

**PROFESSIONAL SERVICES AGREEMENT**

**Town of Amsterdam Comprehensive Plan Update, Zoning Law Update, and Subdivision Regulations Update**

This Agreement is by and between

**Town of Amsterdam, New York (“CLIENT”)**  
**283 Manny’s Corners Road**  
**Amsterdam, NY 12010**

and,

**Delaware Engineering, D.P.C. (“ENGINEER”)**  
**28 Madison Avenue Extension**  
**Albany, New York 12203**

Who agree as follows:

The CLIENT hereby engages the ENGINEER to perform the services described in Part I ("Services") and the ENGINEER agrees to perform the Services for the compensation set forth in Part II. Work shall be conducted pursuant to the Standard Terms and Conditions provided in Part III. The ENGINEER shall be authorized to commence the Services upon execution of this Agreement. The CLIENT and the ENGINEER agree that this signature page, together with Parts I-III and any attachments referred to therein, constitute the entire agreement between them relating to continuing Project assignments (Agreement).

APPROVED FOR CLIENT

APPROVED FOR ENGINEER

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Mary Beth Bianconi

Title: \_\_\_\_\_

Title: \_\_\_\_\_ Partner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# PART I ENGINEER'S RESPONSIBILITIES

## Project Understanding

CLIENT wishes to update its exiting Comprehensive Plan, which was last revised in 2001, and is seeking support, guidance and assistance from ENGINEER. In addition, and recognizing the interrelationship between the Comprehensive Plan and the Town's Zoning Law, CLIENT also desires ENGINEER's assistance in carrying out an update to the Town's Zoning Law, the most recent comprehensive update to which occurred in 2009. As well, in 2022, residents of the Village of St. Fort Johnson voted to dissolve the Village government, making the former Village now part of the Town. CLIENT views updating its land use planning and regulation framework as an opportunity to set a vision for the future and to update and develop tools needed to achieve that vision.

Accordingly, two distinct but related tasks are provided for under this agreement: Task 1 involves the Comprehensive Plan Update; Task 2, updates to the Town's zoning law and subdivision regulations. CLIENT and ENGINEER agree that each Task will result in discrete but interdependent products, and CLIENT desires to leverage efficiencies, including in the areas of data collection, data analysis, and project management, to be gained by undertaking this two-phase project. Therefore, CLIENT and ENGINEER agree that execution of this Agreement constitutes authorization to proceed on Task 1 and, future, that work on Task 2 must be proceeded by a Notice to Proceed issued by CLIENT to ENGINEER.

### Task 1: Comprehensive Plan Update

CLIENT intends the updated Comprehensive Plan ("Plan Update") to act as a guide for future development, a framework for updating public policies and land use regulations, and a plan for future capital improvements and investments in public facilities and infrastructure. ENGINEER shall utilize professional planners, GIS specialists, environmental scientists, and engineers in conducting the following tasks:

#### **1. GIS Mapping, Data Compilation, and Existing Conditions Documentation**

Delaware Engineering will review existing documents and compile needed data to form a basis on which to enhance the Comprehensive Plan. This includes the investigation of development patterns throughout the Town with one or more visits as well as data gathering in the Town Hall records. In this effort, Delaware Engineering will leverage its considerable knowledge of private development, public infrastructure projects, and other community activities in the Town since 2001. Delaware Engineering will provide GIS mapping of existing conditions, as well as updated demographic, natural resources, and economic data relevant to the plan. The update will include an evaluation of the goals and strategies contained in the prior comprehensive plan to determine if they reflect current realities.

#### **2. Comprehensive Plan Committee Meetings**

Delaware Engineering will organize and facilitate monthly meetings of a Comprehensive Plan Committee (CPC), and guide the Town through the planning process. Each month would cover a different topic, and would involve a facilitated discussion to identify current issues and opportunities, and to develop a series of goals and objectives related to the topic at hand (using the current comp plan as a starting point). These meetings would also serve as a forum for stakeholder discussion, such as with members of the land development community, business community, regional stakeholders, subject-matter experts, etc. A written summary will be provided following each meeting for later use in drafting the plan. Delaware Engineering anticipates that the Town Board will convene a committee to prepare the Plan to be forwarded to the Town Board for adoption.

### **3. Public Participation**

Delaware Engineering will develop, launch and tabulate the results of an on-line survey to help guide the comprehensive planning process. The Town will be provided with the raw data, as well as a summary of survey responses in graphic form using charts and infographics. Delaware Engineering will develop and maintain a project website. Delaware Engineering will also organize, publicize and facilitate at least four (4) public meetings: a visioning and goal setting workshop or similar event to be held early in the process and a second public meeting or open house, later in the process, to help confirm/elicit strategies to achieve the vision. The format/structure of these two meetings would be determined in consultation with the CPC. Two additional public meetings are anticipated to present the draft plan to the CPC and Town Board and to serve as the required public hearings. This task includes support for conduct of the required public hearing, including preparation of presentation materials and attendance at the hearing, at the Town Board level prior to adoption of the final Plan.

### **4. Technical Investigation Item: Route 30 Corridor**

In order to address the unique opportunities and challenges presented by the Town's most heavily traveled and developed commercial corridor, Route 30, Delaware Engineering will carry out additional data collection, facilitate a regional stakeholder discussion (e.g., including NYSDOT, CDTA, Montgomery County, etc.), and prepare a technical memorandum addressing the future of Route 30 from a corridor perspective. The intent of this task is to focus additional effort to analyze existing conditions and future opportunities with respect to land use, housing, transportation, and infrastructure in an integrated way. It is envisioned that findings of this technical memo will be incorporated into the plan and that the document itself become an appendix of the plan.

### **5. Draft and Final Plan Preparation**

Delaware Engineering will prepare and deliver a full draft of the updated comprehensive plan for initial review by the comprehensive review committee, and subsequent review by the Town Board and Planning Board. At a minimum, the plan will cover the following topic areas and include an analysis of existing conditions and identification of town-wide issues and opportunities within each topic: Population and Housing; Economic Development; Transportation and Utilities; Community Facilities and Services; Open Space and Natural Resources; and Planning and Future Land Use. The final list of topics to be covered in the Plan Update will be developed with the CPC.

In preparing the draft plan and recommendations, Delaware Engineering will utilize GIS analysis tools, as appropriate, to conduct sensitivity analysis of recommendations with respect to land use to inform the Committee's deliberations. The draft plan will include a separate "Implementation Plan" with clearly articulated goals and objectives to guide future growth and development in the Town, as well as specific action items to be implemented in the next 3 to 5 years.

After initial review by the Committee, Town Board and Planning Board, the Draft Plan will be presented to the public and referred to County Planning (i.e., in accordance with NYS Town Law Section 239-m) for review and feedback. Delaware Engineering will then revise the Plan for final submission to the Town Board, incorporating feedback and comments from the public, County Planning, Town Board, Village Board, Planning Board, etc.

### **7. SEQR Compliance and Plan Adoption**

Delaware Engineering will compile all necessary State Environmental Quality Review (SEQR) materials for the Town Board to make a determination whether the adoption of the Plan Update will have any significant adverse environmental impact. It is anticipated that a Negative Declaration will be issued since updates to

Comprehensive Plans generally have positive impacts on the environment. In the event a Positive Declaration is issued and preparation of a Generic Environmental Impact Statement is required, an amendment to this scope of services would be provided to the Town Board to incorporate the actions and costs of additional environmental review. Finally, Delaware Engineering will provide all necessary materials for the Town Board to consider adoption of the Town of Amsterdam Comprehensive Plan. This includes providing final copies of the Plan Update in native and PDF electronic formats, as determined in consultation with the Town, hard copies sufficient for use by Town officials, and all GIS data.

## **Task 2: Zoning Law and Subdivision Regulations Update**

Using the recommendations and direction outlined in the Plan Update, ENGINEER will assist the Town in performing a comprehensive update of the Zoning Law, adopted in August 2009 and having had minor updates adopted since. ENGINEER will also provide assistance in updating the Town's Subdivision Regulations, adopted in October 1964. CLIENT and ENGINEER agree that initiation of this task should begin as early as practicable to take advantage of schedule and other efficiencies relating to work on Task 1. ENGINEER shall utilize professional planners and GIS specialists in conducting the following tasks:

### **1. Project Management and Zoning Update Committee Support**

Delaware Engineering will work with the Town to establish a Zoning Update Committee (ZUC) to guide the development of the updated Zoning Law. This includes support for ZUC meetings throughout this Task, at a frequency to be determined in consultation with the ZUC and the Town. (Bi-monthly meetings to give sufficient time for development and review of materials are anticipated.) Delaware Engineering will prepare agendas and meeting notes.

### **2. Community Engagement**

Delaware Engineering will carry out community engagement in coordination with the Town and ZUC. Delaware Engineering anticipates that, in addition to ZUC committee meetings, stakeholder meetings and at least one public hearing prior to consideration of adoption by the Town Board will be conducted. Delaware Engineering will provide support for two stakeholder meetings, which includes coordination with various stakeholder groups, such as residents, the land development community, and business community, and providing meeting materials and documentation. Stakeholder meetings may be implemented as public meetings. Delaware Engineering will create and maintain a project website for this Task. This task includes support for conduct of the required public hearing, including preparation of presentation materials and attendance at the hearing, at the Town Board level prior to adoption of the final zoning and subdivision regulations local laws.

### **3. Zoning Audit**

Delaware Engineering will carry out a comprehensive review the Town's existing Zoning Law. The product of this exercise will be a tool, such as a matrix or a report, that will serve to guide the ZUC during the update process. The audit will focus on, e.g., definitions, area/bulk standards, performance/use-specific standards, development standards, administrative sections (e.g., enforcement, site plan review procedures, etc.), PUDs, internal/external inconsistencies, zoning map, etc. It will also look at the structure of the Zoning Law and make recommendations as to usability of the Law itself. Delaware Engineering will conduct a review of recent area and use variance petitions to the ZBA. Delaware Engineering will conduct a similar audit of the Town's Subdivision Regulations. As part of this task, a GIS-based sensitivity analysis may be conducted to help the Town and ZUC visualize

### **4. Draft Zoning Text, Zoning Map, and Subdivision Regulations**

Delaware Engineering will develop a draft of the updated Zoning Law (including a GIS-based zoning map)

and Subdivision Regulations, each in a format that can be adopted as a local law by the Town Board. Delaware Engineering expects that a process of review will be required, and that several drafts of each item will be needed before a final draft can be presented to the ZUC, referred to the Town Board, and considered for adoption by the Town Board. This also includes review with County Planning (i.e., in accordance with NYS Town Law Section 239-m).

#### **5. SEOR and Adoption Support**

Delaware Engineering will compile all necessary State Environmental Quality Review (SEQR) materials for the Town Board to make a determination of significance on whether the adoption of the Zoning Law and Subdivision Regulations will have any significant adverse environmental impact. It is anticipated that a Negative Declaration will be issued since updates to Comprehensive Plans generally have positive impacts on the environment. In the event a Positive Declaration is issued and preparation of a Generic Environmental Impact Statement is required, an amendment to this scope of services would be provided to the Town Board to incorporate the actions and costs of additional environmental review. The Zoning Law will need to be referred to County Planning (i.e., in accordance with NYS Town Law Section 239-m) for review and feedback, which Delaware Engineering will support. Delaware Engineering will also provide all necessary materials for the Town Board to consider adoption of the updated Zoning Law and Subdivision Regulations.

**PART II  
COMPENSATION, BILLING AND SCHEDULE**

Delaware Engineering will conduct the Scope of Services identified as Task 1 in Part I, above, for a fee not to exceed \$80,000 to be invoiced on a monthly, percent-complete basis.

<b>TASK 1 PROPOSED TIMELINE</b>		
<b>Subtask</b>	<b>Duration</b>	<b>Anticipated Start and End Dates</b>
Kick-Off Meeting	1 day	June 2025
GIS Mapping & Data Compilation	3 months	May 2025 – August 2025
Community Survey	6 months	August 2025 – January 2026
Public Meeting/Open House	1 day	August 2025
Steering Committee Meetings	Monthly x 9 months for 1 year	June 2025 – June 2026
Goals and Strategies Public Meeting	1 day	February 2026
Preparation of Draft Plan	3 months	March 2026 – June 2026
Public Hearing	1 day	July 2026
SEQR Determination	1 month	July 2026 – August 2026
Final Plan Adoption	1 month	August 2026 - September 2026

Upon issuance of a notice to proceed, Delaware Engineering will conduct the Scope of Services identified as Task 2 in Part I, above, for a fee not to exceed \$55,000 to be invoiced on a monthly, percent-complete basis.

<b>TASK 2 PROPOSED TIMELINE</b>		
<b>Subtask</b>	<b>Duration</b>	<b>Anticipated Start and End Dates</b>
Kick-Off Meeting	1 day	May 2026
Zoning and Subdivision Regulations Audits	3 months	May 2026 – August 2026
Zoning Update Committee Meetings	Bi-Monthly x 8 months	May 2026 – January 2027
Stakeholder Meetings	1 month	September 2026
Draft Zoning and Subdivision Regulations	3 months	January 2027
Public Hearing	1 day	February 2027
SEQR Determination	1 month	March 2027
Final Zoning and Subdivision Laws Adoption	1 month	March 2027

**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 10 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. In the event of termination, ENGINEER shall return all of the CLIENT'S property, including all work product, plans, specifications, drawings, surveys and test results. The ENGINEER shall reasonably assist with respect to transition of the matter, including any and all necessary communications with any municipality."

**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. While CLIENT acknowledges that the project cost provided is an estimate, ENGINEER shall take all reasonable steps to ensure that the CLIENT is at all times apprised of any costs in excess of the estimate provided prior to such costs being incurred.

**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. Engineer to provide proof of insurance naming Client as additional insured prior to commencement of work.

**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, ENGINEER shall indemnify and save harmless CLIENT from and against loss, liability, and damages sustained by CLIENT, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of ENGINEER, its agents or employees.

To the fullest extent permitted by law, CLIENT shall defend, indemnify, and save harmless ENGINEER from and against loss, liability, and damages sustained by ENGINEER, its agents, employees, and representatives by reason of claims for injury or death to persons, damages to tangible property, to the extent caused directly by any of the following: (a) any substance, condition, element, or material or any combination of the foregoing (I) produced, emitted or released from the Project or tested by ENGINEER under this Agreement, or (b) operation or management of the Project. CLIENT also agrees to require its construction contractor, if any, to include ENGINEER as an indemnitee under any indemnification obligation to CLIENT.

**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 insurance under this Agreement. If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include in Part III of 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 purpose 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.

**18. DISPUTE RESOLUTION.** Parties shall attempt to settle disputes arising under this agreement by discussion between the party's 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. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

**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.** ENGINEER agrees to maintain all information regarding the CLIENT and the project in the strictest confidence. With respect to any matters that are required to be disclosed to a municipality or governing authority, ENGINEER shall obtain the prior written consent of the CLIENT with respect to any information anticipated to be disclosed. ENGINEER agrees and acknowledges that all intellectual property associated with the CLIENT, the project, and any work performed by ENGINEER in relation to the CLIENT and/or the project is the exclusive property of the CLIENT and ENGINEER agrees and acknowledges that it has no license or permission to use the same in any manner without the express prior written consent of the CLIENT