

OWNER-ENGINEER AGREEMENT

THIS AGREEMENT made this 15th day of December in the year Two Thousand and Sixteen, between Kleinfelder, with a usual place of business at 215 First Street, Suite 320, Cambridge, MA 02142, hereinafter called the ENGINEER, and the Town of Millis, acting by its Interim Town Administrator, with a usual place of business at Memorial Building, 900 Main Street, Millis, MA 02054, hereinafter called the OWNER.

The ENGINEER and the OWNER, for the consideration hereinafter named, agree as follows:

1. **Services**

The Engineer shall furnish all labor, materials, equipment and insurance to perform all services for the project known as Norfolk Well Impact Evaluation. Such services will be provided in accordance with the specific Scope of Services provided in Attachment A.

2. **Contract Price**

The Owner shall pay the Engineer for the performance of this Agreement, subject to any additions and deductions provided for herein, on a time and materials basis in current funds, at a rate of 2.5 times salary costs for individuals directly assigned to the tasks, plus reimbursable expenses which can be identified specifically with the project. The total value of services under this contract shall not exceed \$10,000.00. Salary Cost, as used herein, is defined as being the actual direct labor costs (salaries and wages) paid to KLEINFELDER's personnel engaged directly to perform services under this Agreement, plus the cost of customary and statutory benefits including social security, unemployment and payroll taxes, workers compensation, sick leave, vacation and holiday pay. Reimbursable Expenses, as used herein, are defined as (1) actual expenses incurred by KLEINFELDER for transportation, telephone, printing, reproduction costs, computer charges, and the like times a factor of 1.05; and (2) the amount billed to KLEINFELDER by special consultants employed by KLEINFELDER for such consultant's services times a factor of 1.15.

3. **Commencement and Completion of Work**

- A. The Engineer shall commence and prosecute the work under this Agreement and specific tasks conducted under this agreement, upon execution hereof. The Engineer shall perform the work as expeditiously as possible through completion and based upon schedules developed for the individual tasks.
- B. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. Progress and Completion: The Engineer shall commence work promptly upon execution of this Agreement and upon approval of specific tasks under this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such rate of progress as will insure completion within any applicable number of calendar days.

4. **Performance of the Work**

- A. Direction of the Work: The Engineer shall supervise and direct the services, using the Standard of Care defined herein as the skill and care currently rendered by other members of the engineering/design profession for projects similar to the Project in scope, difficulty and location ("Standard of Care"). No other representation, guarantee, or warranty, express or implied, is included or intended in the Agreement, or in any communication (oral or written), report, opinion, document,

or instrument of service. The Engineer shall be solely responsible for coordinating all portions of the work under the Agreement.

B. Responsibility for the Services:

- (1) The Engineer shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees and other persons performing any of the Work under a contract with the Engineer. Consistent with the Standard of Care referenced in Paragraph A. above and the scope of services set forth in Attachment A, the Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specification, estimates and other work or services furnished by him or his consultants and subcontractors and the review of shop drawings, response to contractor questions and observation and examination of contractors' work through site visits. The Engineer shall perform his work under this Agreement in such a competent and professional manner that detail checking and reviewing by the Owner shall not be necessary. The Owner acknowledges that the Engineer does not have control over construction costs or contractors' prices, that Engineer's construction cost estimates are based on its experience and judgement as a design professional and that contractors' bid prices may vary from such estimates.
- (2) The Engineer shall not employ additional consultants not named in his proposal to the Owner, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the Owner. Such written consent shall not in any way relieve the Engineer from his responsibility for the professional and technical accuracy and coordination of all data, designs, drawings, specifications, estimates and other work or services furnished under this Agreement.
- (3) All consultants must be registered and licensed in their respective disciplines if registration and licensure are required under the applicable provisions of Massachusetts law.
- (4) The Engineer and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement.
- (5) The Engineer shall not be relieved from his obligations to perform the Work in accordance with the requirements of this Agreement either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Engineer.
- (6) Neither the Owner's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

C. Deliverables, Ownership of Documents: One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the Engineer shall become the property of the Owner upon payment in full therefor to the Engineer. Ownership of stamped drawings and specifications shall not include the Engineer's certification or stamp. Any reuse of such documents without the Engineer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Engineer or to the Engineer's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection

with the Project is not to be construed as an act in derogation of the Engineer's rights under this Agreement.

D. Notices, Compliance with Laws:

- (1) The Engineer shall give all notices and comply with all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority relating to the performance of the Work. The Engineer shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid.
- (2) The Owner represents that they have disclosed to the Engineer all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (3) If the Engineer observes that any of the Owner's design schemes, outlines or goals are at variance with applicable laws, statutes, codes and regulation in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate notification.
- (4) In the performance of the Work, the Engineer shall comply with all applicable federal, state and local laws and regulations, including those relating to workplace and employee safety.

5. Site Information Not Guaranteed: Engineer's Investigation

The Owner shall furnish to the Engineer available surveys, data and documents relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Engineer and is not guaranteed. It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished and the Engineer must satisfy himself as to the correctness of such information. If, in the opinion of the Engineer, such information is inadequate, the Engineer may request the Owner's approval to verify such information through the use of consultants or additional exploration. In no case shall the Engineer commence such work without the Owner's prior written consent. Such work shall be compensated as agreed upon by the Owner and the Engineer.

6. Payments to the Engineer

- A. The Owner shall make payment to the Engineer, monthly, upon approval of the Engineer's requisitions therefor. All requisitions shall be in the same proportionate amount of the Contract Price as the proportion of the work completed to the total scope of work.
- B. If there is a material change in the scope of the work, the Owner and the Engineer shall mutually agree to an adjustment in the Contract Price. Delay of one year or more plus a significant change in the estimated cost will be considered a change in the scope of the work.
- C. If the Owner authorizes the Engineer to perform additional services, the Engineer shall be compensated in an amount mutually agreed upon, in advance, in writing. Except in the case of an emergency, the Engineer shall not perform any additional services until such compensation has been so established.

7. Reimbursement

Except as otherwise included in the Contract Price or otherwise provided for under this Agreement, the Engineer shall be reimbursed by the Owner: (a) at 1.0 times the actual cost to the Engineer or consultants retained to obtain information pursuant the Article 5 hereof.

8. Final Payment, Effect
The acceptance of final payment by the Engineer shall constitute a waiver of all payment claims by the Engineer arising under the Agreement.
9. Terms Required by Law
This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.
10. Indemnification
 - A. General Liability: The Engineer shall indemnify and hold harmless the Owner from and against any claims, damages, losses and expenses, including reasonable attorney's fees, to the proportionate extent arising out of the performance of the Agreement and to the proportionate extent the same relate to matters of general commercial liability, when such claims, damages, losses and expenses are caused by the negligent or wrongful acts or omissions of the Engineer or his employees, agents, subcontractors or representatives.
 - B. Professional Liability: The Engineer shall indemnify and hold harmless the Owner from and against any claims, damages, losses and expenses, including reasonable attorney's fees, arising out of the performance of this Agreement and to the proportionate extent the same relate to the professional competence of the Engineer's services, when such claims, damages, losses and expenses are caused by the negligent acts, negligent errors or omissions of the Engineer or his employees, agents, subcontractors or representatives. Engineer's obligation to indemnify and defend Owner shall be contingent upon a judicial finding of professional negligence on the part of Engineer.
11. Insurance
 - A. The Engineer shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this Agreement in a minimum amount of \$1,000,000.
 - B. The coverage shall be in force from the time of the Agreement to the date when all work for the Project is completed and accepted by the Owner. If, however, the policy is a claims made policy, it shall remain in force for a period of three (3) years after completion of the services. Since this insurance is normally written on a year-to-year basis, the Engineer shall notify the Owner should coverage become unavailable.
 - C. The Engineer shall, before commencing performance of this Agreement, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c. 152, as amended, to all its employees and shall continue such insurance in full force and effect during the term of the Agreement.
 - D. The Engineer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in the event of loss or destruction until the final fee payment is made or all data are turned over to the Owner.
 - E. The Engineer shall also maintain public liability insurance, including property damage, bodily injury or death, and personal injury and motor vehicle liability insurance against claims for damages because of bodily injury or death of any person or damage to property in the amounts of \$1,000,000/\$1,000,000.
 - F. Certificates and any and all renewals substantiating that required insurance coverage in effect shall be filed with the Agreement. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice

thereof is given by the party proposing cancellation to the other party and to the Owner at least fifteen (15) days prior to the intended effective date thereof, which date shall be expressed in said notice.

- G. Upon request of the Engineer, the Owner reserves the right to modify any conditions of this Article.

12. Notice

All notices required to be given hereunder shall be in writing and delivered, or mailed first class, to the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile but shall, to the extent possible, be followed by notice in the manner set forth above.

13. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven (7) days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Engineer. In the event that the Agreement is terminated pursuant to this subparagraph, the Engineer shall be reimbursed in accordance with the Agreement for all work performed up to the termination date.


14. Miscellaneous

- A. Royalties and Patents: The Engineer shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified by the Owner, but if the Engineer believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or product specified.
- B. Assignment: The Engineer and Owner shall not assign or transfer any of its rights duties or obligations under this Agreement without the written approval of the other parties.
- C. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- D. Owner shall provide unimpeded and timely access to the project site as may be required of Engineer for the successful and timely performance of the services, including third party sites.
- E. Neither party shall be liable to the other for any consequential damages, including but not limited to, loss of profits, loss of use, incidental, exemplary, indirect, punitive, penal, multiple or other special damages incurred by the other party or for which either party may be liable to any third party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the Owner by its authorized representatives who, however, incur no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

KLEINFELDER

TOWN OF MILLIS

By: 
 Name: Betsy C. Frederick
 Title: Project Manager

By: _____
 Name: Suzanne Kennedy
 Title: Interim Town Administrator

Approved as to form

 Mark R. Reich, Esq.
 KP/Law

Approved as to availability of funds

 Kathleen R. LaPlant
 Finance Director, Town of Millis

**PROVISIONS REQUIRED BY MASSACHUSETTS LAW
(Contracts Not More Than \$100,000)**

- (i) If an individual, the individual is a registered engineer;
- (ii) If a partnership, a majority of all the partners are persons who are registered engineers;
- (iii) If a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered engineers, and the person to have the project in his or her charge is a registered engineer;
- (iv) If a joint venture, each joint venturer satisfies the requirements of this section. (Statutory Reference: M.G.L. c. 7, §38A½)

The Engineer hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for or in connection with the award of this Agreement. {Statutory Reference: M.G.L. c. 7, §38H (e) (i)}

The Engineer hereby certifies that no consultant to or subcontractor for the Engineer has given, offered or agreed to give any gift, contribution or offer of employment to the Engineer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Engineer. {Statutory Reference: M.G.L., c. 7, §38H (e) (ii)}

The Engineer hereby certifies that no person, corporation or other entity other than a bona fide full-time employee of the Engineer, has been retained or hired by the Engineer to solicit for or in any way assist the Engineer in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Engineer. {Statutory Reference: M.G.L., c. 7, §38H (e) (iii)}

The Engineer shall maintain all books, records and accounts related to the Project in compliance with the following:

1. The Engineer shall make and keep for at least six (6) months after final payment, books, records and accounts that in reasonable detail accurately and fairly reflect the transactions and dispositions of the Engineer.
2. Until the expiration of six years after final payment, Exelon, the Owner, the office of the Inspector General and the Deputy Commissioner of Capital Planning and Operations shall have the right to examine any books, documents, papers or records of the Engineer or of its consultants that directly pertain to, and involve transaction relating to, the Engineer or its consultants.
3. Records and statements required to be made, kept or filed in compliance with the provisions of this paragraph shall not be public records and shall not be open to public inspection, except as provided by subparagraph 2.

{Statutory Reference: M.G.L., c. 30, §39R}

The Engineer and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Engineer in the preparation of bid documents, as reasonably determined by Exelon and the Owner. {Statutory Reference: M.G.L., c. 7, §38H (j)}

The Engineer hereby certifies under penalties of perjury that the Engineer has complied with all the laws of the Commonwealth of Massachusetts relating to taxes. {Statutory Reference: M.G.L., c. 62C, §49A}.

Attachment A
Scope of Services

Scope of Services: Millis-Norfolk Land Purchase Agreement and New Source Development Evaluation

Background

The Town of Millis is evaluating issues related to sale of land in Millis subject to M.G.L. Chapter 61A. Concerns about the sale involve considerations that relate both to the Town's right-of-first-refusal regarding purchase of the property and implications of the proposed use of the land by the purchaser (Town of Norfolk). Kleinfelder understands that the Town of Norfolk is seeking to site a new groundwater source (one or more wells) on the property for potable water use in the Town of Norfolk. Millis has specific concerns about the potential impacts of a new well proximate to the two highest-producing wells (Wells 5 & 6) within Millis' drinking water system. These wells are situated in a groundwater sub-basin that is already stressed at maximally impacted levels according to DEP standards. Kleinfelder proposes to undertake the following tasks to assist the Town of Millis in their analysis of opportunities or challenges associated with the proposed use of the property under consideration:

Task 1: Document Review and Project Research

Kleinfelder will review documents that are publically available or made accessible by MassDEP, the Town of Norfolk, and/or the Town of Millis pertinent to the proposed new well(s) at 95 Holbrook Street, Norfolk, MA. The purpose of the document review is to evaluate the potential environmental, operational and/or regulatory impacts of the proposed well(s), if any, on the Town of Millis. Kleinfelder will rely upon available documents based on correspondence with MassDEP CERO (Drinking Water) staff, specifics of the Groundwater Supply Development and Source Approval Process, and professional judgement. **Scope of Services:** assumes that the pertinent documents will be made available by the Town of Millis, the Town of Norfolk, MA, and/or MassDEP in a timely manner.

Kleinfelder will communicate with the Town of Norfolk, MA Department of Public Works Director, Robert J. McGhee, and/or Water Division Foreman, Allen J. Phinney, Sr., to understand the project goals and extent of work done to date relative to new sources, and request available data from any preliminary testing or investigation of the site. This task assumes up to one (1) telephone meeting with a representative(s) from the Town of Norfolk, MA.

Kleinfelder will communicate with MassDEP CERO (Drinking Water) to gain an understanding of the status of the new source approval process and the implications of siting the well at this location. This task assumes up to one (1) telephone meeting with MassDEP CERO.

Task 2: Evaluation of New Source Approval Process & Technical Memorandum

The document review described in **Task 1: Document Review** will assist in the development of a Technical Memorandum which will provide the Town of Millis with a summary of the new source approval process, the status of the process as it pertains to the Town of Norfolk application, and recommendations related to entering a payment in lieu of taxes (PILOT) agreement with the Town of Norfolk, MA for the part of the property that lies within Millis borders.

If specific data is available at this time upon which to base an evaluation, the Memorandum will address whether any of the anticipated changed groundwater conditions could impact mitigation proposals provided previously to the Town during the water supply feasibility study recently completed. Specifically, since Millis has groundwater sources in subbasins with an August net groundwater depletion of 25% or more as identified in the MassDEP's WMA permitting tool, it is required to develop and implement a DEP-approved plan to minimize impacts of its withdrawals. Proposed mitigation included modified pumping regimens for Wells 5 and 6, which are already subject to pumping constraints based on Charles River streamflow elevations. Since increased

pumping at other Town sources, such as Well 4, may result in higher costs for water quality treatment, this is an issue of specific concern to the Town. Through the development of a technical memorandum, Kleinfelder will provide the Town with a summary of the implications, such as they may be anticipated given available data, on aquifer health, operations and water quality at existing Town of Millis public supply wells, and mitigation and minimization activities that may be imposed on the Town of Millis, if any, due to potential changed basin conditions.

Deliverables:

- A. Draft & Final Technical Memorandum: Kleinfelder will provide a Draft for Town's review and attend one (1) meeting with the Town to present and discuss findings. Kleinfelder will incorporate Town edits into a Final Technical Memorandum.