

PROFESSIONAL SERVICES AGREEMENT

0724-PW05

Town of Myersville
301 Main Street
P.O. Box 295
Myersville, MD 21773

and

ARRO Consulting, Inc.
201 Thomas Johnson Dr, Suite 207
Frederick, MD 21702

July 30, 2024

The purpose of this Agreement is to form the basis for ARRO Consulting, Inc. (ARRO) to provide professional engineering services to the Town of Myersville (Client), for engineering design services at the Ashley Water Treatment Plant related to PFAS treatment upgrades in the Town of Myersville, Frederick County, MD. ARRO will provide the services identified in the Scope of Services below.

SCOPE OF SERVICES

Field Survey Services

1. Perform a field survey for the proposed Ashley PFAS treatment upgrades in addition to perform internal equipment and feature survey. The survey will locate above grade features, topography, and location of existing property lines, Horizontal and Vertical Datum will be established using the Frederick County Geodetic Control NAD83/91 and NAVD88. Recoverable Benchmarks will be established to support future survey efforts and construction.
2. Perform geotechnical survey for building addition.
3. Perform wetlands presence/absence survey.

PFAS Treatment System Design

1. Attend one (1) kick-off meeting with Client to discuss treatment approach.
2. Meet with MDE to discuss permitting requirements.
3. Prepare a basis of design report and review via virtual meeting with Client
4. Prepare plans for upgrades to incorporate treatment of PFAS chemicals at the Ashley Water Treatment Plant. The design shall be in accordance with Maryland Department of the Environment (MDE) Standards related to PFAS removal. Currently, no pilot study is required by MDE. Therefore, the pilot study of the proposed treatment process is excluded.
5. Prepare plans on ARRO's standard 24-inch by 36-inch sheets using AutoCAD in accordance with ARRO's standard CADD protocol. Engineering details will be provided on the drawings if needed, in ARRO standard (CSI) format.

A tentative drawing list is as follows:

- a) Title Sheet, 1 sheet
- b) Treatment and Building Upgrades (Maximum H=1":30' / V=1":3'), 8 sheets
- c) Construction Details and Certifications, 4 sheets
- d) Sediment and Erosion Control Plan, Details, and Notes, 5 sheets

6. Provide plans, in electronic PDF format to the Client at the 30% completion stage for review and comments.
7. Submit plans for approval to Frederick County and Frederick County Soil Conservation District.
8. Prepare contract documents and supplement specifications (in addition to those included on the plans) and contract documents in ARRO's standard Construction Specifications Institute (CSI) format for one (1) general construction contract supplemental provisions, technical specifications, bid forms, and related bid documents.
9. Prepare and issue engineer's opinion of probable construction cost.
10. Provide plans, bid documents, supplemental specifications, and engineer's opinion of probable construction cost in electronic PDF format to the Client at the 50% completion stage for review and comments.
11. Respond to/incorporate 50% completion comments and provide plans, bid documents, supplemental specifications, and engineer's opinion of probable construction cost in electronic PDF format to the Client at the 90% completion stage for review and comments.
12. Respond to/incorporate 90% completion comments and provide plans, bid documents, supplemental specifications, and engineer's opinion of probable construction cost in electronic PDF format to the Client at the 100% completion stage for bidding.
13. Submit to the following agencies and include at a minimum the number of noted copies:
 - a. Presentation to Town Planning Board (one (1) public meeting and five (5) paper sets of submission) up to a maximum of two (2) presentations.
 - b. Frederick County Soil Conservation District – Erosion and Sediment Control Permit (one (1) paper set per submission) up to a maximum of two (2) submissions.
 - c. Frederick County DPW & ECS – Utility & Grading Permit (electronic submission) up to a maximum of two (2) submissions.
 - d. MDE permitting application (electronic submission) up to a maximum of two (2) submissions.
 - e. Notice of Intent (NOI) for Maryland Department of Environment (MDE).

SPECIFIC SERVICES EXCLUDED

The following services are specifically excluded:

1. Services resulting from significant changes to the general Scope of Services beyond the reasonable control of ARRO. Such revisions include, but are not limited to, changes in size, complexity, scheduling, or character of engineering design and bidding services required to complete project.
2. Paper copies of deliverables to Client.
3. It is understood that MDE currently does not have design standards or pilot testing standards. Any revisions that need to occur due to MDE newly adopted standards shall be considered outside the scope of this Agreement.
4. Payment of any fees for permits, advertising, and/or review by outside agencies.

5. Bidding services.
6. Construction management and/or Resident Project Representative services.
7. Preparation of deeds or descriptions, title searches, chain of custody searches other than that described herein.
8. Obtaining right-of-entry for purposes of field surveys, engineering inspections or observations.
9. Forest conservation resource ordinance compliance and archeological investigations.

SCHEDULE

ARRO will begin the project from the date of the execution of this agreement by the Client, considered the Notice to Proceed (NTP), and will complete the initial permit submissions by fourth quarter 2024.

CLIENT'S RESPONSIBILITIES

1. Designate a person to act as its representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Client's policies and decisions pertaining thereto within a reasonable time so as not to delay the services of ARRO.
2. Arrange for access to and make all provisions for ARRO to enter upon public and private property as required for ARRO to perform its services.
3. Obtain approvals and permits from and pay fees of all governmental authorities having jurisdiction over the project, and such approvals and consents from others as may be necessary for completion of the project.
4. Assist ARRO by placing at its disposal all available information pertinent to the project including previous reports and any other data relative to the work covered herein.
5. Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by ARRO, obtain advice of an attorney, insurance counselor, and other consultants as Client deems appropriate for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ARRO.
6. Provide such accounting, legal, and insurance counseling services as may be required by Client for the project or as ARRO may reasonably request with regard to legal, accounting, and insurance issues pertaining to the project including any that may be raised by a third party.
7. Give prompt written notice to ARRO whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of ARRO's services or becomes aware of any unsatisfactory performance by ARRO.

COMPENSATION

In consideration of the services performed by ARRO in accordance with this Agreement, the Client shall pay ARRO on a time and expense basis.

These services shall be provided for a total not-to-exceed fee of One Hundred Sixty-Four Thousand, Five Hundred Three Dollars (\$164,503.00). In the event that such services are altered by a modification of this Agreement, the parties hereto, shall, at the time of such modification, also agree to an equitable adjustment in the not-to-exceed fee stated above.

Invoices shall be rendered and shall be paid within thirty (30) days of the date of the invoice.

THE TERMS OF THIS AGREEMENT SHALL REMAIN OPEN FOR ACCEPTANCE FOR A PERIOD OF SIXTY (60) DAYS FROM THE ABOVE DATE, AFTER WHICH TIME ARRO RESERVES THE RIGHT TO REVIEW, REVISE, OR WITHDRAW THIS AGREEMENT.

THE ATTACHED STANDARD TERMS AND CONDITIONS ARE INCORPORATED INTO AND ARE A PART OF THIS AGREEMENT.

Town of Myersville

ARRO Consulting, Inc.

BY: _____

BY: _____



Printed Name: _____

Nate J. Merkel, GISP

TITLE: _____

TITLE: _____

Vice President

DATE: _____

DATE: _____

July 30, 2024

Client's Designated Representative: _____

**ARRO HOLDINGS, LLC; THE ARRO GROUP & SUBSIDIARIES,
ARRO CONSULTING, INC., CKS ENGINEERS, INC., CASTLE VALLEY CONSULTANTS, INC.
STANDARD TERMS AND CONDITIONS**

1. OPINION OF PROBABLE COSTS

Opinions of probable construction and related costs, financing and acquisition of land and rights-of-way prepared by ARRO represent its judgment as a design professional and are supplied for the general guidance of the Client. Since ARRO has no control over cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, over costs of financing, acquisition of land or rights-of-way or over competitive bidding, market or negotiating conditions, ARRO does not guarantee that any such opinions will not vary from actual costs or contractors' bids to the Client.

2. INSTRUMENTS OF SERVICE

All reports, plans, specifications, drawings, field data, notes, formulae, calculations, codes, computer programs and any other documents used in the preparation of the work hereunder or delivered to the Client hereunder, including electronic or digitized versions thereof, are instruments of service of ARRO and shall remain the property of ARRO. Client has the right to use the work delivered hereunder for an indefinite period of time for the purposes outlined in this Agreement. However, the work furnished by ARRO hereunder, whether in document form or electronic or digitized versions thereof, are not to be reused by the Client or any other person or entity for extensions of the project for which they were prepared or on any other project. Any reuse of the documents or their electronic or digitized versions without specific written verification or adaptation by ARRO will be at the Client's sole risk and without liability to ARRO, and Client shall hold ARRO harmless from any claims or damages resulting from such reuse, including claims of infringement of proprietary information.

3. CHANGED CONDITIONS

ARRO has used its professional judgment in establishing the scope of services and fee for this project, given the information provided by the Client or known to ARRO about the project's nature and risks and current laws, codes, regulations, standards and permit conditions in effect thirty (30) days prior to the date of this proposal/Agreement. Occurrences or discoveries that were not originally contemplated by or known to ARRO shall constitute changed conditions and shall require an equitable adjustment in scope, schedule and/or fee under this Agreement. If ARRO should request an adjustment to this Agreement, ARRO shall identify the changed conditions and the Client shall promptly and in good faith enter into a renegotiation of this Agreement. If the Client refuses to renegotiate, ARRO may terminate this Agreement.

4. ADDITIONAL WORK

The Client or ARRO may, from time to time, during the course of the work request changes or modifications in the "Scope of Services" to be performed hereunder. Such changes and/or modifications, including any increase or decrease in the amount of ARRO's compensation, which are mutually agreed upon between the Client and ARRO, shall be incorporated in written amendments to this Agreement. In the event the Client desires additional work performed, which is not covered by the proposal and/or Agreement, the parties shall execute an amendment to this Agreement, and ARRO shall be paid for the additional work in accordance with the terms and conditions for extra work as set forth in the Agreement.

5. DELAYS

In the event of delays through no fault of ARRO, the Client shall pay all costs which have been reasonably incurred by ARRO in suspending the services including all costs incurred in reactivating the services. This is in addition to compensation for services performed and costs incurred prior to suspension.

6. WARRANTY AND REMEDY

ARRO warrants that it shall exert the degree of care and skill in the performance of its services normally exercised by similar professionals under similar circumstances. This warranty is in lieu of and excludes all other warranties whether express or implied, by operation of law or otherwise, including any warranty of fitness for particular purpose.

ARRO's liability to the Client for losses, injuries, damages or expenses arising from ARRO's services under this Agreement and which are covered by ARRO's liability insurances shall be limited to the then remaining limits of ARRO's applicable liability insurance coverage(s). For any other losses, injuries, damages or expenses arising from ARRO's services, Client agrees that ARRO's total aggregate liability therefore shall not exceed the amount of ARRO's service revenue under this Agreement.

In addition, the Client agrees to extend any and all liability limitations and indemnifications provided by the Client to ARRO to those individuals and entities ARRO retains for performance of the services under this Agreement, including ARRO's subconsultants and their assigns.

For purposes of this Agreement the term "liable" and "liability" shall mean liability of any kind that may be found to rest upon ARRO, whether arising from the negligence of ARRO, its subcontractors, agents or employees, breach of warranty, breach of contract, strict or absolute liability and/or any other cause.

7. CONSEQUENTIAL DAMAGES

Neither ARRO nor Client shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by ARRO or the Client, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

8. TERMS OF PAYMENT

In the event that payment is not made within thirty (30) days from date of billing, interest will be charged at the rate of one percent (1%) per month, or the maximum amount permitted by law.

9. PATENTS

ARRO will not conduct patent searches in the performances of its services and assumes no responsibility or liability for any patent or copyright infringement arising therefrom. Nothing contained herein shall be construed as a warranty or representation that anything made, used or sold arising out of the services provided for the project will be free from infringement of patents.

10. SUSPENSION OF SERVICES

If payment of ARRO's invoices is not maintained as per the Terms of Payment set forth herein, ARRO may by seven (7) days written notice to the Client suspend further services without liability until the Client has paid in full all amounts due ARRO on account of services rendered and expenses incurred, including interest on past due invoices. Suspension exceeding ninety (90) days shall, at ARRO's option, make this Agreement subject to renegotiation or termination. Any suspension shall extend the time schedule for performance in a manner that is satisfactory to ARRO.

11. TERMINATION

This Agreement for ARRO's services may be terminated by either party upon thirty (30) days prior written notice to the other party. In the event of termination, ARRO shall be compensated for services performed and expenses incurred up to the date of termination, plus reasonable actual costs incurred by ARRO as a result of a termination by the Client.

12. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties and their respective successors and assigns. ARRO may employ such independent consultants, associates and subcontractors as it may deem appropriate. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

13. SEVERABILITY AND REFORMATION

Any provision or part thereof of this Agreement held to be void or unenforceable under any law or order of court shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Client and ARRO. In addition, the parties agree that this Agreement shall be reformed to replace such stricken provision(s) or part(s) thereof with a valid and enforceable provision(s) which comes as close as possible to expressing the intention of the stricken provision(s).

14. EMPLOYEE LIABILITY

The Client acknowledges that ARRO is a corporation and agrees that any claim made by the Client arising out of any act or omission of any director, officer or employee of ARRO in the execution or performance of this Agreement, shall be made against ARRO and not against such director, officer or employee.

15. FORCE MAJEURE

Client and ARRO agree that there shall be no liability on the part of either party for any failure or delay in the performance of any obligations hereunder resulting from any cause beyond their reasonable control, including, but not limited to: acts of God; acts or omissions of civil or military authority; acts or omissions of contractors or suppliers; fires; floods; epidemics; quarantine restrictions; severe weather; strikes; embargoes; wars; political strife; riots; delays in transportation; compliance with any regulations or directives of any national, state, local, or municipal governments or any department thereof; fuel, power, materials or labor shortages.

16. ENTIRE AGREEMENT

This Agreement, upon its acceptance by the Client, shall constitute the entire and integrated understanding between the parties and supersedes all prior and contemporaneous negotiations and agreements, whether oral or written, with respect to the subject matter herein. This Agreement may be amended only by a written instrument signed by both parties.

17. ASBESTOS OR HAZARDOUS OR TOXIC MATERIALS

ARRO's scope of services does not include any services related to asbestos or hazardous or toxic materials. ARRO shall have no responsibility under this Agreement to determine the existence, location, quantity, type or composition of any hazardous or toxic materials that may exist at the site. In the event ARRO or any other party encounters asbestos or hazardous or toxic materials at the site, or should it become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of ARRO's services, ARRO may, at its option and without liability for consequential or other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the site is in full compliance with applicable laws and regulations.

18. PHASE I & PHASE II ENVIRONMENTAL SERVICES

In consideration of the substantial risks to ARRO in performing Phase I and Phase II environmental assessment services, the Client agrees, to the maximum extent permitted by law, to indemnify and hold harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising out of or resulting from the performance of services under this Agreement or related in any manner whatsoever to the existence, identification, release or disposal of hazardous or toxic substances, except those damages, liabilities or costs arising directly from the sole negligence or willful misconduct of ARRO.

a. REGULATED CONTAMINANTS

The Phase II environmental assessment is being conducted solely to permit ARRO to render a professional opinion on the likelihood of regulated contaminants being present on, in, or beneath the site identified in the Agreement at the time the services are rendered. Client acknowledges and understands that the findings derived from a Phase II environmental assessment are limited and that ARRO cannot know or state as an absolute fact that the site is unaffected by reportable quantities of regulated contaminants. Furthermore, even if ARRO believes, in its professional opinion, that reportable quantities of regulated contaminants are not present at the site, Client still bears the risk that such contaminants may be present or may migrate to the site after the study is completed. Client's acceptance of this Agreement shall evidence that Client understands the risks associated with the Phase II environmental assessment and, in consideration of ARRO agreeing to provide these services, Client agrees, to the maximum extent permitted by law, to waive any claim against ARRO and agrees to defend, indemnify, and hold ARRO harmless from any damage, claim, liability, or cost, including reasonable attorneys' fees and costs of defense, for injury or loss which may arise out of or result from any alleged contamination or existence of hazardous material discovered at the site or performance of services under this Agreement or related in any manner whatsoever to the existence, identification, release or disposal of hazardous or toxic substances, except those damages, liabilities or costs arising directly from the sole negligence or willful misconduct of ARRO.

b. SAMPLING BYPRODUCTS

All substances on, in, or beneath the Client's site identified in the Agreement, or obtained from the site as samples or as byproducts of the sampling process are, and shall remain, the Client's property. Any samples or byproducts of the sampling process that are, or are assumed to be regulated contaminants, or in ARRO's opinion, may be affected by a regulated contaminant, will be packaged in accordance with applicable law and these materials will be promptly turned over to the Client and the Client will be responsible for legal disposal of them. ARRO shall not have any responsibility under this Agreement to arrange for disposal, or dispose, of materials that are, or are suspected to be, affected by regulated contaminants. Client shall sign all manifests for the disposal of regulated contaminants or suspected regulated contaminants. ARRO will not, under any circumstances, be considered a generator, transporter, or disposer of the materials affected by regulated contaminants. Because involvement with the Client's contaminated samples can expose ARRO to considerable risks, Client agrees, to the maximum extent permitted by law, to waive any claim against ARRO and agrees to defend, indemnify, and hold ARRO harmless from any damage, claim, liability, or cost, including reasonable attorneys' fees and costs of defense, for injury or loss which may arise out of or result from ARRO containing, labeling, transporting, testing, temporarily storing, and other handling of the Client's contaminated samples or performance of services under this Agreement or related in any manner whatsoever to the existence, identification, release or disposal of hazardous or toxic substances, except those damages, liabilities or costs arising directly from the sole negligence or willful misconduct of ARRO.

c. CROSS CONTAMINATION

Sampling may result in unavoidable cross-contamination of subsurface areas, such as when a probe or boring penetrates through a contaminated area into an aquifer, underground stream, or other hydrous body not previously contaminated. Client acknowledges and understands that ARRO cannot, despite exercising due care, completely eliminate this risk. Because sampling is an essential element of the Phase II environmental services covered by this Agreement and can expose ARRO to considerable risks, Client agrees, to the maximum extent permitted by law, to waive any claim against ARRO and agrees to defend, indemnify, and hold ARRO harmless from any damage, claim, liability, or cost, including reasonable attorneys' fees and costs of defense, for injury or loss which may arise out of or result from any cross-contamination allegedly caused by sampling or performance of services under this Agreement or related in any manner whatsoever to the existence, identification, release, or disposal of hazardous or toxic substances, except those damages, liabilities or costs arising directly from the sole negligence or willful misconduct of ARRO.

19. THIRD PARTY BENEFICIARY

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or ARRO. ARRO's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against ARRO because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

20. GOVERNING LAW

The laws of the Commonwealth of Pennsylvania shall govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the Courts of Common Pleas of Pennsylvania having jurisdiction.