.
August 2, 2021	Submit completed design plans for modifications/improvements of the Water System in order to correct the significant deficiencies noted during the sanitary survey as detailed above.
By the NHDES-approved correction date	Correct the significant deficiencies and submit documentation, including photographs, to NHDES confirming that the deficiencies have been corrected.

\*Water system owners may request an alternate repeat notice frequency in accordance with Env-Dw 801.10 and 801.13, *Alternate Frequency for Repeat Standard Public Notice*. NHDES will review and approve the request for modification of the repeat notice frequency if the proposal adequately protects human health and the

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environment and meets all applicable federal requirements. In no event shall repeat notice be given less frequently than once per year.

Please note that NHDES may initiate formal action for this violation, including issuing an order requiring the deficiencies to be corrected, proposing an administrative fine of up to \$4,000 per violation, and/or referring the matter to the NH Department of Justice for imposition of appropriate penalties.

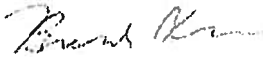
**All information as requested above should be addressed as follows or emailed to [dwgbenforcement@des.nh.gov](mailto:dwgbenforcement@des.nh.gov):**

Kim Bourgouin  
Enforcement Section  
Department of Environmental Services  
Drinking Water and Groundwater Bureau  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095

NHDES records indicate that the Water System currently holds an SOC chemical monitoring waiver, which expires December 31, 2021. Please note that systems with unresolved significant deficiencies identified by NHDES will be denied requests for an SOC monitoring waiver, per Env-Dw 712.20(c).

Please contact Randy Suozzo at (603) 271-1746 or by email at [randal.a.suozzo@des.nh.gov](mailto:randal.a.suozzo@des.nh.gov), if you have any questions regarding the noted sanitary survey deficiencies. If you have any other questions regarding this letter, please contact Kim Bourgouin by email at [kim.c.bourgouin@des.nh.gov](mailto:kim.c.bourgouin@des.nh.gov) or [dwgbenforcement@des.nh.gov](mailto:dwgbenforcement@des.nh.gov), or by phone at (603) 271-0713.

Sincerely,



Brandon Kernen, P.G., Administrator  
Drinking Water and Groundwater Bureau

cc: NHDES Legal Unit  
File

ec: Taylor Deogburn, Primary Operator, [tdeogburn@newenglandservicecompany.com](mailto:tdeogburn@newenglandservicecompany.com)  
Health Officer, Town of Carroll, [twinmountainfireambulance@gmail.com](mailto:twinmountainfireambulance@gmail.com)  
Randy Suozzo, NHDES/DWGB, Sanitary Surveyor  
EPA, Region 1



*EXECUTED COPY*

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Proposal No. 19165R2  
December 22, 2020

### **AGREEMENT FOR ENGINEERING SERVICES**

#### **1. CLIENT**

This Agreement is between the Abenaki Water Company care of New England Service Company, 37 Northwest Drive, Plainville, CT 06062, attn.: Mr. Donald Vaughan (Client), and Horizons Engineering, Inc. (Engineer), of Littleton and New London, New Hampshire.

#### **2. PROJECT UNDERSTANDING**

The Client intends to implement reconfiguration of the Rosebrook Water System to reduce operating pressures in the system. This pressure reduction project is proposed in response to a Letter of Deficiency (LOD) from the New Hampshire Department of Environmental Services (NHDES) dated December 1<sup>st</sup>, 2020. The LOD identified 2 Significant Deficiencies in the system, including excessive operating pressures at the lower elevations, and lack of adequate secondary containment for the chemical feed system in the system's primary pump station.

In order to achieve compliance with the LOD, the Client intends on implement a water system upgrade project that results in reducing the maximum operating pressures in the system from approximately 185 psi to approximately 100 psi, while still maintaining approximately 35 psi minimum pressure during all flow conditions. This project, which requires additional preliminary engineering to identify the final scope of proposed improvements, is anticipated to include construction of approximately 3 new booster stations, additional connecting water main, and addition and/or elimination of isolation and pressure reducing valving. In addition, the Client intends to upgrade the existing well station to include an updated chemical feed system with adequate secondary containment to comply with the LOD. The Client also wishes to identify a feasible location for a future atmospheric storage tank on the north side of Route 302 that could be used to help improve water deliver to the areas of the system in the vicinity of Base Station Road and the Mount Washington Hotel.



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### 3. SCOPE OF SERVICES

Horizons Engineering, Inc. proposes to provide the following engineering services associated with the Rosebrook Water Company, Bretton Woods, New Hampshire in accordance with currently accepted engineering practices:

- 1) Additional Preliminary Engineering and Basis of Design – Horizons will complete additional preliminary engineering to more thoroughly assess alternatives for implementing the pressure reduction and pump station upgrade projects. It is anticipated that the alternative analysis will include assessment of up to three configurations of a combination of new booster pump stations and connecting water main. Horizons will assess up to three potential alternatives, prepare preliminary opinions of probable construction cost for the alternatives, and rank the alternatives based on practicality of implementation within the proposed project schedule and net present value. Horizons will also review the SCADA system architecture and main pump station deficiencies and complete preliminary engineering to assess upgrade options. Horizons will then prepare a preliminary opinion of probable construction cost for the SCADA and pump station upgrades. In addition, Horizons will identify a potential location and proposed storage volume and conceptual configuration of an additional atmospheric storage tank, and prepare a preliminary opinion of probable construction cost for the tank and associated connecting infrastructure.

Following completion of preliminary engineering and option selection, Horizons will prepare a Basis of Design report for the proposed options that outline the scope of the proposed improvement options for implementation to address the LOD, project approach for implementing the project, preliminary opinions of construction cost, and a proposed construction schedule. Horizons will submit the Basis of Design report to the Client and NHDES for review and approval.

Task deliverables will include a completed Preliminary Engineering Summary and Basis of Design Report, including conceptual site sketch plans for proposed improvements, preliminary opinions of probable construction cost for the proposed improvements, and a proposed implementation schedule.



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- 2) Booster Pump Station Designs – Horizons will complete design plans and specifications for up to three booster pump stations and up to 600 feet of connecting water main to supply both potable demand and fire flows to service connections above the ~1,700 grade line. Designs will include wetlands review, ½ day of ledge probes at each station location and one additional day of probe work for connecting water main, field survey, electrical, mechanical, site, building, and water system interconnection. Horizons will prepare an opinion of probable cost for each of the pump station based on final design plans.

Task deliverable will include design plans and specifications for each of the proposed booster stations, including valving and connecting water main to achieve compliance with Env-Dw 404.01(a), and opinion of probable cost.

- 3) Well Station Upgrade Design – Horizons will complete design plans and specifications for upgrades to the existing well station, including potential station expansion/modification, secondary containment, chemical feed upgrades to bring the station into better compliance with currently accepted design standards. Horizons will also prepare and opinion of probable cost based on final design plans.

Task deliverable will include design plans and specifications for well station upgrades to achieve compliance with Env-Dw 404.01(a) and opinion of probable cost.

- 4) Water Main and Valve Design - Horizons will prepare a design for approximately 350 linear feet of water main to complete a water main loop at the end of Mt. Adams Lane. Design will include wetlands review, field survey, ½ day of ledge probes along the proposed water main alignment, water main design plans and specifications include water main connection. In addition to the Mt. Adams Lane water main, Horizons will also identify locations and prepare plans and details as required for additional system bypass and valves as required. Horizons will also complete an updated opinion of probable construction cost based on the final design.

Task deliverable will consist of design plans, specifications, and opinion of probable cost.

- 5) Scada Upgrade - We will meet with the Client and operator and identify current SCADA deficiencies and desired SCADA features. We will also visit each of the existing SCADA equipped system infrastructure locations to identify existing conditions. Using this information Horizons will prepare an updated SCADA process diagram and narrative that identifies existing componentry and the desired SCADA features.



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Deliverable will consist of a completed SCADA process diagram and narrative suitable for presentation to SCADA vendors for review and pricing.

- 6) NHDES Permit Submittals - Horizons will prepare the following final design submittals for the State of New Hampshire Department of Environmental Services:
- a. NHDES Drinking Water and Groundwater Bureau: We will submit design plans and specifications for the three proposed pump stations, Dartmouth Ridge water main extension, and well pump/pump station upgrades.
  - b. NHDES Wetlands Bureau: If wetlands impacts are required, we will submit a wetlands application package to NHDES for review and approval.

Deliverables will include completed design plan and specification submittal and wetlands permit application. Client is responsible for permit application fees directly.

- 7) NHDOT and Local Permitting: If required, Horizons will prepare and submit a Carroll Planning Board Site Plan Review application and attend Planning Board and associated meetings as required. In addition, Horizons will prepare and submit an NHDOT Trench Permit application for any work proposed with NHDOT right of way along Base Station Road or Rt 302.

Deliverable will include completed permit applications. Client is responsible for permit application fees directly.

- 8) Contract Document Preparation Horizons will prepare contract documents for the portions of the proposed project that will be formally bid based on the EJCDC Construction Contract. Contract documents will include contract front ends, design plans, and project specifications. Bid and contract documents will be prepared for the following:

Contract 1 - Three pump stations, Mt. Adams Lane water main extension, pump station upgrades, and additional valves/hydrants. Scope assumes owner will furnish pump skids for each of the stations.

In addition to the formal contract documents, Horizons will prepare request for proposals for the following items:

- a. Upgrade of the SCADA system as described in Scope Item 5).

Task deliverables will be Contract 1 bid documents/construction plans and specifications, and SCADA request for proposal.



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- 9) **Bidding:** Horizons will coordinate bidding of the contracts and proposal solicitation, coordinate invitations to bid/requests for proposal, attend up to three pre-bid meetings, answer contractor and vendor questions during the bidding/proposal process, and attend bid openings. Horizons will then review bids, prepare bid tabulations, and submit bid results to the Client for review.

Task deliverable will consist of tabulated bid results and recommendations of award for Contract 1 and SCADA upgrades.

- 10) **Meetings:** Horizons will attend project meetings as required. At this time we anticipate the following project meetings (either in-person, on-site, or web based):

- a. Client kickoff meeting and site walk;
- b. NHDES kickoff meeting and site walk;
- c. Property owner meeting;
- d. NHDOT scoping meeting; and
- e. Town of Carrol site plan review (2 meetings)

Meetings for project bidding are included in the bid assistance scope item.

### 3. **SCHEDULE**

Horizons proposes the following estimated work schedule assuming a January 1<sup>st</sup> 2021 contract start date. Timeline is assumed to be calendar days from the proposed start date.

*Within approximately 75 days* – Completion of Scope Item 1: Preliminary Engineering

*Within approximately 150 days* - Completion of Scope Items 2–7 including final design and permit submittals for the pump stations, water main, valving, well station upgrades, and SCADA. Schedule assumes snow conditions will allow the completion of field survey, ledge probes, and wetlands delineation no later than April 15<sup>th</sup> 2021

*Within approximately 210 days* – Completion of Scope Items 8-9.

Meetings under Scope Item 10 will be completed during the project process as required.

It is assumed that NHDES, NHDOT, and local approvals will require approximately 60 days once permit applications have been submitted. Horizons proposes to bid the project while design plans and specifications are under review. Bid submittal due dates can be timed to correspond to after the anticipated receipt of regulatory comments, and therefore any design changes that result from NHDES review can be incorporated.





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**4. ADDITIONAL SERVICES**

Horizons has not included the following scope items in this proposal:

- Construction administration;
- Well yield/drawdown testing;
- Shop drawing review and value engineering;
- Construction observation;
- Stormwater Pollution Prevention Plan preparation;
- Easement surveys;
- Topographic survey and ledge probes outside what is specified in this agreement;
- As built utility location and as-built drawings;
- Other scope items outside the proposed scope of services;

These additional services can be provided for an additional fee as requested.

**4. FEE**

As changes to the final scope are possible, Horizons proposes to complete the project on a time and materials basis. We anticipate the following *estimated* fees:

Item 1 Additional Preliminary Engineering, and Basis of Design Preparation	\$14,500
Item 2. Booster Pump Station Designs	\$54,700
Item 3. Well Station Upgrade Design	\$15,800
Item 4. Water Main Design	\$9,100
Item 5 SCADA Upgrade Coordination	\$6,200
Item 7 State of NH Permitting	\$8,500
Item 8 Local and NHDOT permitting	\$4,500
Item 9 Contract Document Preparation	\$5,100
Item 10 Bidding and Contract Negotiation	\$5,500
Item 11 Meetings	\$4,500
<b>ESTIMATED PROJECT TOTAL</b>	<b>\$128,400</b>

**Horizons will not exceed the proposed project budget without receipt of prior approval from the Client.**

Horizons currently hourly rates are as follows:

Principal Engineer/Geologist	\$179/hour
Construction Services Manager	\$184/hour



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Senior Project Manager	\$138-153/hour
Project Manager II	\$113/hour
Project Manager I	\$110/hour
Subsurface Engineer	\$113/hour
Project Engineer II	\$ 94/hour
Environmental Scientist	\$ 82/hour
Geologist	\$ 82/hour
Project Engineer I	\$ 87/hour
Senior Designer	\$ 92/hour
Administrative	\$ 57/hour
Survey Manager	\$123/hour
Survey Tech III	\$ 87/hour
Survey Tech	\$ 75/hour
One man survey crew with robotic instrument/gps	\$125/hour
Plan Copies	\$ 4/page
Mileage	\$ 0.69/mi
Expense Items and Subcontracted Work	Cost Plus 17%

Hourly rates are subject to change.

In addition to engineering fees, the Client will also be responsible for State and Local application fees directly.

**5. CONDITIONS FOR ENGAGEMENT**

The attached Standard Conditions for Engagement are considered to be part of this Agreement.

**ACCEPTED AND AUTHORIZED TO PROCEED WITH PROJECT**


  
 Drafted and signed by Jon Verzette, P.E.  
 P.E. 603-444-4111  
 jon.verzette@horizonsengineering.com  
 34 School Street, Littleton, NH 03561  
 Horizons Engineering, Inc., C/O Jon Verzette, P.E.

**Horizons Engineering, Inc.**

AWC PO# 1787

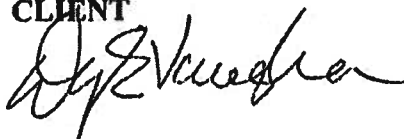
CEO  
**Title**

12/22/2020  
**Date**

  
**CLIENT**

PRESIDENT  
**Title**

12/24/20  
**Date**



CHAIRMAN

12/24/20

**HORIZONS ENGINEERING, INC.  
STANDARD TERMS AND CONDITIONS FOR ENGAGEMENT OF SERVICES**

These conditions are considered a part of the Agreement between the Client and Horizons Engineering, Inc. ("HE").

**FEE:** Client agrees to pay the fee stated in the Agreement for the performance of HE's scope of services. Payment is due and payable within fifteen (15) days of the date of invoice. Lump sum work will be invoiced based upon an estimate of percent complete as determined by HE. Hourly services will be invoiced monthly on a time, materials, and expense basis.

**COLLECTIONS:** Client shall pay interest at a rate of 1.5% per month on all unpaid amounts after thirty (30) days. Client agrees to pay all costs and expenses incurred by HE in connection with collection of any amounts owed to HE including, without limitation, all attorneys' fees and costs incurred to enforce any of the terms of the parties' Agreement, whether or not suit is initiated.

**COST ESTIMATES:** If HE has provided an estimate for the cost of its services, Client agrees that such an estimate is not a guaranty or warranty and that HE does not control the cost of labor, materials, or construction. Client understands that fees and costs may exceed any estimates provided by HE.

**RIGHT OF ENTRY:** By accepting these terms, Client is affirming that it is the owner of the property on which HE's services are to be performed and is allowing HE access to the property to complete its work, or that Client has the express permission of the owner of the property to allow HE access to perform its services. HE is not responsible for damages to the property or to anything on the property caused through normal and customary execution of HE's work, and Client hereby waives all potential claims for such damage.

**SCOPE OF SERVICES:** The scope of services that HE is to provide is defined by and limited to the written scope outlined in the Agreement between the parties. Any changes to HE's scope of service must be made in a writing signed by both parties.

**WARRANTY DISCLAIMER:** HE will perform its services in accordance with the applicable standard of care, but does not otherwise warrant or guaranty its work expressly disclaims any such warranties and any other express or implied warranties.

**INSTRUMENTS OF SERVICE:** Any drawings, documentation, information produced, or other work product generated by HE shall be considered HE's instruments of service and shall remain the property of HE. These instruments of service may not be used for any other projects or clients or otherwise reused, modified, or altered in any way without HE's written permission. Any reuse, modification, or reproduction of HE's instruments of service shall be at the Client's sole risk and Client agrees to indemnify and hold HE harmless from all claims, damages, loss and expenses including attorneys' fees and costs of defense and settlement arising out of such reuse, modification, or reproduction by Client or others acting through or on behalf of Client.

**ELECTRONIC FILES FOR CONVENIENCE:** HE may at its sole discretion provide electronic copies or versions of information or instruments of service, but Client agrees that if done, it is solely for Client's convenience and that Client may only rely upon printed hard copies of HE's instruments of service that have been signed and sealed by HE. The hard copy documents bearing HE's signature and seal are the controlling instruments of service. Any use, reuse, dissemination or reproduction of any electronic files or information provided by HE shall be at the Client's sole risk and Client agrees to indemnify and hold HE harmless from all claims, damages, loss and expenses including attorneys' fees and costs of defense and settlement arising out of the use of such electronic information by Client or others acting through or on behalf of Client.

**LIMITATION OF LIABILITY:** Client agrees to limit the liability of HE, its owners, employees, consultants and agents for any damages for all claims, disputes or other matters arising out of or relating to this Agreement, under any legal theory, such that the total aggregate liability, including legal fees and expenses, shall not exceed the amount paid to HE for services rendered to Client.

**WAIVER OF CONSEQUENTIAL DAMAGES:** Client waives consequential damages for all claims, disputes or other matters arising out of or relating to the parties' Agreement or HE's work for Client.

**LIMITATION PERIOD:** Any legal action arising out of or relating to the parties' Agreement or HE's work for Client must be commenced within one (1) year from the date when HE completes its work under this Agreement, or when HE last performs any work for Client under this Agreement, whichever event is earlier. Failure to bring such an action within this time period shall be a complete bar to any claims against HE arising out of HE's work for Client or this Agreement, and shall be a waiver of any such claims.

**WAIVER OF ENVIRONMENTAL LIABILITY:** Client agrees and acknowledges that HE has not contributed to the presence of oil, hazardous materials, waste, or pollutants at the site. HE assumes no liability or responsibility for the known or unknown presence of such materials. HE's scope of work may include assessment and site characterization related to identifying the presence, nature, and extent of release of oil, hazardous materials, waste, or pollutants. If within the authorized scope, HE will complete this work in a manner consistent with current accepted environmental science practices. HE makes no warranties or guarantees as to whether a site has or is clean of contamination, and HE's scope of service does not include advising Client on such issues or whether to purchase, occupy, or use a property.

**INDEMNIFICATION:** Client agrees to indemnify and hold HE harmless from all claims, damages, loss and expenses, including attorneys' fees and costs of defense and settlement, arising out of or associated with HE's work for Client or HE's work at Client's site, unless such claims are the result of HE's sole negligence or sole misconduct.

**LESS THAN CUSTOMARY ENGINEERING SERVICES:** Client understands that it is customary for the engineer responsible for the design of a project to be retained to provide services during the construction phase of a project to interpret the design intent, monitor construction for conformity with design, and to render guidance with respect to changes or deviations from the design. If these construction services are not included within HE's written scope of service with Client, then Client agrees to indemnify and hold HE harmless from all claims, damages, loss and expenses, including attorneys' fees and costs of defense and settlement, arising out of or associated with interpretation of HE's instruments of service or design by Client or others.

**SUSPENSION OF SERVICES:** If HE's services are suspended, by Client or otherwise, for more than ten (10) calendar days, consecutive or in the aggregate over the term of this Agreement, HE shall be immediately compensated for all services performed and all expenses incurred for Client. Upon resumption of services, Client shall compensate HE for any expenses incurred as a result of the suspension and resumption of its services, and HE's schedule and fees for the remainder of the work under this Agreement shall be equitably adjusted. If HE's services are suspended for more than twenty (20) calendar days, consecutive or in the aggregate, HE may terminate this agreement upon giving five (5) calendar days' notice to Client. If Client is in breach of payment terms or otherwise is in material breach of this Agreement, HE may immediately suspend performance of services. HE shall have no liability to the Client, and Client shall make no claim or any delay or damages as a result of such suspension caused by any breach of the Agreement by Client. Upon receipt of payment in full of all outstanding sums due from Client, or curing of such breach that caused HE to suspend services, HE may, at its sole discretion, resume services and if so there shall be an equitable adjustment to the remaining work schedule and fees as a result of the suspension.

**TERMINATION:** This Agreement may be terminated by either party upon not less than ten (10) days' written notice. In the event of termination of this Agreement by either party, Client shall within fifteen (15) days of termination pay HE for all services rendered and all costs or expenses incurred by HE through the date of termination. Should this Agreement be terminated, HE's shall not be required to perform any additional services, but the remaining aspects of the Agreement shall survive termination.

**DISPUTE RESOLUTION:** Any claim, dispute, or other matter in question arising out of or related to this Agreement or HE's work thereunder shall be subject to mediation as a condition precedent to the initiation of legal proceedings by either party. Such mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect, unless the parties agree otherwise. If such matter concerns a lien arising out of HE's services, HE may proceed in court prior to mediation in order to comply with lien notice or filing deadlines. Request for mediation shall be filed in writing with the other party, and may be made concurrently with the filing of legal proceedings with shall then be stayed to allow mediation to proceed. The parties shall share the mediator's fees and any other mediation expenses equally, and mediation shall be held in Littleton, New Hampshire unless the parties agree otherwise.

**GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New Hampshire, without regard to its conflict of law principles.

**ASSIGNMENT:** Neither party may assign or transfer any obligations or rights under this Agreement without the prior written consent of the other party.

**SEVERABILITY:** If any term or provision of this Agreement shall be held invalid, such term or provision shall be ineffective to the extent of such invalidity without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement.

**FORCE MAJEURE:** HE is not liable for any loss, damage or delays which result from flood, fire, acts of God or War, civil unrest, strikes, lockouts or any other cause beyond its control.

**MODIFICATION OF AGREEMENT:** Any modifications or amendments to this Agreement must be set forth in writing signed by both parties to be effective.

**VENUE:** The parties agree that any disputes between them relating to this Agreement or HE's work thereunder shall be exclusively resolved in the courts of competent jurisdiction in the State of New Hampshire, and the parties expressly submit themselves to the jurisdictions of the courts of New Hampshire. Notwithstanding the above, HE may avail itself of the courts of other jurisdictions to obtain injunctive or equitable relief, or to collect upon any money owed or to enforce any judgment obtained in New Hampshire.

**NO THIRD PARTY BENEFICIARIES:** The parties agree that this Agreement shall be for the sole and exclusive benefit of HE and Client. Nothing in this Agreement is intended to or shall be construed to confer upon or give any other parties any rights, remedies, or claims under this Agreement.