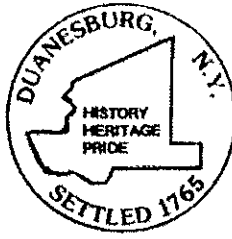


Roger Tidball, Town Supervisor
Jennifer Howe, Town Clerk
Brandy Fall, Deputy Town Clerk
William Reed, Highway Superintendent



John D. Ganther, Council Member
Charles Leoni, Council Member
Francis R. Potter, Council Member
Jeffrey Senecal, Council Member

Thursday June 27, 2019
Regular Town Board Meeting
Meeting Time: 7:00PM

Meeting called to order by Supervisor Tidball at 7:00PM

Present: Supervisor Tidball, Council Members Ganther, Leoni, Potter, Senecal, Highway Superintendent William Reed, Deputy Town Clerk Brandy Fall, Town Attorney Randall Beach
Absent:

Pledge of Allegiance

Resolution 82-19: Council Member Leoni motioned, seconded by Council Member Ganther to approve the Town Board Meeting minutes of Thursday, June 13, 2019.
Motion carried, 5 ayes

Resolution 83-19: Council Member Potter motioned, seconded by Council Member Ganther to pay the following claims:
Motion carried, 5 ayes

Vouchers to be Paid

June 27, 2019

General Fund: #171-182	\$13,261.66
SD#1: #83-89	\$4,189.06
SD#2: #94-100	\$3,180.01
SD#3: #57-59	\$715.66
In – House #4	\$148.98
Highway: #111-118	\$6,234.60
<hr/>	
Total Vouchers to be Paid=	\$27,729.97

Highway: Highway Superintendent Reed reported that the first mowing of the season is all done and that all prep work for the capital projects are done and that they were pushed to July. He also reported that the Department will be hiring a new employee and that he will start July 8th, 2019.

Public Safety: Council Member Leoni stated that there is nothing new to report at this time.

Parks: Council Member Leoni reported that the summer park program counselors will be appointed at tonight's meeting.

Sewer District #1, 2 & 3: Council Member Ganther stated that there is nothing new to report. Mary Beth from Delaware Engineering gave an update (see attached).

Technology: Council Member Ganther reported that Schenectady County provided a \$100,000 grant for broadband expansion. Some pilot projects are Creek Road and Mountain View. The NYS Broadband Office Phase 3 funded some wiring. He also reported that the USDA grant programs they were looking into did not provide enough funding for the project with Midtel. The NYSPSC came to a settlement with Charter Communications to allow them to stay in the state and do business. He stated that they had wrote the PSC a letter with all the complaints that they have about the settlement and their failure to promote broadband service. Council Member Ganther also stated that the next broadband committee meeting will Wednesday August 7, 2019 at 6:30 p.m. downstairs at Town Hall. Council Member Ganther also reported that with all of the issues with our email at Town Hall that he has been looking into other options. He put together a spread sheet with information. (see attached)

Business Meeting:

Resolution 84-19: Council Member Leoni motioned, seconded by Council Member Senecal to approve and authorize the Town Supervisor to execute the Utility Credit Purchase Agreement with Schenectady County.

Motion carried, 5 ayes

Resolution 85-19: Council Member Potter motioned, seconded by Council Member Senecal to approve and authorize the Town Supervisor to enter a professional services agreement with Delaware Engineering, P.E. to assist with the Delanson WWTP State Pollutant Discharge Elimination System Permit.

Motion carried, 5 ayes

Resolution 86-19: Council Member Ganther motioned, seconded by Council Member Leoni to appoint the following counselors for the 2019 Park Program: Adam Ostrander, Raelee Ostrander, Madison Stealey, Kristen Johnson, Olivia Harris, Justin LeClair and Schuyler Bradshaw.

Motion carried, 5 ayes

Resolution 87-19: Council Member Potter motioned, seconded by Council Member Senecal to hire Kyle Smart as a highway department employee.

Motion carried, 5 ayes

Resolution 88-19: Council Member Ganther motioned, seconded by Supervisor Tidball to move our office and email systems to Microsoft Office 365.

Motion carried, 5 ayes

Privilege of the Floor: Opened at 7:32 pm

Dick Hoffmann of Thousand Acre Road asked why doesn't the highway department spray the sides of the roads with weed killer? Highway Superintendent Reed stated that municipalities must be licensed to do so and that we are not. He also stated that there could be issues with runoff but that we will look into it. Mr. Hoffmann also asked what the town was doing about a building. Supervisor Tidball let him know that at this time, the town is not pursuing any options and explained what happened with past options and that it is not a dead topic but they are just not moving on anything at this time.

Bill Park of Maranatha Way asked if he could schedule an appointment to look at financial records like the ledgers, checkbooks, etc. of the Supervisor's office. Supervisor Tidball stated that he needs to call and schedule an appointment.

Floor Closed: 7:39 pm

Supervisor Tidball motioned, seconded by Council Member Senecal to adjourn the meeting.
Motion carried, 5 ayes

I, Brandy Fall, Deputy Town Clerk of the Town of Duanesburg, so hereby certify that this is a true and accurate transcript of the Regular Town Board Meeting held on Thursday June 27, 2019 at the Duanesburg Town Hall, 5853 Western Turnpike, Duanesburg, New York 12056.

Status:	Already on Office 365	Will get Office 365	Add Email	Need Email Only
Monthly Cost:	\$8.25	\$8.25	\$5.25	\$6.00
Cheryl/Cathy	1		1	
Brandy	1		1	
Jenn		1	1	
Tracy		1	1	
Roger		1	1	
Dale		1	1	
Assessor		1	1	
Downstairs Clerks		3	3	
Bill Reed		1	1	
Board Members				4
Dog Office				1
Historian				1
Zoning Chair				1
Planning Chair				1
Sewer Team Members				3

Total Users:	2	9	11	11
Current Monthly Cost:	\$16.50	\$74.25	\$57.75	\$66.00
Future Monthly Cost:				\$21.00
Annual Cost:	\$198.00	\$891.00	\$693.00	\$792.00
				\$2,574.00

Benefits: Microsoft is the industry standard in office and email management

Email and office files can be stored in the cloud, enabling access from anywhere on multiple devices

Applications can be downloaded on up to 5 different devices

1 TB of storage for each user - don't have to worry about maintaining hardware, failures or backups

Mail is stored encrypted on secure Microsoft servers which are HIPPA compliant

Always on the latest version. Each time a new office version released, it would cost us around \$3000 plus consulting services and upgrade time

And we eliminate these current issues: emails won't get lost

searching is fast

web site won't get locked up

Town of Duanesburg Town Board

RESOLUTION NO. 84 - 2019

June 27, 2019

WHEREAS, Schenectady County (the "County") has initiated the Schenectady County Solar Energy Consortium (the "Solar Energy Consortium") to develop a network of solar projects on municipally owned land within Schenectady County; and

WHEREAS, the goal of the Solar Energy Consortium is to eliminate utility costs and generate revenue for participating municipalities, and pass millions of dollars in savings to County, Town, City, and Village taxpayers; and

WHEREAS, the Town of Duanesburg Town Board adopted a resolution authorizing the Town Supervisor to execute a Memorandum of Understanding (the "MOU") with the Solar Energy Consortium, GE, and the various participating municipalities within the County as a preliminary step toward the Town's participation in the Solar Energy Consortium; and

WHEREAS, Schenectady County Solar Projects 2019, LLC has been established as the project company that will develop, own, and maintain the solar photovoltaic electricity generating and battery energy storing facilities (the "Solar Facilities") anticipated to be constructed under the Solar Energy Consortium; and

WHEREAS, pursuant to the MOU, the Town may enter a Utility Credit Purchase Agreement to receive a portion of the Utility Credits created by all or any of the Solar Facilities; and

WHEREAS, the Town desires to enter the Utility Credit Purchase Agreement with Schenectady County Solar Projects 2019, LLC attached hereto.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board approves and authorizes the Town Supervisor to execute Utility Credit Purchase Agreement attached hereto.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting of June 27, 2019.


Roger Tidball, Supervisor


Town Clerk/Deputy Town Clerk

Present:

Absent:

Town Board Members:

Roger Tidball	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
John Ganther	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Rick Potter	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Charles Leoni	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Jeff Senecal	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain

UTILITY CREDIT PURCHASE AGREEMENT

BETWEEN

SCHENECTADY COUNTY SOLAR PROJECTS 2019, LLC ("Seller")

and

THE TOWN OF DUANESBURG ("Purchaser")

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Exhibits

Exhibit A - Designation of Purchaser Accounts	A-1
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- i. The Party fails to pay any amount as and when due under this Agreement (other than amounts being disputed in accordance with Section 6.f), and such failure is not cured in full within five (5) Business Days following written notice thereof.
- ii. The Party fails to perform or comply in any material respect with any covenant or agreement set forth in this Agreement and such breach continues for a period of thirty (30) days after receipt of written notice thereof; provided, that if such cure reasonably cannot be effected within such thirty (30) day period and the breaching Party commences and works diligently to cure such breach during such thirty (30) day period, the defaulting Party's time to cure such failure shall be extended by the time reasonably necessary to cure the same.
- iii. The Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) is judicially determined to be insolvent or is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within sixty (60) days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (vii) causes or is subject to any event that under the applicable laws of any jurisdiction has an analogous effect to any of the events specified in clauses (i) through (vi).
- iv. The Party assigns this Agreement in whole or in part in violation of Section 11.a.
- v. If Purchaser (or any subdivision or agency of Purchaser) is the lessor under any Lease, then a default by Purchaser under any such Lease that is not cured as provided therein shall be an Event of Default as to Purchaser.
- vi. A representation or warranty made by the Party in Article 8 is determined to have been materially false or misleading when made or deemed made, and such breach has had or is reasonably likely to have a material adverse effect on the Facility or the non-breaching Party, which effect cannot be cured within thirty (30) days of such determination provided, that if such cure reasonably cannot be implemented within such thirty (30) day period and the defaulting Party commences and works diligently to cure such effect (or potential effect) of the breach on the other Party during such thirty (30) day period, the defaulting Party's time to cure such impact shall be extended by the time reasonably necessary to cure the same but not to exceed ninety (90) days following the determination.

b. Termination for Default.

- i. Upon the occurrence and during the continuation of an Event of Default, the non-defaulting Party may terminate this Agreement by providing written notice to the defaulting Party. Such termination shall be effective as of the date of delivery of such notice to the defaulting Party.
- ii. If this Agreement is terminated pursuant to Section 9.b.i, Seller shall notify the Utility, and Seller and Purchaser shall cooperate to make all related filings with the Utility within [ten (10)] Business Days thereafter to cease allocating Utility Credits to the Accounts. As of the termination of this Agreement, Seller shall have no further obligation to allocate the Purchaser Percentage to Purchaser, and Purchaser shall have no further right hereunder to the Purchaser Percentage or the Utility Credits and no obligation to accept the allocation of the Utility Credits. Seller shall deliver to Purchaser a final invoice through the date that the Utility Credits cease to be allocated to the Accounts, and Purchaser shall pay such invoice in accordance with the applicable provisions of Article 6.

c. Termination Payment; Remedies.

- i. In the event that this Agreement is terminated by Seller as provided in Section 9.b, then Seller shall calculate a payment (the "Purchaser Termination Payment") in a commercially reasonable manner as follows: The Purchaser Termination Payment shall be an amount equal to the sum of all amounts owed to

Seller hereunder as of the date of such termination plus the Net Settlement Amount, less any amounts owed by Seller to Purchaser.

- ii. Purchaser shall provide written notice to Seller of the Purchaser Termination Payment, including the detailed calculation of the Purchaser Termination Payment and supporting documentation. Purchaser shall make payment thereof to Seller within thirty (30) days after delivery of the notice thereof.
- iii. Any dispute as to the amount of the Purchaser Termination Payment shall be resolved in accordance with Section 12.f.
- iv. The payment of the Purchaser Termination Payment shall be Seller's exclusive remedy in the event of a termination of this Agreement by Seller pursuant to this Article 9.
- v. In the event that this Agreement is terminated as provided in Section 9.b, then each Party shall be entitled to exercise its available remedies at law or in equity, subject to the limitations herein.

d. **Force Majeure.** If by reason of Force Majeure either Party is unable to carry out, either in whole or in part, any of its obligations contained herein, such Party shall not be deemed to be in breach or default of its obligations hereunder during the continuation of such inability, provided that: (a) the non-performing Party promptly gives the other Party written notice describing the particulars of the Force Majeure, the affected performance and the anticipated period of non-performance or delay; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (c) no obligations of the Party that accrued prior to the Force Majeure shall be excused by reason of such Force Majeure except to the extent that such performance is affected by the Force Majeure; and (d) the non-performing Party shall use commercially reasonable efforts to remedy or mitigate the effects of the Force Majeure.

10. Limitation of Liability

a. Limitation of Liability and Warranty

i. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER'S LIABILITY TO PURCHASER UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND WILL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY PURCHASER TO SELLER UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE APPLICABLE CLAIM LESS ANY DAMAGES PREVIOUSLY PAID TO PURCHASER HEREUNDER OR, IF APPLICABLE, UNDER ANY LEASE. SUCH AMOUNT SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY, AND PURCHASER HEREBY WAIVES ALL OTHER REMEDIES OR DAMAGES AT LAW OR EQUITY. OTHER THAN AS EXPRESSLY PROVIDED HEREIN, INCLUDING THE PURCHASER TERMINATION PAYMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL (OTHER THAN DIRECT OR ACTUAL), PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES.

ii. EXCEPT AS EXPRESSLY STATED HEREIN, PURCHASER ACKNOWLEDGES THAT SELLER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ITS OBLIGATIONS OR THE FACILITY. SELLER DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USE OF TRADE.

b. **No Implied Waivers: Remedies Cumulative.** No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Purchaser, unless such waiver is in writing and signed by the Party against whom it is to be enforced. Consent or approval of Seller or Purchaser to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of Seller or Purchaser to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of Seller or Purchaser specified herein or any other right or remedy that Seller or Purchaser may have at law or in equity hereunder shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to exclude any other.

- c. Acceptance of Payment. Neither receipt nor acceptance by Seller or Purchaser of any payment hereunder, nor payment of same by Purchaser or Seller, shall be deemed to be a waiver of any breach or Event of Default, or of any right or defense that Seller or Purchaser may be entitled to exercise hereunder.

11. Assignment

a. Assignment.

- i. Notwithstanding the execution of the MOU by GEIL, Purchaser consents to the Seller as the Seller hereunder for all purposes, which consent shall be effective as consent by Purchaser pursuant to New York General Municipal Law Section 109, if and as applicable to this Agreement. Any assignment of this Agreement by Seller following the Effective Date would be subject to Purchaser's consent pursuant to New York General Municipal Law Section 109, if and as applicable to this Agreement.
- ii. Purchaser shall not assign this Agreement, or any part hereof, to any Person without the prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed. Any assignee pursuant to this Section 11.a.ii shall confirm in writing to Seller that such assignee is bound by this Agreement and is subject to all of the obligations required of Purchaser.
- iii. Following any assignment made in accordance with this Section 11.a, the assigning Party shall have no further obligation hereunder.

- b. Assignment and Collateral Assignment to Financing Party. Seller, without the consent of Purchaser, may assign, collaterally assign or grant an interest in this Agreement or any or all of its rights and obligations hereunder to any Financing Party. Promptly after granting such interest, Seller shall notify Purchaser in writing of the name, address, and telephone number of each and every Financing Party to which Seller's interest under this Agreement has been assigned.

- c. Financing Party Accommodations. If Seller collaterally assigns or grants an interest in or to this Agreement as permitted by Section 11.b, then:

- i. thereafter, Purchaser shall provide the Financing Party with copies of all notices issued to Seller under Section 9.b, and any Financing Party shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Article 9, and Purchaser shall accept a cure performed by any Financing Party that is performed in accordance with the terms of this Agreement and such additional cure period as the Financing Party may reasonably request.
- ii. Purchaser acknowledges that no Financing Party shall have any obligation or liability to Purchaser with respect to this Agreement other than as to such liabilities that arise upon or after this Agreement has been expressly assumed by the Financing Party, or any Financing Party has otherwise assumed obligations of Seller hereunder; provided that Purchaser shall nevertheless be entitled to exercise all of its rights hereunder if Seller or Financing Party fails to perform Seller's obligations under this Agreement from and after such assumption.
- iii. Upon the receipt of a written request from Seller, Purchaser shall execute or arrange for the delivery of such documents as may be reasonably requested by Seller to confirm consent to any collateral assignment of this Agreement, and which may provide that Purchaser recognizes the right of such Financing Party to assume the rights and obligations of Seller under this Agreement upon foreclosure of Financing Party's interest herein; provided, that Purchaser shall not be required to execute any documents or instruments that are contrary to Applicable Law or that are reasonably likely to increase Purchaser's obligations under the Agreement.
- iv. Any assignment or transfer not expressly permitted herein or without prior consent if required herein will be null and void *ab initio*.

12. Confidentiality.

- a. Confidential Information. If either Party provides confidential information, including this Agreement, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System ("Confidential

Information") to the other Party or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other Party, the receiving Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement and the development, construction, operation and maintenance of the Facility, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, potential lenders and purchasers, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information consistent with this Section). Any recipient of Confidential Information shall be informed of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by the provisions of this Section. In any event, each Party shall be liable (to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section by the receiving Party or the disclosure of Confidential Information by its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in such event. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the disclosing Party's exclusive remedies, but shall be in addition to all other remedies available at law or in equity.

b. **Permitted Disclosures.** Notwithstanding any other provisions in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than by disclosure through the receiving Party or its Representatives, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

c. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and any related reporting rights. Notwithstanding the foregoing, Purchaser may, without Seller's consent, issue promotional or advertising materials regarding Purchaser's purchase of the Utility Credits that do not identify Seller or any of its affiliates.

13. Miscellaneous

a. **Notices.** All notices given under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the Persons identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing. Each Party shall deem a document electronically sent in PDF form to it as an original document.

The communications shall be sent to the following addresses:

If to Seller:

Schenectady County Solar Projects 2019, LLC
1 River Road
Schenectady, NY 12345
Attention: Erik Schiemann

Email: Erik.Schiemann@ge.com
Phone: +1 518-742-6863

And copy to:

Schenectady County Solar Projects 2019, LLC

1 River Road

Schenectady, NY 12345

Attention: Jennifer Gerrard

Email: Jennifer.Gerrard@ge.com

Phone: +1 518-380-3770

If to Purchaser:

[Redacted]
[Redacted]
[Redacted]

Email:

Telephone:

Attn: [Redacted]

Either Party may change its address and contact person for the purposes of this Section 12.a by giving notice thereof in the manner required herein.

- b. **Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, adjudicated to be invalid, illegal or unenforceable by any court of competent jurisdiction or by a Change in Law, such article, section, phrase, or portion will be deemed separate, severable and independent, and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.
- c. **Forward Contract.** This Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties acknowledge that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- d. **No Third Party Beneficiaries.** Except for successors, permitted assigns and the Financing Parties as to Section 11.c, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person.
- e. **Governing Law.** This Agreement, the obligations of the Parties hereunder, and all matters arising out of or in connection herewith shall be governed and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.
- f. **Dispute Resolution.**
 - i. **Negotiation.** The Parties, through their respective senior management, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within twenty (20) business days after the date that a Party gives written notice of such Dispute to the other Party.
 - ii. **Arbitration.** In the event any Dispute is not settled to the satisfaction of each Party pursuant to this Section 12.f, the Dispute shall then be settled by final, binding arbitration pursuant to the U.S. Federal Arbitration Act, 9 U.S.C. Section 1 et seq., in accordance with the American Arbitration Association Commercial Arbitration Rules. The Parties shall mutually select one arbitrator. In the event the Parties are unable to agree on an arbitrator, an arbitrator will be appointed by the American Arbitration Association in accordance with its rules. All arbitration proceedings will take place New York, New York. The arbitrator will be entitled to award monetary and equitable relief, including specific performance and other injunctive relief; provided, however, that only damages allowed pursuant to this Agreement may be awarded. Except as otherwise expressly provided in this Section 12.f each Party will bear the expenses of its own counsel

and will jointly bear the expenses of the arbitrator. The arbitrator may include, as an item of damages, the costs of arbitration, including reasonable legal fees and expenses, incurred by the prevailing party if the arbitrator determines that either (i) the non-prevailing Party did not act in good faith when disputing its liability hereunder to the prevailing Party or when initiating a claim against the prevailing Party; or (ii) the prevailing Party has had to resort to arbitration with respect to a substantially similar claim more than twice in any thirty-six (36) month period. Should it become necessary to resort or respond to court proceedings to enforce a Party's compliance with this Section 12.f, such proceedings will be brought in accordance with Section 12.f. If the court directs or otherwise requires compliance herewith, then all costs and expenses, including reasonable attorneys' fees incurred by the Party requesting such compliance, will be reimbursed by the non-complying Party to the requesting Party.

- iii. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to the dispute resolution process set forth in this Section 12.f to prevent irreparable harm that would be caused by a breach of this Agreement.
- g. **Entire Agreement.** This Agreement together with the Leases to which Seller and Purchaser are both parties, contains the entire agreement between Seller and Purchaser with respect to the subject matter hereof, and supersedes all other understandings or agreements, whether written or oral, between the Parties relating to the subject matter hereof.
- h. **No Joint Venture.** Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Purchaser hereunder are individual and neither collective nor joint in nature.
- i. **Change in Law.** If any Change in Law occurs that (i) is generally applicable to similarly situated electric generating facilities and (ii) increases the capital, financing, operating or maintenance costs of the Facility, or otherwise has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then Seller may make an equitable adjustment to the Energy Rate to compensate Seller for such increased costs over the remainder of the Term. If Purchaser disputes the adjustment, the Parties shall resolve the dispute as provided in Section 13.f.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the Facility.
- k. **Amendments; Binding Effect.** This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- l. **Counterparts.** This Agreement may be executed in counterparts, each of which may be delivered electronically in portable document format or other readable electronic format. Each such counterpart shall be deemed an original and all such counterparts together with this Agreement shall constitute one and the same agreement.
- m. **Further Assurances.** From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents, reasonably requested by the other and consistent with the terms of the Agreement for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. The Party making a request under this Section 12.m shall pay all reasonable costs and expenses incurred by the other Party in complying with any such request. Neither Party shall withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.m.
- n. **Survival.** Provisions of this Agreement that should reasonably be considered to survive the expiration or termination of this Agreement shall survive such expiration or termination. Without limiting the generality of the foregoing, the provisions of Article 9, Article 10, Article 12, Sections 13.a, 13.d, 13.e, 13.f, 13.n, and 13.p shall survive the expiration or earlier termination of this Agreement.
- o. **Program Change.** In the event that the VDER Program is terminated, delayed or modified, the Parties shall promptly and in good faith amend or restate this Agreement if and as may be necessary to be consistent with Applicable Laws then in effect relating to community solar projects. Without limiting the foregoing, such amendments may include providing for the allocation to Purchaser of net metering credits as established pursuant to

the Order Establishing a Community Distributed Generation Program and Making Other Findings, Case 15-B-0082, issued by the PSC on July 17, 2015, if applicable.

p. **Waiver of Immunity.** The Parties acknowledge that this Agreement is a commercial agreement, and Purchaser expressly and irrevocably waives any claim of right which it may have to immunity (whether sovereign immunity, act of state, or otherwise) for itself or with respect to any of its assets in connection with any proceeding to enforce this Agreement, including immunity from service of process, immunity of any of its assets from pre- or post-judgment attachment or execution and immunity from the jurisdiction of any court or arbitral tribunal.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Utility Credit Purchase Agreement as of the Effective Date.

Purchaser

Seller

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: Erik Schiemann

Title: _____

Title: President

only

EXHIBIT A

DESIGNATION OF PURCHASER ACCOUNTS

46502-15100	Lighting SC1 T&D
52902-15105	Lighting SC1 T&D Private Area Lighting
47702-15117	Electric SC2 T&D
00391-31005	Electric SC2 T&D
02731-01009	Electric SC2 T&D
04831-60005	Electric SC2 T&D
08131-10002	Electric SC2 T&D
09791-27001	Electric SC2 T&D
09791-29005	Electric SC2 T&D
15240-44005	Electric SC2 T&D
33950-53007	Electric SC2 T&D
43071-69002	Electric SC2 T&D
45470-99001	Electric SC2 T&D
62270-61007	Electric SC2 T&D
72030-80001	Electric SC2 T&D
62552-93108	Lighting SC2 T&D Street Lighting
10102-15103	Electric SC2D T&D
10302-15109	Electric SC2D T&D

NOTES:

1. Each Account will be allocated Utility Credits during each twelve month period commencing with the Credit Start Date (each such twelve-month period, a "Credit Year") corresponding to ninety percent (90%) of Purchaser's electric load (in kWh) metered for such Account during the twelve months prior to the Effective Date based on Purchaser's consumption at such Account as shown in Purchaser's utility bills for such period ("Purchaser Percentage").
2. Notwithstanding Note 1 above, the Accounts that are "demand meter accounts" (as such term is used in the VDER Program Order, the "Demand Accounts") shall not be allocated Utility Credits for any Billing Cycle in excess of forty percent (40%) of the VDER utility credits attributable to any single Facility comprising the Facility for such Billing Cycle ("the Demand Meter Threshold"). If, for any Billing Cycle, the monthly statement of Utility Credits indicates that the Utility Credits allocated to the Demand Accounts exceeded the Demand Meter Threshold, then with Purchaser's cooperation, Seller shall use reasonable efforts to have the allocation corrected.

RESOLUTION OF THE TOWN BOARD

RESOLUTION NO. 85-2019

June 27, 2019

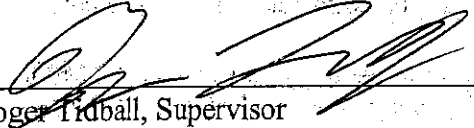
WHEREAS, the Delanson WWTP serves the Duanesburg/Delanson Sewer District No. 1 and Duanesburg Sewer District No. 3; and

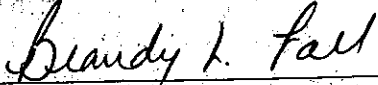
WHEREAS, the Town of Duanesburg Town Board wishes to retain Delaware Engineering, P.E. ("DE") under a professional services agreement to assist with the Delanson WWTP State Pollutant Discharge Elimination System ("SPDES") Permit review by the New York State Department of Environmental Conservation (the "Work"); and

WHEREAS, the amount to be paid to DE for the Work is an amount not to exceed \$1,500 to be invoiced to a project number and charged to both Sewer District No.1 and No. 3.

NOW, THEREFORE, BE IT RESOLVED, the Town Board approves and authorizes the Town Supervisor to enter the attached professional services agreement with DE.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting of June 27, 2019.


Roger Tidball, Supervisor


Town Clerk/Deputy Town Clerk

6/27/19
Date

6/27/2019
Date

Present:
Absent:

Town Board Members:

Roger Tidball	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
John Ganther	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Rick Potter	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Charles Leoni	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Jeff Senecal	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain



Delaware Engineering, D.P.C.

55 South Main Street
Oneonta, NY 13820

Tel: 607.432.8073
Fax: 607.432.0432

TOWN OF DUANESBURG, NY TOWN BOARD MEETING

June 27, 2019

1. Sewer District #3

- Final project costs reviewed with the Town – final draw down request processed with NYSEFC
- Site restoration completed
- Preparing application to move to long term financing to close project out

2. Sewer District #2

- Mariaville WWTP SPDES permit was modified in 2018 to require disinfection be added at the plant by 2023
- Town applied for and was awarded \$300k Water Quality Improvement Program (WQIP) grant from NYSDEC to go towards the \$400k project
- DEC forwarded documentation on the grant to Town to initiate the processing. Budget and workplan prepared, based on the initial application, and submitted to NYSDEC grants gateway website
- NYSDEC to issue grant/financing agreement for Town approval
- Town will need to decide on plan of finance for the project (local ban or potential for EFC). Will need to review options with Town Bond Counsel

3. Sewer District #1

- Long term improvements required by NYSDEC Consent Order to be implemented by 12/2021
 - Project includes equalization tank, screen for rags/wipes, upgraded disinfection and controls
 - Estimated project cost ~\$1.8 million
- Town applied for and was awarded a Water Infrastructure Improvement Act grant in amount of \$436k to go towards the project. Remaining project costs to be financed with a CWSRF loan through NYSEFC
- Revised Engineering Report submitted to NYSEFC to move forward with project financing
- Draft contract amendment submitted to Town for planning/preliminary engineering efforts to include these costs in project financing
- DEC issued a request for information on the Delanson WWTP as part of a review of the SPDES permit, which is up for renewal next year.
 - Will require testing be conducted, and summary of the plant history along with drawings and forms be completed
 - Delaware Engineering revised proposal attached

4. Attachments

- Revised Proposal for RFI Response for Delanson
- Contract Amendment for Delanson WWTP Preliminary Engineering

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Delaware Proposal for RFI Response for Delanson



Delaware Engineering, D.P.C.

55 South Main Street
Oneonta, NY 13820

Tel: 607.432.8073
Fax: 607.432.0432

June 13, 2019

Roger Tidball, Supervisor

May 23, 2019

Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Sub: Revised Engineering Services Proposal
Delanson WWTP - NYS SPDES Permit #NY026127
Sewer Districts 1&2

Dear Supervisor Tidball:

Delaware Engineering, D.P.C. is pleased to provide this revised proposal to provide the following professional services for Town.

Our understanding is the Town owns and operates the Delanson Wastewater Treatment Plant (WWTP) located off of Cole Road. The plant services Town sewer districts #1 (Delanson) and #3 (Duanesburg). The Town recently received a request for information from NYSDEC regarding the facility. The request is in advance of a SPDES permit renewal anticipated in 2020 when the current permit runs out.

Delaware Engineering proposes to provide the following professional services to the Town to assist in response to NYSDEC's request for information.

SCOPE OF PROFESSIONAL SERVICES

In regards to Professional Services, Delaware Engineering agrees to provide the following professional services for the project.

Task 1 - RFI Response

Delaware Engineering will complete all work with our staff and there will be no subcontracts.

A response letter will be drafted and submitted to Town personnel for review. Upon concurrence the letter (with any needed revisions) will be submitted to NYSDEC. As requested in the RFI, a Municipal Application Form 2A will be prepared and attached. Additional requested information will include a summary

of existing sampling (DMR information to be provided to Delaware by Town Staff), a flow diagram, a storm water certification, and a mixing zone form. Finally additional sampling and testing of wastewater effluent and receiving stream water is required by the RFI. Delaware will assist Town staff in procuring applicable sample bottles from the Town's designated laboratory, taking the sampling, and returning the sample bottles to the lab for analysis. Lab costs are not included in this proposal. Upon receipt of results from the lab, they will be tabulated and included in the response letter to be submitted to NYSDEC.

SUMMARY OF COSTS

Delaware Engineering will complete the above listed professional services for a not-to-exceed cost of \$1,500.

Task 1 – NYSDEC RFI Response

\$1,500

Total – Professional Services:

\$1,500

COMPENSATION

Compensation shall be based upon the hours spent on each task by the various categories of personnel, plus subcontractors and direct expenses in accordance with the Rate Schedule in effect (for the year) at the time of the work. Compensation shall commence for services provided from the date of contract execution until completion of the work.

Total contract compensation shall not exceed \$1,500 unless prior authorization is received from the Client.

Invoices will be submitted to the Client on a monthly basis. Payment shall be made to the Engineer within 45 calendar days of the date of invoice. Checks shall be forwarded to Delaware Engineering, D.P.C., 28 Madison Avenue Extension, Albany, NY 12203 Attention: Susan Olivares.

ADDITIONAL SERVICES

Additional services can be provided if deemed necessary and approved by the Owner. Compensation for additional services can be negotiated as needed. Additional work will be approved by the Owner prior to the execution of any additional tasks.

Services not indicated or included in the above-listed scope of services or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.

STANDARD CONTRACT TERMS AND CONDITIONS

The terms and conditions contained on the attached sheet apply to this contract.

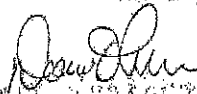
ATTACHMENTS

- NYSDEC RFI
- 2019 Rate Schedule
- Standard Terms and Conditions

Thank you for the opportunity to submit a proposal for these services. If all is acceptable and you wish us to proceed with the work, please sign below and return a copy to our office.

Respectfully Submitted,

DELAWARE ENGINEERING, D.P.C.



Dave Ohman, P.E.

The following endorsement accepts the terms of this proposal and authorizes Delaware Engineering D.P.C. to proceed with the work set forth above.

Town of Duaneburg – (Client)

By: _____

(Signature)

(Title)

(Print Name)

Date

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Water, Bureau of Permits
625 Broadway, Albany, New York 12233-3505
P: (518) 402-8111 | F: (518) 402-9029
www.dec.ny.gov

April 30, 2019

Roger Tidball, Supervisor
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Subject: Request for Information - SPDES Permit # NY0261271
Due Date: July 26, 2019

Dear Permittee:

The Department is aware of a capital improvement project at your SPDES permitted facility. In accordance with the Department's Environmental Benefit Permit Strategy (EBPS), the Department will be conducting a comprehensive review of your SPDES permit to ensure that it complies with all applicable laws and regulations.

Please be aware that approval of the design documents cannot occur, and **construction cannot begin** before the review is complete and a final SPDES permit has been issued. Please consider responding as soon as possible, ahead of the deadline, to help expedite the review.

Please complete Municipal Application Form NY-2A (www.dec.ny.gov/permits/6287.html), as well as the information requested on the attached Additional Instructions form and submit as an electronic copy in PDF format (and Excel format for data files) to SPDESapp@dec.ny.gov. Do not submit a copy to the regional NYSDEC office.

Please note that you are responsible for maintaining a permit that adequately authorizes your discharge(s). Therefore, you should also provide us with any additional information concerning your discharge or planned improvements, such as:

- increase in discharge flow (expansion)
- changes to your treatment system (new or additional treatment processes)
- changes to your outfall configuration or location
- changes to your service area
- increase or change to the content of the waste being treated

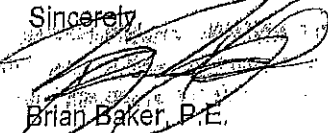
Please note that you are required by the terms of your permit and 6 NYCRR Part 750-1.19 to provide this information. Failure to provide accurate and timely information may prevent renewal of your permit in the future, may result in permit revocation and/or may result in the assessment of penalties.



Department of
Environmental
Conservation

If you have questions concerning this request, please contact Ms. Monica Moss, P.E. at monica.moss@dec.ny.gov or (518) 402-8104.

Sincerely,



Brian Baker, P.E.
Section Chief

cc: COPY VIA EMAIL ONLY --
RWE, NYSDEC R4
BWP -- Permit Coordinator
EFC -- Rachel Kenyon

State Pollutant Discharge Elimination System (SPDES)

Environmental Benefit Permit Strategy (EBPS)

ADDITIONAL INSTRUCTIONS

In addition to completing Municipal Application Form NY-2A, please provide the information requested below:

- SUMMARY OF EXISTING REQUIRED SAMPLING** – Attach a tabularized summary, in Excel spreadsheet or compatible format, of all sampling required by the permit over the past 4.5 years. Include date of sample, parameter, sampling date, sampling location, EPA Method, concentration and/or mass reported, units, and flow rate for each outfall.
- FLOW DIAGRAM:** Include a unit flow diagram (or line diagram) clearly showing the flow of wastewater at your facility, including all major treatment units, outfalls and sampling locations.
- STORMWATER NO EXPOSURE CERTIFICATION:** Complete the attached NYSDEC No Exposure Certification form for Stormwater and return with your application materials.
- MIXING ZONE FORM:** Complete the attached mixing zone form and return with your application materials.
- SAMPLING:** Complete the following sampling for the indicated outfalls and receiving water. For effluent sampling, one composite sample (at the frequency currently in your permit) shall be collected except for parameters that require grab (pH, temperature, settleable solids, coliform).

Outfall(s)	Sampling Required ¹
X	Conventional ¹
X	13 Priority Pollutant Metals ²
X	Volatiles (EPA Method 624)
X	Acid Compounds (EPA Method 625)
X	Base Neutral (EPA Method 625)
X	Mercury (EPA Method 1631) ²
X	Pesticides/PCB (EPA Method 608)
X	BOD ₅ , Dissolved Oxygen, Hardness (as CaCO ₃), Ammonia (as N), Total Kjeldahl Nitrogen (TKN, as N), Total Phosphorus, Total Dissolved Solids (TDS), Temperature, pH, and Priority Pollutant Metals. ²

- Conventional parameters which shall be sampled include: BOD₅, COD, Dissolved Oxygen, TSS, TDS, Settleable Solids, Oil & Grease, Total Organic Nitrogen, Ammonia (as N), Nitrate (as N), Nitrite (as N), Total Kjeldahl Nitrogen (TKN, as N), Total Phosphorus, Flow Rate, Temperature, pH, Total Residual Chlorine (if applicable), Fecal Coliform, Total Coliform, E. coli, and Enterococci.
- Mercury analysis shall be performed using EPA Method 1631. Other metals shall be analyzed using EPA Method 200.7. Analysis shall be for the "Total" form of metals.
- The ambient receiving water sampling location shall be as close to the outfall(s) as is reasonable while also being outside of the direct influence of the discharge(s), i.e. upstream or, for ponded waters, outside the mixing zone. The selected location shall be indicated on the submitted application. Ambient samples shall be collected in accordance with applicable sampling protocols and be representative of the ambient conditions in the receiving water.

- SUMMARY & SAMPLING OF STORMWATER DISCHARGES (if applicable):** Submit a description of any stormwater outfalls that runoff from the site to surface water or to a separate storm sewer system, including latitude and longitude (degrees, minutes, seconds), receiving water, and classification of receiving water. Sampling of each stormwater outfall must be conducted for conventional parameters and any toxic parameters that are exposed to stormwater at the facility. A grab sample of stormwater must be collected during the first 30 minutes of discharge from a storm of at least 0.1 inches of accumulation which has been preceded by at least 72 hours of dry weather.
- DESCRIPTION OF PUMP STATION EMERGENCY OVERFLOWS (if applicable):** Submit a description of any emergency pump station outfalls, including existing CSOs, SSOs, and other known bypasses that discharge to surface water. Include a physical description of the overflow structure, latitude and longitude of the discharge point, receiving water, and classification of receiving water. Also include frequency (occurrences/month) and average duration of discharge (hours). Data from Sewage Pollutant Right-to-Know reporting may be included to satisfy portions of this requirement.



Department of
Environmental
Conservation

NO EXPOSURE CERTIFICATION
for Exclusion from SPDES Stormwater Permitting
The completed No Exposure Certification should be submitted
along with the NY-2A application to SPDESapp@DEC.ny.gov.

I. Owner/Facility Information

Owner/Operator Name:

Mailing Address:

City/State/Zip:

Contact Name:

Phone No.:

Facility Name:

Street Address:

City/State/Zip:

County:

Latitude:

Longitude:

SIC Code:

Was the facility previously covered under a SPDES MSGP permit? ☐ Yes ☐ No

☐ Yes ☐ No

If Yes to either question, enter SPDES ID, NYR

Is there a No Exposure Certification currently on file with the Department? ☐ Yes ☐ No

☐ Yes ☐ No

If Facility was previously covered under the MSGP, the completion of this section will serve as a termination of your MSGP coverage.

II. Exposure Checklist

Are any of the following materials or activities exposed to precipitation, now or in the foreseeable future? (Please check either "Yes" or "No" in the appropriate box.) If you answer "Yes" to any of these questions (1) through (11), you are not eligible for the no exposure exclusion.

YES

NO

1 Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater.

2 Materials or residuals on the ground or in stormwater inlets from spills/leaks

3 Materials or products from past industrial activity

4 Material handling equipment (except adequately maintained vehicles)

5 Materials or products during loading/unloading or transporting activities

6 Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to stormwater does not result in the discharge of pollutants)

7 Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers

8 Materials or products handled/stored on roads or railways owned or maintained by the discharger

9 Waste material (except waste in covered, non-leaking containers [e.g., dumpster])

10 Application or disposal of process wastewater (unless otherwise permitted)

11 Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the storm water outflow

III. Certification

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from SPDES stormwater permitting. I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)). I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the SPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request.

Printed Name:

Title/Position:

Signature:

Date:

Clear Form

(1/1/18)

MIXING ZONE FORM

To be submitted with the NY-2A Application Form

Outfall # 001 Configuration

1.	Choose the diagram that best represents your outfall (Figure 2-4). Refer to that figure to complete numbers 2-9.		Figure:
2.	Discharge outfall height (center to bottom of waterbody)	= H_o	Ft:
3.	Average water depth (average depth across entire cross-section)	= H_A	Ft:
4.	Actual water depth at outfall (depth of water near the outfall)	= H_D	Ft:
5.	Distance to the bank from outfall	= DISTB	Ft:
6.	Outfall/Port diameter (for Figure 3, provide number and diameter of the discharge ports)	= D_o	Ft:
7.	Angle between outfall and waterbody (see Figure 1, below)		Degrees:
8.	Bottom Slope (Figure 4 only)	= θ	Degrees:
9.	Channel width (Figure 4 only)	= B_o	Ft:
10.	Provide a cross-section diagram of the waterbody at the discharge site.		
11.	Provide plan and elevation (section) views of the outfall pipe/diffuser.		
12.	Provide a plan view of the outfall pipe and surrounding areas.		

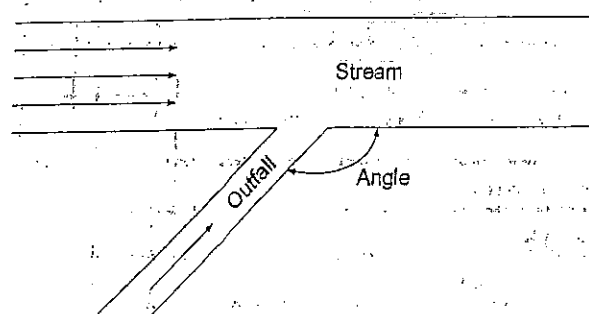


Figure 1: Outfall Angle

Elevation View

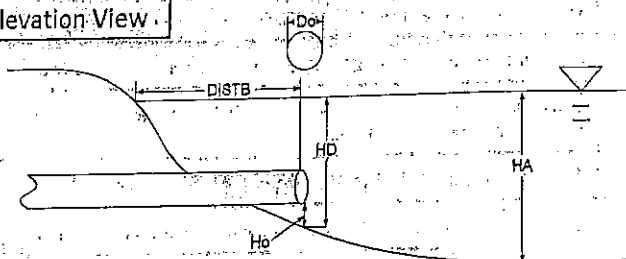


Figure 2: Cross-Section of Single Pipe Outfall

Elevation View

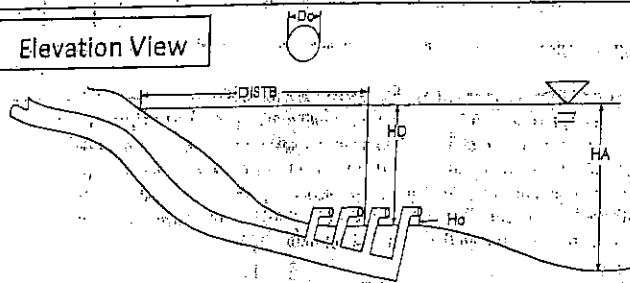


Figure 3: Cross-Section of Multiport Diffuser

Plan View

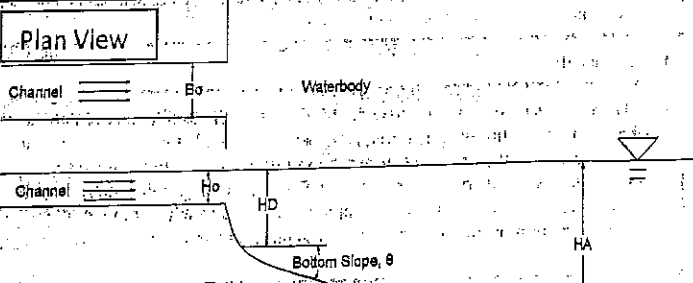


Figure 4: Cross-Section and Plan View of Channel Discharge

DELAWARE ENGINEERING, D.P.C.

ENGINEERING RATE SCHEDULE

YEAR 2019

Billing Category	Rate/Hour
Technical Typist / Administration	\$80 - \$90
Designer, Technician, Construction Inspector	\$100 - \$125
Senior Designer, Technician, Construction Inspector	\$120 - \$140
Senior Construction Manager	\$145 - \$175
Senior Project Manager	\$140 - \$165
GIS Specialist	\$120 - \$140
Engineer / Scientist / Planner I	\$100 - \$140
Engineer / Scientist / Planner II	\$140 - \$155
Engineer / Scientist / Planner III	\$145 - \$160
Senior Engineer / Scientist / Planner I	\$150 - \$165
Senior Engineer / Scientist / Planner II	\$160 - \$175
Senior Engineer / Scientist / Planner III	\$175 - \$195
Principal Engineer / Scientist / Planner	\$190 - \$210

Reimbursable Expenses:

- Mileage @ Federal Rate
- Travel Expenses (Lodging, Meals) @ Federal Per Diem Rate
- Telecommunications @ Cost
- FedEx, UPS, US Postal, Courier @ Cost
- Subcontract Management @ Cost plus 5%
- Other allowable costs @ Cost (Plan Reproductions, Photographs, etc.)
- In-house Printing:

	B&W	Color
A size - 8 1/2" x 11"	\$ 0.0375	\$.375
B size - 11" x 17"	\$ 0.10	\$ 1.00
D size - 24" x 36"	\$ 0.50	\$ 5.00
E size - 36" x 48"	\$ 1.00	\$ 10.00
other sizes	\$ 0.10/s.f.	\$ 2.50/s.f.

1. STANDARD OF CARE. Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CLIENT are specifically objected to.

2. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CLIENT. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

3. SAFETY. ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. DELAYS. If events beyond the control of CLIENT or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, ENGINEER shall be entitled to an equitable adjustment in compensation.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon 30 days written notice to the other party. CLIENT shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including CLIENT'S obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. OPINIONS OF CONSTRUCTION COST. Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CLIENT only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CLIENT.

7. RELATIONSHIP WITH CONTRACTORS. ENGINEER shall serve as CLIENT'S professional representative for the Services, and may make recommendations to CLIENT concerning actions relating to CLIENT'S contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CLIENT'S contractors.

8. CONSTRUCTION REVIEW. For projects involving construction, CLIENT acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CLIENT agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

9. INSURANCE. ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER'S business requirements. Certificates evidencing such coverage will be provided to CLIENT upon request. For projects involving construction, CLIENT agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER'S coverages referenced above shall, in such case, be excess over contractor's primary coverage.

10. HAZARDOUS MATERIAL. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ENGINEER and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. ENGINEER agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CLIENT acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. CLIENT shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize ENGINEER to execute such documents as CLIENT'S agent. CLIENT waives any claim against ENGINEER and agrees to defend, indemnify, and save ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER'S discovery of unanticipated hazardous materials or suspected hazardous materials.

11. INDEMNITIES. To the fullest extent permitted by law, CLIENT and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CLIENT and ENGINEER, they shall be borne by each party in proportion to its negligence.

12. LIMITATIONS OF LIABILITY. No employee or agent of ENGINEER shall have individual liability to CLIENT.

CLIENT agrees that, to the fullest extent permitted by law, ENGINEER'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER'S negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the limits of the ENGINEER'S insurance under this Agreement. If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include as an attachment to this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

13. ACCESS. CLIENT shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

14. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CLIENT for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purposes intended, shall be at the CLIENT'S risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when CLIENT provides deliverables in electronic media to another entity. CLIENT agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. CLIENT shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, ENGINEER shall be advised and the inconsistency shall be corrected at no additional cost to CLIENT. Following the expiration of this 30-day period, CLIENT shall bear all responsibility for the care, custody and control of the electronic media. In addition, CLIENT represents that it shall retain the necessary mechanisms to read the electronic media, which CLIENT acknowledges to be of only limited duration. CLIENT agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CLIENT or others acting through CLIENT.

15. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

16. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

17. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

18. DISPUTE RESOLUTION. Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute can not be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings.

19. NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

20. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CLIENT'S contractors, if any.

21. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

22. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

23. COMPENSATION. ENGINEER will prepare and submit invoices to the CLIENT on a monthly basis. CLIENT shall make payment to the ENGINEER within 30 calendar days of the date of the invoice. Checks shall be forwarded to Delaware Engineering, D.P.C., 28 Madison Avenue Extension, Albany, NY 12203.

24. ADDITIONAL SERVICES. Additional services can be provided if deemed necessary and approved by the CLIENT. Compensation for additional services can be negotiated as needed. Additional work will be approved by the CLIENT prior to the execution of the additional tasks.

Services not indicated or included in the above-listed scope of services or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.

Draft Contract Amendment for Delanson WWTP Preliminary Engineering

This an EXHIBIT, consisting of 2 pages,
To the Agreement between Owner and Engineer for
Professional Services dated 2/28/2019.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 1

The Effective Date of this Amendment is: 2/28/2019.

Background Data

Effective Date of Owner-Engineer Agreement: 2/28/2019

Owner: Town of Duanesburg, NY

Engineer: Delaware Engineering, D.P.C.

Project: Delanson WWTP Long Term Improvements

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ☒ Additional Services to be performed by Engineer
- ☐ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☒ Modifications of payment to Engineer
- ☐ Modifications to time(s) for rendering services
- ☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Amendment will add preliminary engineering, regulatory coordination, special use district proceeding coordination, funding agency coordination services, and corresponding costs to the contract.

Initial Contract	Not to Exceed Cost
Design, Bidding Services, Construction Management, Construction Inspection, Asbuilt Drawing Prep, NYSEFC Coordination	\$250,000
Contract Amendment	Not to Exceed Cost
Preliminary Engineering	\$70,894.70
Total	\$320,894.70

Agreement Summary:

Original agreement amount:	\$ 250,000
Net change for prior amendments:	\$ 0.00
This amendment amount:	\$ 70,894.70
Adjusted Agreement amount:	\$ 320,894.70

Change in time for services (days or date, as applicable): N/A

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Part III.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By:

Print

name: Roger Tidball

Title: Town Supervisor

Date Signed: _____

By:

Print

name: Mary Beth Bianconi

Title: Partner

Date Signed: 6/24/2019

Scope of Services

Preliminary Engineering:

These services are conducted by design/office staff.

1. Assist Town personnel and representatives in coordination with NYSDEC with respect to issuance of an order on consent by the Department to the Town for the required improvements.
2. Review of facility conditions, needs, and history with Town personnel as part of a plant evaluation.
3. Preparation of a preliminary engineering report as required by the consent order to identify needed long-term improvements at the Delanson wastewater treatment plant (WWTP).
4. Prepare NYSEFC CWSRF listing form and assist Town in submitting to NYSEFC.
5. Prepare revised engineering report and submit to NYSEFC to accommodate an amendment to the Order On Consent with the Department and Town
6. Assist Town in conducting 202b proceedings, issuance of a definite Map and Plan for the project
7. Assist Town with SEQR proceedings for the project
8. Assist Town with coordinating with Bond Counsel for bond resolution for the project
9. Prepare a CWSRF and WIIA funding application and submit to NYSEFC on Town's behalf