

AGREEMENT  
BETWEEN THE COUNTY OF ALBANY  
AND LABELLA ASSOCIATES, D.P.C.  
FOR PROFESSIONAL ENGINEERING DESIGN  
AND CONSTRUCTION INSPECTION SERVICES  
FOR A REMEDIATION SYSTEM FOR CONTAMINATED SOIL  
AT THE ALBANY COUNTY DEPT OF PUBLIC WORKS  
SITE IN VOORHEESVILLE, NEW YORK

CONTRACT NO. 5239 FOR 2019

This is an Agreement made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with a principal place of business located at 112 State Street, Albany, New York 12207 (hereinafter called the "County" or "Owner") and LaBella Associates, D.P.C., a New York professional corporation, with a principal place of business located at 300 State Street, Suite 201, Rochester, New York 14614 (hereinafter called the "Consultant," and together with the County, may be referred to herein as the "[p]arties").

WITNESSETH

WHEREAS, the County requires professional engineering design and construction inspection services for a remediation system for contaminated soil at the Albany County Dept. of Public Works site located in Voorheesville, New York; and

WHEREAS, the Albany County Purchasing Division (hereinafter called "Purchasing Division") issued a Request for Proposals for the aforesaid engineering design and construction inspection services, said request having been designated RFP #2019-128, issued on October 25, 2019 and published on October 31, 2019 and November 7, 2019 (hereinafter called the "RFP"); and

WHEREAS, the Purchasing Division has issued an addendum to the RFP on November 8, 2019 (hereinafter called the "Addendum"); and

WHEREAS, the Consultant has submitted a proposal on November 14, 2019 to provide the aforesaid engineering design and construction inspection services (hereinafter called the "Proposal"); and

WHEREAS, the County has accepted the Proposal of the Consultant to provide the aforesaid engineering design and construction inspection services; and

WHEREAS, this Agreement sets forth the understanding reached by the parties herein;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

## ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

1.1 The Contract Documents consist of the following: this Agreement; the RFP, which is incorporated by reference and made a part hereof; the Addendum, which is incorporated by reference and made a part hereof; and the Proposal, which is incorporated by reference and made a part hereof (collectively called "the Agreement" hereinafter).

1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the Addendum; 3) the RFP; 4) the Proposal.

## ARTICLE 2. SCOPE OF SERVICES

2.1 The Consultant shall provide engineering design and construction inspection services for a remediation system for contaminated soil located at the Albany County Dept of Public Works site in Voorheesville, New York. The remediation system the Consultant designs shall consist of additional subsurface investigation to determine the full extent of the contaminated area at the site, and the Consultant shall provide/procure all of the services, test borings, soil sample collection and analysis, site survey and required permits described in the RFP, in the manner described in the RFP and consistent with the Addendum. Said services shall include, but not be limited to, the following:

2.1.1 Provide complete identification of the full extent of the contaminated area. Once determined, a set of construction plans and a project manual will be developed outlining the preferred method of remediation as selected by the County, (who will base the selection on the new information of the area of contamination along with the original site investigation report prepared by Environmental & Fueling Systems, LLC dated February 2016);

2.1.2 Prepare preliminary plans and cost estimate for review and approval by the County;

2.1.3 Develop construction plans, specifications and bid documents, based on approved preliminary plans;

2.1.4 Prepare a final construction cost estimate;

2.1.5 Meet with the County to review the plans, specifications and estimate. Modify the bid documents as required to address the County's comments;

2.1.6 Provide two (2) sets of the bid documents for the County's review;

2.1.7 Provide one (1) set of final plans on 11x17 paper, one (1) set in an electronic format compatible with the County's CADD system, and one (1) copy of project manuals to the

County for reproduction and distribution in paper form. Also, the Consultant shall provide the County with 25 CD's with the plans and specifications loaded on them;

2.1.8 Obtain all necessary permits as required, in accordance with the provisions contained in the RFP at Section 1.3, which includes, but is not limited to, the following information:

- a. No environmental impact statement is anticipated;
- b. The project shall be designed such that it is in accordance with the NYSDEC requirements for environmental permits; and
- c. The project is anticipated to be a SEQR Type II; therefore, no further SEQR processing should be required.

The Consultant is to prepare all permit applications and forward to the County for signature, and provide the County with copies of all acquired permits;

2.1.9 Prepare an Advertisement to Bid for the County's distribution. Provide the answers to any questions the County receives from potential bidders during the bid period;

2.1.10 Attend the construction bid opening, review the bids and participate in the recommendation of award of the construction contract;

2.1.11 Provide an inspector to perform full time on-site inspection services for the duration of the remediation project. The inspector shall possess, at a minimum, NICET Level IV certification and shall have at least ten (10) years of actual construction field experience; and

2.1.12 Regarding the construction period and construction contract administration during the remediation work period:

- a. Attend all preconstruction meetings and prepare meeting minutes;
- b. Review all shop drawings associated with proposed construction and inform the County of approvals and any discrepancies;
- c. Create and maintain inspection reports using the NYSDOT CAM/MURK system, which upon completion of the constructions work shall be turned over to the County;
- d. Maintain inspection reports for sediment and erosion control during construction activity;
- e. Prepare a monthly estimate for work completed by the contractor;

- f. Review and prepare change orders to be submitted to the County for approval;
- f. Assist the County with all construction contract disputes that arise while the construction contract is in effect; and
- g. Prepare final as-built drawings and submit one (1) paper copy along with a CD for the County's files.

2.2 Under this Agreement, the County will provide an AutoCAD file with the Albany County Standard Border for use by the Consultant. The County will distribute the final plans and specifications for bidders.

2.3 The parties understand and agree to the following conditions for the remediation project:

2.3.1 A Study will be performed to determine the most economical method for remediation.

2.3.2 Final design plans shall be completed and ready for letting in March 2020 with a completion of construction anticipated for November 2020;

2.3.3 Up to 6 weeks of construction at 50 hrs/week and the Construction Inspector shall be required to keep track of all work being performed on site; and

2.3.4 Possible utility conflicts with poles, buried cable, gas and water.

2.4 The Consultant shall not perform any services beyond that set forth or described in this Agreement (hereinafter called "additional/extra work or services") unless it has obtained prior written approval from the County.

### ARTICLE 3. COMPENSATION

3.1 In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Consultant agrees to accept, an amount not to exceed FIFTY FIVE THOUSAND NINE HUNDRED TWENTY FIVE AND 00/100 DOLLARS (\$55,925.00) as full compensation for services rendered under this Agreement, said dollar amount being equal to the sum of the following amounts (as further described in the Proposal at Section V, page CP-3):

Total Engineering Cost:	\$27,970.00
Construction Inspection Cost: (six (6) weeks @ 50 hrs/wk)	\$25,800.00

Various Testing Cost:

\$ 2,155.00.

3.2 The hourly rates and cost proposals set forth in the Proposal shall remain fixed for the entire term of this Agreement and any renewals.

#### ARTICLE 4. PAYMENT

Payment shall be made to the Consultant by the County upon the Consultant's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to the requesting Albany County Department of Public Works, and acceptance by the County of the claim form.

#### ARTICLE 5. TERM OF THE AGREEMENT

The term of this Agreement shall commence on execution of the Agreement by the parties and shall continue in effect until six (6) months after completion of all the services, as determined by the County. Based on the conditions described in Subparagraph 2.3.3, the parties anticipate completion of the final design plans and ready for letting in March 2020 and construction completion in November 2020.

#### ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Consultant as follows:

6.1.1 The County shall have the right at any time to terminate the services required of the Consultant under this Agreement by written notice of such termination. In the event of such termination, the Consultant shall be paid for all services theretofore authorized and performed pursuant to the terms and conditions of this Agreement.

6.1.2 The Consultant may terminate this Agreement if the County is substantially in breach of it.

6.2 In the event of a breach by the Consultant, the Consultant shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute consultant to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute consultant.

#### ARTICLE 7. ASSIGNMENT

7.1 The Consultant specifically agrees as required by Section 109 of the N.Y. General Municipal Law that the Consultant is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of the Consultant's right, title, or interest therein, without the prior written consent of the County.

7.2 The Consultant shall not subcontract for any portion of the services required under this Agreement, except as described in the Proposal or without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

#### ARTICLE 8. A AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Consultant shall be made available to the other party to this Agreement without expense to the other party.

#### ARTICLE 9. COOPERATION

The Consultant shall cooperate with representatives, agents and employees of the County and the County shall cooperate with representatives, agents and employees of the Consultant to the end that work may proceed expeditiously and economically.

#### ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of N.Y. Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Consultant agrees that neither it nor any of its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

#### ARTICLE 11. RELATIONSHIP

The Consultant is, and shall function as, an independent consultant under the terms of this Agreement and shall not be considered an agent or employee of the County for any purpose. The employees and agents of the Consultant shall not in any manner be, or be held out to be, agents or employees of the County.

#### ARTICLE 12. INDEMNIFICATION

The Consultant shall defend, indemnify and save harmless the County, its employees and agents, from and against all claims, damages, losses and expenses (including, without limitation, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the Consultant, its employees or agents, to the extent of its responsibility for such claims, damages, losses and expenses.

#### ARTICLE 13. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

#### ARTICLE 14. APPLICABLE LAW

The laws of the State of New York shall govern this Agreement. The designated venue is Albany, New York.

#### ARTICLE 15. RECORDS

15.1 The Consultant shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement.

15.2 The Consultant shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software or any other information relevant to performance under this Agreement, immediately upon request.

15.3 The Consultant shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County, and authorized State and/or Federal personnel during such period.

#### ARTICLE 16. INSURANCE

16.1 The Consultant shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon 30 days prior written approval by the County.

16.2 The Consultant shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Consultant shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate. No work shall be commenced under this Agreement until the Consultant has delivered the Certificates of Insurance to the County. Upon failure of the Consultant to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.

16.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Consultant shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule (A) of this Agreement.

#### ARTICLE 17. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Consultant.

#### ARTICLE 18. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

#### ARTICLE 19. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

#### ARTICLE 20. HEADINGS - CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of this Agreement or in any way to modify, amend or affect the provisions hereof.

#### ARTICLE 21. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no representations or promises have been made except as herein expressly set forth.

#### ARTICLE 22. COMPLIANCE WITH MacBRIDE PRINCIPLES

The Consultant hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that the Consultant either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. 3 in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Consultant in default and/or seeking debarment or suspension of the Consultant.

#### ARTICLE 23. NON-INTERRUPTION OF WORK

The Consultant agrees that it will not intentionally engage in any course of conduct or activity, or employ for the purposes of performing the public work, any subcontractors, employees, labor or materials which will or may result in the interruption of the performance of the public work due to labor strife or unrest by workmen employed by the Consultant or by any of the trades working in or about the public works and/or premises where the work is being performed.

#### ARTICLE 24. ADDITIONAL/EXTRA WORK OR SERVICES

If the Consultant is of the opinion that any work or services it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant shall promptly notify the County of that opinion. The County shall be the sole judge as to whether or not such work or services is in fact beyond the scope of this Agreement and whether or not it constitutes additional/extra work or services. In the event the County determines such work does constitute additional/extra work or services, it shall provide extra compensation to the Consultant on a negotiated basis.

#### ARTICLE 25. STORMWATER MANAGEMENT PROGRAM

25.1 The Consultant understands that Albany County is a regulated entity subject to the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003), and must comply with the terms and conditions of the aforementioned Permit. Proposer further understands that under the New York State Environmental Conservation Law, it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards, and that Albany County adopted Local Law 7 of 2007 enabling the County to take action against any discharges that cause or contribute to



a violation of water quality standards. The Consultant agrees to comply with the terms and conditions of the SPDEC General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003) as well as Albany County Local Law No. 7 for 2007 and any Best Management Practices developed pursuant to the foregoing, as established in Albany County's Stormwater Management Program Plan. The Consultant also agrees to implement any corrective actions identified by Albany County or a representative pursuant to the above regulations, and further understands that any non-compliance by the County will not diminish, eliminate, or lessen Proposer's own liability.

25.2. The Consultant shall execute and deliver to the County a certification statement acknowledging the above provisions prior to providing any services and/or commencing any work.

#### ARTICLE 26. MISCELLANEOUS PROVISIONS

26.1 In addition to the policies and procedures described above, the Consultant also acknowledges that it shall follow the Non Interruption of Work Agreement (per Res. No. 298 for 1986), the Iranian Energy Sector Divestment (per N.Y. Gen. Mun. Law § 103-9), and all other policies and procedures described in the RFP.

26.2 During the term of this Agreement, the Consultant agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Consultant shall give the County 30 days written notice in advance of such event.

26.3 The Consultant shall at all times obtain and maintain all licenses and/or certifications required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

26.4 If any term, part, provision, section, subdivision or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs.

26.5 The County shall bear no responsibility other than that set forth in this Agreement.

26.6 All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

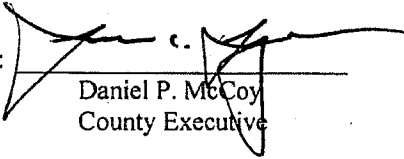
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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed the day and year first indicated below.


COUNTY OF ALBANY

DATED: 3/4/2020

BY:   
Daniel P. McCoy  
County Executive  
or  
Daniel C. Lynch  
Deputy County Executive

LABELLA ASSOCIATES, D.P.C.

DATED: 2/18/20

BY:   
Name  
Vice President  
Title

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared Daniel P. McCoy personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

On the 4/14 day of March, 2020, before me, the undersigned, personally appeared Daniel C. Lynch, Esq. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jeffery V. Jamison  
Notary Public

Jeffery V. Jamison  
Notary Public  
Albany County  
023961410367  
EX 1/2022

STATE OF New York )  
COUNTY OF Monroe ) SS.:

On the 18 day of February, 2020, before me, the undersigned, personally appeared Daniel Noll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

STACY FRYS  
Notary Public, State Of New York  
Monroe County, Reg. #01FR5077131  
Commission Expires May 5, 2023

Stacy Frys  
Notary Public

**SCHEDULE A  
INSURANCE COVERAGE**

The kinds and amounts of insurance to be provided are as follows:

1. **Workers' Compensation and Employers Liability Insurance:** A policy or policies providing protection for employees in the event of job related injuries or a waiver of the requirements of this insurance with such waiver to be issued by New York State.
2. **Automobile Liability Insurance:** A policy or policies with the limits of not less than \$500,000 for each accident because of bodily injury, sickness or disease, including death at any time, resulting therefrom, sustained by any person caused by accident, and arising out of the ownership, maintenance or use of any automobiles; and with the limits of \$500,000 for damage because of injury to or destruction of property, including the loss of the use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobiles.
3. **General Liability Insurance:** A policy or policies of comprehensive all-risk insurance including coverage for demolition of structures with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000.

4. **Professional Liability Insurance:** A policy or policies with limits of not less than \$1,000,000.