

February 8, 2016

RESOLUTION NO. 6, 2016

Board Member _____ presented the following Resolution and moved its adoption.

BE IT

RESOLVED, that the Water Board contract with CT Male Associates, a copy of which is attached hereto as Schedule "A", for general engineering and consulting services for the year 2016 for an amount not to exceed \$5,000.00.

Seconded by:

Ayes:

Noes:

C.T. MALE ASSOCIATES

CONTRACT AGREEMENT

Project No.: 13.3166

Agreement made this 23rd day of January, 2016 by and between C.T. MALE ASSOCIATES ENGINEERING, SURVEYING, ARCHITECTURE & LANDSCAPE ARCHITECTURE, D.P.C., a Design Professional Corporation registered in New York State (hereinafter called C.T. MALE ASSOCIATES); and the City of Johnstown Water Board (hereinafter called CLIENT).

<u>City of Johnstown Water Board</u>	(Client Name)
<u>27-31 E. Main Street</u>	(Street Address)
<u>Johnstown, NY 12095</u>	(City, State, Zip)
<u>518-736-4027</u>	(Telephone)
<u>518-762-0193</u>	(FAX)

CLIENT and C.T. MALE ASSOCIATES agree as follows:

A. CLIENT intends to:

Enter into an agreement with C.T. MALE ASSOCIATES to perform general professional engineering services for a term contract period.

B. C.T. MALE ASSOCIATES agrees to perform the following Scope of Services:

Perform general engineering, water system engineering, operational, and construction related consulting services as requested by the Water Board for the calendar year of 2016 effective January 1, 2016 as described in the January 23, 2016 proposal letter.

C. CLIENT agrees to provide project related items as follows:

Provide access to correspondence, records, drawings, maps, facilities, codes, rules, and regulations as required for work requested by the CLIENT.

D. CLIENT agrees to compensate C.T. MALE ASSOCIATES for such services as follows:

Hourly up to a maximum not-to-exceed fee established by Water Board issued purchase order(s).

CLIENT shall reimburse C.T. MALE ASSOCIATES for the actual cost of all travel-related expenses, including but not limited to meals, lodging, transportation, for project related work performed away from C.T. MALE ASSOCIATES' office. CLIENT shall reimburse C.T. MALE ASSOCIATES for other project related expenses, including but not limited to, blueprints and reproduction costs, shipping, survey monuments, computer charges, at charged rates. Telephone toll charges shall be invoiced at fixed rates. Other expenses, including but not limited to, outside consultants, materials testing, bond premiums, title company charges, application fees, permits, shall be invoiced at cost plus a 10% service fee for handling and administration.

E. This Agreement includes the Provisions of Agreement following, and exhibits or documents incorporated herein by this reference. Services not set forth above or specifically listed in exhibits or addenda are excluded. See the attached Proposal letter dated January 23, 2016.

C.T. MALE ASSOCIATES

STANDARD PROVISIONS OF AGREEMENT

Article 1 **CLIENT Responsibilities**

1.1 Upon written request, CLIENT shall execute and deliver, or cause to be executed and delivered, such additional instruments, documents, governmental fees and charges which are necessary to perform the terms of this agreement.

1.2 CLIENT shall pay the costs of on-site construction review, construction management, observation of construction of engineering structures or other construction observation for this project, and inspection fees, zoning and annexation application fees, assessment fees, and all other fees, permits, bond premiums, title company charges, prints and reproductions, and all other charges not specifically covered by the terms of this agreement.

1.3 This agreement shall not be construed to alter, affect or waive any lien or stop notice right which C.T. MALE ASSOCIATES may have for the performance of services pursuant to this agreement. CLIENT agrees to separately provide to C.T. MALE ASSOCIATES the present name and address of the record owner of the property on which the project is to be located.

Article 2 **Ownership and Use of Documents**

2.1 All original papers, documents, drawings and other work product of C.T. MALE ASSOCIATES, and copies thereof, produced by C.T. MALE ASSOCIATES pursuant to this agreement, except documents which are required to be filed with public agencies, shall remain the property of C.T. MALE ASSOCIATES. The CLIENT covenants and agrees that all such data and drawings are the instruments of service of C.T. MALE ASSOCIATES, who shall be deemed to be the author of the drawings and the data, and shall retain all common law, statutory law and other rights, including copyrights.

2.2 C.T. MALE ASSOCIATES agrees not to release CLIENT's data without authorization except as required by law or licensure.

2.3 In the event the CLIENT agrees to, permits or authorizes changes in the plans, specifications, data, reports and documents prepared by C.T. MALE ASSOCIATES pursuant to this agreement, which changes are not consented to in writing by C.T. MALE ASSOCIATES, CLIENT acknowledges that the changes and their effects are not the responsibility of C.T. MALE ASSOCIATES and CLIENT agrees to release C.T. MALE ASSOCIATES from all liability arising from the use of such changes and further agrees to defend, indemnify and hold harmless C.T. MALE ASSOCIATES, its officers, directors, principals, agents and employees from and against all claims, demands, damages or costs arising from the changes and their effects.

2.4 CLIENT agrees not to use or permit any other person to use plans, drawings, or other work product prepared by C.T. MALE ASSOCIATES, which plans, drawings, or other work product are not final and which are not signed, and stamped or sealed by C.T. MALE ASSOCIATES. CLIENT agrees to be liable and responsible for any such use of nonfinal plans, drawings, or other work product not signed and stamped or sealed by C.T. MALE ASSOCIATES and waives liability against C.T. MALE ASSOCIATES for their use. CLIENT further agrees that final plans, drawings or other work product are for the exclusive use of CLIENT and may be used by CLIENT only for the project described on the face hereof. Such final plans, drawings or other work product may not be changed nor used on a different project without the written authorization or approval by C.T. MALE ASSOCIATES.

2.5 Survey drawings meet appropriate accuracy standards only at the scale at which they are provided. Any enlargement of the survey drawing will decrease its accuracy.

Article 3 **Electronic Media Files**

3.1 Data and drawings stored on electronic media may be provided to CLIENT upon written request. This information will be provided to CLIENT under the following terms:

3.1.1 proper credit shall be given to C.T. MALE ASSOCIATES wherever this data, or portions of it, is reproduced.

3.1.2 because data stored on electronic media can deteriorate undetected or can be modified without C.T. MALE ASSOCIATES' knowledge, the CLIENT agrees that C.T. MALE ASSOCIATES will not be held liable for the completeness or correctness of the electronic media after the acceptance period of thirty (30) days after delivery of the electronic files. C.T. MALE ASSOCIATES stands by the accuracy of the sealed drawings that accompany the submittal.

3.1.3 the electronic files are submitted to the CLIENT for a thirty-day acceptance period. During this period, the CLIENT may review and examine these files; any errors detected during this time will be corrected by C.T. MALE ASSOCIATES as part of the basic agreement. Any changes requested after the acceptance period will be considered additional services to be performed on a time and materials basis, at C.T. MALE ASSOCIATES' standard charge rates.

3.1.4 any use or reuse of original or altered electronic media files by the CLIENT or others without

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written verification by C.T. MALE ASSOCIATES for the specific purpose intended will be at the CLIENT's risk and full legal responsibility. Furthermore, the CLIENT will, to the fullest extent permitted by law, indemnify and hold C.T. MALE ASSOCIATES harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting therefrom. Any verification by C.T. MALE ASSOCIATES of such adaptation by the CLIENT will entitle C.T. MALE ASSOCIATES to additional compensation at the charge rates currently in use at the time of verification.

3.1.5 the submitted data files are intended to work only as described in the agreement. These files are compatible only with AutoCAD Release 2011, operating under Windows. C.T. MALE ASSOCIATES makes no warranty as to the compatibility of these files beyond the specified release of the above-stated software. C.T. MALE ASSOCIATES is not responsible for uses of the data outside of or beyond the scope of the agreement.

Article 4 Extra Work

4.1 CLIENT agrees that if CLIENT requests services not specified pursuant to the scope of services description within this agreement, CLIENT agrees to pay for all such additional services as extra work.

4.2 If C.T. MALE ASSOCIATES, pursuant to this agreement, produces plans, specifications, or other documents and/or performs field work, and such plans, specifications, and other documents and/or field work are required by one or more governmental agencies, and one or more such governmental agencies changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field work thereby required shall be paid for by CLIENT as extra work.

4.3 In the event that any staking is destroyed, damaged or disturbed by an act of God or parties other than C.T. MALE ASSOCIATES, the cost of restaking shall be paid for by CLIENT as extra work.

4.4 C.T. MALE ASSOCIATES agrees to negotiate the magnitude and extent of any extra work with CLIENT prior to performing the extra work.

Article 5 Termination, Suspension or Abandonment

5.1 In the event all or any portion of the work prepared or partially prepared by C.T. MALE ASSOCIATES is to be suspended, abandoned, or terminated, CLIENT shall pay C.T. MALE ASSOCIATES for all fees, charges, and services earned and/or otherwise incurred by third parties performing legitimate and agreed to contractual work to the time of termination, suspension or abandonment of the project, not to exceed any contract limit specified herein. CLIENT acknowledges if the project work is suspended and restarts, there will be additional charges due to suspension and restarting of the work which shall be paid for by CLIENT as extra work. Additional charges due to suspension and restarting of the work will be incurred when the delay is unreasonable in nature. Unreasonable is defined as more than thirty (30) calendar days in the aggregate. Unreasonable delays will require change orders and/or changes to the project schedule to accommodate the demobilization and remobilization costs; or both parties must agree to renegotiate the contract in good faith. Failure to renegotiate new or changed terms may result in termination of the contract with seven (7) days notice by either party.

5.2 C.T. MALE ASSOCIATES is not responsible for delay caused by activities or factors beyond C.T. MALE ASSOCIATES' reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of CLIENT to furnish timely information or approve or disapprove C.T. MALE ASSOCIATES' work promptly, faulty performance by CLIENT or other contractors or governmental agencies. When such delays beyond C.T. MALE ASSOCIATES' reasonable control occur, CLIENT agrees C.T. MALE ASSOCIATES is not responsible for damages nor shall C.T. MALE ASSOCIATES be deemed to be in default of this agreement.

5.3 The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, C.T. MALE ASSOCIATES shall be paid for all services rendered to the date of termination, as well as for all reimbursable expenses and termination expenses. For purposes of this section, the failure of the CLIENT to pay C.T. MALE ASSOCIATES within forty-five (45) days of receipt of an invoice shall be considered such a substantial failure. In the event of a substantial failure on the part of the CLIENT, C.T. MALE ASSOCIATES in addition to the right to terminate set forth in this paragraph, may also elect to suspend work until the default in question has been cured. No delay or omission on the part of C.T. MALE ASSOCIATES in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.

Article 6 Limitations of Probable Construction Cost Estimates

6.1 Any estimate of the probable construction cost of the project or any part thereof is not to be construed, nor is it intended, as a guarantee.

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Article 7 Construction Phase Responsibility

7.1 CLIENT acknowledges that the design work performed pursuant to this agreement is based upon field and other conditions existing at the time of preparation of C.T. MALE ASSOCIATES' work. CLIENT further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications, discrepancies or other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include on-site construction review, construction management, observation of construction of engineering structures, or other construction observation for this project, or if subsequent to this agreement CLIENT retains other persons or entities to provide such services, CLIENT acknowledges that such services will be performed by others and CLIENT will defend, indemnify and hold C.T. MALE ASSOCIATES harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities. C.T. MALE ASSOCIATES does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, or supplier or other entity furnishing materials or performing any work on the project.

7.2 In the event CLIENT discovers or becomes aware of changed field or other conditions which necessitate clarification, adjustments, modifications or other changes during the construction phase of the project, CLIENT agrees to notify C.T. MALE ASSOCIATES and engage C.T. MALE ASSOCIATES to prepare the necessary clarifications, adjustments, modifications or other changes to C.T. MALE ASSOCIATES' work before construction activities commence or further activity proceeds. Further, CLIENT agrees to have a provision in its construction contracts for the project which requires the contractor to notify CLIENT of any changed field or other conditions so that CLIENT may in turn notify C.T. MALE ASSOCIATES pursuant to the provisions of this paragraph.

Article 8 Safety and Hazardous Conditions

8.1 CLIENT agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and CLIENT further agrees to defend, indemnify and hold C.T. MALE ASSOCIATES harmless from any and all liability, except for the sole negligence for C. T. MALE ASSOCIATES, in connection with the performance of work on this project. C.T. MALE ASSOCIATES does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, or supplier or other entity furnishing materials or performing any work on the project.

8.2 CLIENT shall provide C.T. MALE ASSOCIATES' personnel with any information regarding potential hazards or whether personal protective measures are required when working on project site(s) associated with this contract and that C.T. MALE ASSOCIATES' personnel be afforded the opportunity to review any health and safety plan available for site(s) that they will be working on.

8.3 In the event C.T. MALE ASSOCIATES or any other party encounters asbestos, or other hazardous or toxic materials at the site, or should it become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of C.T. MALE ASSOCIATES' services during performance under this agreement, C.T. MALE ASSOCIATES may, and without liability for consequential or any other damages, suspend performance of services under this agreement until CLIENT causes the identification, abatement and/or removal of such materials and warrants the site is in full compliance with applicable laws and regulations. Any additional efforts required by C.T. MALE ASSOCIATES to meet expanded site health and safety requirements after work under this agreement commences, will be considered extra work to be performed by C.T. MALE ASSOCIATES which shall not require prior approval or request of CLIENT.

8.4 In consideration of the substantial risks to C.T. MALE ASSOCIATES posed by the presence or suspected presence of asbestos or hazardous or toxic materials on or about the project site, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless C.T. MALE ASSOCIATES, its officers, directors, employees, agents and independent consultants and any of them from all claims and losses, including reasonable attorney's fees and defense costs, arising out of, or in any way connected with, the performance or nonperformance of the obligations under this Agreement unless and until there has been an adjudication by a court or forum of competent jurisdiction that the claims at issue are a direct result of the sole negligence of C.T. MALE ASSOCIATES.

Article 9 Insurances

9.1 C.T. MALE ASSOCIATES shall procure and maintain throughout the period of this agreement, at C.T.

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MALE ASSOCIATES' own expense, insurance for protection from claims under worker's compensation, temporary disability and other similar insurance required by applicable State and Federal laws, and shall maintain general and professional liability insurances. Certificates for all such policies of insurance shall be provided to the CLIENT upon written request. C.T. MALE ASSOCIATES shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.

9.2 The CLIENT recognizes that C.T. MALE ASSOCIATES' insurance policies may contain certain exclusions including exclusions for work involving asbestos containing materials and for certain claims arising from the discharge, dispersal, release or escape of pollutants.

9.3 The CLIENT agrees to defend, indemnify, and hold C.T. MALE ASSOCIATES and its employees or agents harmless from and against any and all claims, causes of action, suits, proceedings, damages, losses and expenses, including third party claims or actions, arising from C.T. MALE ASSOCIATES' work for CLIENT under this agreement occasioned wholly or in part by a default by the CLIENT under this agreement or any act or omission of CLIENT, its agents, contractors, employees, servants, levees, licenses or invitees.

Article 10 Risk Allocation

10.1 CLIENT and C.T. MALE ASSOCIATES have discussed the risks, rewards and benefits of the project and C.T. MALE ASSOCIATES' total fee for services. The risks have been allocated such that the CLIENT agrees that to the fullest extent permitted by law, C.T. MALE ASSOCIATES' total liability to CLIENT for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this agreement from any cause or causes, shall not exceed the total amount of **\$100,000.00**. Such causes include but are not limited to C.T. MALE ASSOCIATES' negligence, errors, omissions, strict liability, or breach of contract.

10.2 C.T. MALE ASSOCIATES has a right to complete all services agreed to be rendered pursuant to this contract. In the event this agreement is terminated before the completion of all services, unless C.T. MALE ASSOCIATES is responsible for such early termination, CLIENT agrees to release C.T. MALE ASSOCIATES from all liability for work subsequently performed.

10.3 CLIENT agrees that in performing requested surveys and engineering tasks, in accordance with this contract or amendments thereto, C.T. MALE ASSOCIATES will provide statements of adherence to standards or specifications only when said standards or specifications are included in the scope of services. In the event C.T. MALE ASSOCIATES is required to sign a statement or certificate on behalf of CLIENT, which differs from or exceeds the scope of services contracted for, CLIENT hereby agrees to indemnify and hold C.T. MALE ASSOCIATES harmless from any liability arising from or resulting from such statement or certificate.

10.4 C.T. MALE ASSOCIATES makes no representations concerning soil conditions or soil materials unless specifically included in writing in this agreement, and is not responsible for any liability that may arise out of the making or failure to make soil surveys, or subsurface soil tests, or general soil testing.

10.5 C.T. MALE ASSOCIATES shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, wetlands delineations, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits.

Article 11 Dispute Resolution

11.1 CLIENT and C.T. MALE ASSOCIATES agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this agreement or the breach thereof ("disputes"), to non-binding mediation by a mediator jointly selected by CLIENT and C.T. MALE ASSOCIATES prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 11.2 through 11.8 unless delay in initiating arbitration would irrevocably prejudice one of the parties. The requirement of paragraph 11.3 that demand for arbitration must be filed within a reasonable time shall be suspended with respect to a dispute submitted to mediation within that same applicable time limit and shall remain suspended until ten (10) days after the termination of the mediation. The mediator of any dispute submitted to mediation under this agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

11.2 All disputes between CLIENT and C.T. MALE ASSOCIATES not resolved under paragraph 11.1 will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association subject to the limitations and restrictions stated in paragraphs 11.4 and 11.5 below. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 11 will be specifically enforceable under the prevailing law of any court having jurisdiction.

11.3 Notice of the demand for arbitration must be filed in writing with the other party to the agreement and

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with the American Arbitration Association. A demand for arbitration must be made within two years from the date the claim has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

11.4 Except as provided in paragraph 11.5 below, no arbitration arising out of or relating to this agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this agreement unless each of the following is met:

11.4.1 the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration;

11.4.2 such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

11.4.3 the written consent of the other person or entity sought to be included and of CLIENT and C.T. MALE ASSOCIATES has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but such consent shall not constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

11.5 Notwithstanding paragraph 11.4, if a claim, dispute or other matter in question between CLIENT and C.T. MALE ASSOCIATES involves the work of a Contractor, Subcontractor, CLIENT's consultant or C.T. MALE ASSOCIATES' Consultant (each, a "Joinable Party"), either CLIENT or C.T. MALE ASSOCIATES may join such Joinable Party as a party to the arbitration between CLIENT and C.T. MALE ASSOCIATES hereunder, and C.T. MALE ASSOCIATES or CLIENT, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between CLIENT and C.T. MALE ASSOCIATES involving the work of such Joinable Party. Nothing in this paragraph 11.5 nor in the provision of such contract consenting to joinder shall create any claim, right or cause of action in favor of the Joinable Party and against CLIENT or C.T. MALE ASSOCIATES that does not otherwise exist.

11.6 All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$100,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount is controversy of any such claim, counterclaim, dispute or matter is more than \$100,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$100,000 (exclusive of interest and costs).

11.7 By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs 11.4 and 11.5 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$100,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

11.8 The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal.

11.9 Notwithstanding the foregoing, if a claim is made by C.T. MALE ASSOCIATES for payment for services rendered in accordance with the provisions of this agreement, the above referenced dispute resolution provisions shall not apply unless CLIENT interposes valid defenses under the contract provisions for nonpayment.

Article 12 Mediation, Arbitration, and Litigation

12.1 In the event that CLIENT institutes a legal action against C.T. MALE ASSOCIATES, whether by mediation, arbitration, complaint or cross complaint, including a cross-complaint for indemnity, for alleged negligence, error, omission, or other failure to perform, and if CLIENT fails to obtain a decision or judgment in CLIENT's favor, the mediation, arbitration or the lawsuit action is dismissed, or if judgment is rendered for C.T. MALE ASSOCIATES, CLIENT agrees to pay C.T. MALE ASSOCIATES all costs of defense, including attorney's fees, expert witness fees, mediation, arbitration and court costs and any, and all other expenses of defense. CLIENT agrees such payments shall be made immediately following dismissal of the proceeding, case or upon entry of judgment.

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Article 13 Aerial Photography and Related Mapping

13.1 With respect to Mapping, areas obscured by dense vegetation or shadow will be labeled as "DENSE WOODS," "SHADOW" or "OBSCURED AREA". C.T. MALE ASSOCIATES cannot certify as to the accuracies within these areas. Field verification of such area(s) must be undertaken and is not included within the scope of this contract unless explicitly stated.

13.2 The horizontal accuracy of aerial mapping is such that 90% of all well defined planimetric features are plotted to within 1/40th of an inch of their correct coordinate positions. 90% of all contours on unobscured ground are correct to within 1/2 of the contour interval, and the remaining 10% are not in error by more than the contour interval.

Article 14 Engagement of Laboratories and Other Third Parties

14.1 If so requested or agreed by the CLIENT, C.T. MALE ASSOCIATES will recommend the CLIENT's engaging the services of laboratories, testing services, subconsultants, or third-parties to perform suitable aspects of the services. Payment to these third-parties will be made directly by the CLIENT. C.T. MALE ASSOCIATES will recommend the use of such third-parties with reasonable care but does not guarantee their services and will not be liable for their errors or omissions.

Article 15 Subsurface Risks

15.1 CLIENT recognizes that subsurface conditions across the site may vary from those encountered at the locations where test borings were made. At the test boring locations, specific subsurface data is collected only at the depths where representative samples are obtained. Accordingly, CLIENT accepts that C. T. MALE ASSOCIATES must infer what subsurface conditions exists between sampling locations and depths, and that the actual subsurface conditions may vary from those inferred by C. T. MALE ASSOCIATES.

15.2 CLIENT recognizes that subsurface conditions at the site may change over time due to natural causes, or through direct or indirect human intervention at the site or a distance from it.

15.3 CLIENT agrees that he/she must assume the risks associated with the limited subsurface data gathered and/or the changes in the subsurface conditions which may occur over time.

15.4 C. T. MALE ASSOCIATES is available to explain the risks the CLIENT must assume and the methods by which these risks may be mitigated; but not limited to, by supplementary site investigations such as test borings, test pit excavations, seismic surveys or various in-situ tests, and/or the addition of specific construction contract terms and conditions.

Article 16 Payments To C.T. MALE ASSOCIATES

16.1 All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this agreement.

16.2 CLIENT agrees that the periodic billings from C.T. MALE ASSOCIATES to CLIENT are correct, conclusive, and binding on CLIENT unless CLIENT, within ten (10) days from the date of receipt of such billing, notifies C.T. MALE ASSOCIATES in writing of alleged inaccuracies, discrepancies, or errors in the billing.

16.3 CLIENT agrees to pay a monthly late payment charge, which will be the lesser of, one and one-quarter percent (1.25%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the original billing.

16.4 If CLIENT fails to pay C.T. MALE ASSOCIATES within forty-five (45) days after invoices are rendered, CLIENT agrees C.T. MALE ASSOCIATES shall have the right to consider such default in payment a material breach of this entire agreement, and, upon written notice, the duties, obligations, and responsibilities of C.T. MALE ASSOCIATES under this agreement are terminated. In such event, CLIENT shall promptly pay C.T. MALE ASSOCIATES for all fees, charges, and services provided by C.T. MALE ASSOCIATES.

Article 17 Equal Employment Opportunity

17.1 C.T. MALE ASSOCIATES is committed to equal employment opportunity for all persons regardless of race, color, sex, age, national origin, marital status, handicap, or veteran's status. In striving to eliminate discrimination in the workplace, it is our policy to deal only with sub-contractors, vendors, suppliers, and other affiliates who recognize and support equal employment opportunity and comply with all applicable State and Federal Equal Employment Opportunity laws and regulations including the annual filing of Standard Form EEO-1.

Article 18 Misc. Provisions

18.1 This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of CLIENT and C.T. MALE ASSOCIATES.

18.2 This agreement shall not be assigned by either CLIENT or C.T. MALE ASSOCIATES without the prior written consent of the other.

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18.3 This agreement embodies the entire understanding between the parties and supersedes and voids all prior agreements, whether oral or written, between C.T. MALE ASSOCIATES and CLIENT. This agreement may not be amended, nor shall any waiver, change (except as provided in Article 8.3), modification, consent or discharge be effective, except by an instrument in writing and signed by both CLIENT and C.T. MALE ASSOCIATES.

18.4 C.T. MALE ASSOCIATES' waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.

18.5 If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on CLIENT and C.T. MALE ASSOCIATES.

18.6 This agreement shall be governed by and construed in accordance with the laws of the **State of New York**.

18.7 CLIENT and C.T. MALE ASSOCIATES agree to cooperate with each other in every way on the project.

18.8 CLIENT acknowledges that C.T. MALE ASSOCIATES is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

18.9 C.T. MALE ASSOCIATES makes no warranty, either expressed or implied, as to their findings, recommendations, plans, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance.

18.10 It is understood and agreed that C.T. MALE ASSOCIATES is not, and has no responsibility as, a handler, generator, operator, treater or storer, transporter or disposer of hazardous or toxic substances found or identified at a site, and that CLIENT shall undertake or arrange for the handling, removal, treatment, storage, transportation and disposal of hazardous substances or constituents found or identified at a site.

18.11 The CLIENT agrees that all samples of contaminated materials, including materials samples not consumed in laboratory work and contaminated wastes generated by drilling or testing at contaminated sites shall be owned by the CLIENT and the CLIENT shall take possession of contaminated samples upon C.T. MALE ASSOCIATES' request.

18.12 The person signing this agreement warrants he/she has authority to sign as, or on behalf of, the CLIENT. If such person does not have such authority, it is agreed that he/she will be personally liable for all breaches of this agreement, and that in any action against him/her for breach of such warranty, a reasonable attorney's fee shall be included in any mediation or arbitration award or in any judgment rendered.

Article 19 Impact of Standards Regulation

19.1 The standards and regulations imposed by various government entities relative to architecture, engineering, environmental and other issues are subject to continuing change. Given this dynamic situation, C.T. MALE ASSOCIATES, may select acceptable, effective approaches that, through no fault of their own, are rendered obsolete and unacceptable by the time recommendations are ready for execution. C.T. MALE ASSOCIATES agrees to keep the client informed of any technical or regulatory change of which C.T. MALE ASSOCIATES becomes aware and believes are pertinent to the project until the project has been substantially completed. C.T. MALE ASSOCIATES also agrees to give the CLIENT an opinion of such changes' impact on on-going and/or planned future activities, and the techniques and attendant fees and expenses for accommodating such changes. The CLIENT agrees to pay C.T. MALE ASSOCIATES additional reasonable fees and expenses made necessary by C.T. MALE ASSOCIATES being required to abide by new regulations or technologies. The CLIENT also waives any claim against C.T. MALE ASSOCIATES and agrees to defend, indemnify and hold C.T. MALE ASSOCIATES harmless from any claim or liability for injury or loss which may arise from C.T. MALE ASSOCIATES' decision to utilize concepts or measures which were acceptable at the time it was decided to employ them, but which had become legislatively ineffective or unacceptable by the time they were ready for implementation. The CLIENT also agrees to compensate C.T. MALE ASSOCIATES for any time spent and expenses incurred by C.T. MALE ASSOCIATES in defense of any such claim, with such compensation to be based upon C.T. MALE ASSOCIATES' prevailing fee schedule and expense reimbursement policy. Should CLIENT and C.T. MALE ASSOCIATES believe that changes require contract renegotiation, both parties shall promptly enter into discussion for that purpose, and shall bargain in good faith to permit C.T. MALE ASSOCIATES to continue to meet the CLIENT's needs. If a renegotiated contract cannot be agreed to, the CLIENT agrees C.T. MALE ASSOCIATES has an absolute right to terminate this contract, in accord with procedures and mutual responsibilities identified in Article 5.3. (Or define a specific time limit).

C.T. MALE ASSOCIATES

STANDARD PROVISIONS OF AGREEMENT

Article 20 Information Provided by Others

20.1 C.T. MALE ASSOCIATES shall indicate to the Client the information needed for rendering of services hereunder. Information may be drawings, documents, and/or CADD Data, but is not limited to these forms. The CLIENT shall provide to C.T. MALE ASSOCIATES such information as is available to the CLIENT and the CLIENT's consultants and contractors, and C.T. MALE ASSOCIATES shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes it is impossible for C.T. MALE ASSOCIATES to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the CLIENT is providing. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless C.T. MALE ASSOCIATES and C.T. MALE ASSOCIATES' subconsultants, from any claim, liability, or cost (including reasonable attorney fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT to C.T. MALE ASSOCIATES.

Article 21 Notices

21.1 Any notice required under this agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

IN WITNESS WHEREOF, the parties hereto have executed this agreement to be effective as of the date first above written.

CLIENT
JOHNSTOWN WATER BOARD
27-31 E. Main Street
Johnstown, NY 12095

C.T. MALE ASSOCIATES ENGINEERING,
SURVEYING, ARCHITECTURE &
LANDSCAPE ARCHITECTURE, D.P.C.

By: Nicholas Cannizzo

Title: Water Board President

Address for giving notices:

27-31 E. Main Street

Johnstown, NY 12095

Telephone: 518-736-4027

FAX: _____



By: Charles R. Kortz, P.E.

Title: Managing Engineer

Address for giving notices:

50 Century Hill Drive

Latham, New York 12110

Telephone: 518/786-7400

FAX: 518/786-7299

C.T. MALE ASSOCIATES

Engineering, Surveying, Architecture & Landscape Architecture, D.P.C.

10 N. Perry Street, Suite 100, Johnstown, NY 12095-2310
518.848.3533 FAX 518.848.3534 ctmale@ctmale.com



January 23, 2016

Mr. Nicholas Cannizzo, President
Johnstown Water Board
27-31 E. Main Street
Johnstown, NY 12095

**Re: General Engineering Services Proposal
Johnstown Water Board
City of Johnstown, NY**

Dear Mr. Cannizzo:

It is our understanding that the City of Johnstown Water Board (Water Board) would like to enter into a new agreement for professional engineering services with C.T. Male Associates Engineering, Surveying, Architecture, and Landscape Architecture, D.P.C. (C.T. Male) for general engineering, water system engineering, operational, and construction related consulting services for 2016.

We are available to assist the Water Board with a wide array of tasks including, but not limited to:

- Drafting technical letters and responses;
- Drafting requests for proposals, cost estimates, and reports;
- Providing engineering consulting, advice, guidance, and design;
- Reviewing submissions to the Water Board for conformance with applicable regulations, codes, and Water Board requirements;
- Assisting with long term planning;
- Assisting with funding alternatives and sources of grants and loans;
- Providing Water Department maintenance guidance;
- Mapping and GIS services;
- Water system hydraulic modeling;
- Environmental investigations and compliance including workplace health and safety;
- Energy audits and energy efficiency studies and planning;
- Water system infrastructure repair and replacement prioritization and planning;
- Construction administration and inspection;

The above is just a sampling of what we can offer the Water Board.

C.T. Male's office located at 10 N. Perry Street in Johnstown, one block from the Water Department Offices, will be the primary point of contact for the Water Board. Mr. Chad

C.T. MALE ASSOCIATES

January 23, 2016
Mr. Nicholas Cannizzo
Page - 2

Kortz, P.E. will manage and oversee all work and correspondence with the Water Board. Mr. Kortz will work with the Water Board and its employees as the need arises and will coordinate assistance with C.T. Male professionals as requested by the Water Board. A secondary point of contact will be Mr. Chet Szymanski, P.E. also located in our Johnstown office. C.T. Male understands that we will receive requests for service and direction from the Water Board's President and primary contact, Mr. Nicholas Cannizzo. We may also consider requests from Senior Water Treatment Plant Operator and Clerk of the Water Board at the President's direction. Professional engineering services for capital projects as initiated by the Water Board would be provided under separate agreements negotiated with the Water Board.

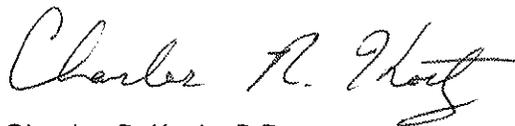
We propose to perform the above services on an hourly basis as requested by the Water Board with an initial Not-To-Exceed Fee of \$5,000.00 set by purchase order. Additional work can be performed as requested with the execution of additional purchase orders issued by the Water Board. The term of the contract will be from its execution by the Water Board through December 31, 2016. Hourly rates and reimbursement for out-of-pocket expenses such as mileage, printing, copies, phone, fax, etc. will be billed at our standard rates. Please see the attached sheets for our 2016 rate schedules. The standard 2016 hourly rates for Mr. Kortz and Mr. Szymanski are \$145 and \$125, respectively. Invoices for services provided will be issued on a monthly basis and will show each C.T. Male staff person who performed work for the Water Board, their hourly rate, and the total number of hours for the billing period.

With your authorization, C.T. Male is immediately available to begin assisting the Water Board.

Thank you for the opportunity to submit this proposal. Should you have any questions, or need additional information, please don't hesitate to call me at 518.848.3533.

Respectfully submitted,

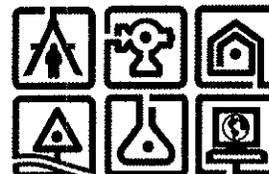
C.T. MALE ASSOCIATES
Engineering, Surveying, Architecture, and Landscape Architecture, D.P.C.



Charles R. Kortz, P.E.
Managing Engineer

SCHEDULE OF REPRESENTATIVE

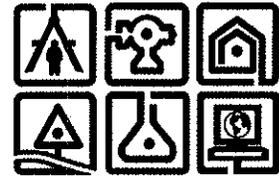
CHARGE RATES



January - December 2016

<u>Professional Level Classifications</u>	<u>Rate Per Hour</u>
P7 - President, Chief Executive	\$250.00
P7 - Vice President(s)	\$235.00
P6 - <i>Managing:</i> Engineer, Environmental Scientist, Surveyor, Architect, Land Planner, GIS Specialist	\$140.00 to \$210.00
P5 - <i>Senior:</i> Engineer, Environmental Scientist, Surveyor, Architect, Land Planner, Project Manager, GIS Specialist	\$103.00 to \$155.00
P4 - <i>Project:</i> Engineer, Environmental Scientist, Surveyor, Architect, Land Planner, Manager, GIS Specialist	\$105.00 to \$135.00
P3 - <i>Assistant Project:</i> Engineer, Environmental Scientist, Surveyor, Architect, Senior Architect Intern, Land Planner	\$98.00 to \$118.00
P2 - Design Engineer, Environmental Scientist, Architect, Architect Intern, Intern Land Planner; Project Coordinator	\$75.00 to \$110.00
P1 - <i>Intern/Junior:</i> Engineer, Environmental Scientist, Surveyor, Architect	\$55.00 to \$85.00
<u>Technical Level Classifications</u>	
T6- Senior Designer, Senior Construction Observer, Senior Engineering Technician, Senior GIS Technician, Senior Crew Chief	\$88.00 to \$117.00
T5 - Engineering Technician V, Designer, Senior Designer, Construction Observer, Senior Crew Chief, Environmental Technician, GIS Technician, Survey Technician, GPS Manager	\$80.00 to \$98.00
T4 - Senior Drafter, Construction Observer, Field Scientist, Crew Chief, Designer, Instrument Operator, Survey Technician	\$66.00 to \$95.00
T3 - Drafter, Instrument Operator, Survey Technician	\$50.00 to \$86.00
T2 - Instrument Operator, Drafter	\$45.00 to \$72.00
T1 - Junior Drafter, Instrument Operator Intern, Junior Technician	\$40.00 to \$55.00
<u>Support Services</u>	
S - Administrative Assistant, Clerk, Project Coordinator	\$53.00 to \$85.00

REIMBURSABLE EXPENSES



January - December 2016

1. **Travel:**
 - * mileage and tolls (\$.54 per mile)
 - * train
 - * taxi, subway, bus
 - * travel time
 - * car rental, gas
 - * airplane (coach fare)
 - * parking
 - * tips
2. **Meals and Lodging:** At cost.
3. **Photocopies:**
 - \$ 0.14 each
 - * color copies/photos
 - 8 ½x11 \$.75 each
 - 11x17 \$1.50 each
4. **Report Printing:** 10 copies or more (\$.07 per page), less than 10 copies (\$.14 per page)
 - * specifications
 - * 3-Ring binders for reports – at cost
 - * bindings
5. **Printing:**
 - * B&W: \$.35/per square foot
 - * Color: \$.39/per square foot
 - * Mylars: \$2.00/per square foot
6. **Scanning:**
 - * \$.14/per 8 ½ x 11
 - * \$.35/per square foot
7. **CD Burning:**
 - * \$2.00/per CD
8. **Rental or purchased equipment:** Tools (e.g. scaffolding, special lighting, etc. for measuring and photographing existing building), at cost.
9. **Telephone charges:**
 - * Long distance charges: At cost
 - * Cellular telephone charges: \$.25 per minute
10. **Fax charges:**
 - * One page \$1.00 (minimum charge)
 - * Two or more pages \$.50 (per page up to \$10.00)
11. **Mail Deliveries:**
 - * Certified mail \$3.45, not including first class postage
 - * Return receipt \$2.80, not including first class postage
 - * Insurance \$1.95/\$50 per piece mailed
 - * Bulk mailings Large reports, etc., Client cost to mail, typically UPS ground
 - * Courier service Client cost to courier/deliver
 - * Overnight service Federal Express, UPS, etc., at cost to Client
12. **Consultant's Expenses:** With 10% mark-up