CITY OF BEACON

PROFESSIONAL SERVICE AGREEMENT
BRIDGE STREET BRIDGE
FISHKILL CREEK
BEACON, NY

THIS AGREEMENT, bearing the date set forth on the signature page, by and between the City of Beacon, a municipal corporation, at One Municipal Plaza, Suite One, Beacon, New York 12508 (hereinafter referred to as the "City") and Dr. Francis E. Griggs, JR. (hereinafter referred to as the "Consultant") with an office located at 30 Bradt Road, Rexford, NY 12148.

WHEREAS, the City wishes to obtain the professional services of the Consultant; and

WHEREAS, the Consultant has the knowledge, skill and capability to perform such services for the City;

NOW THEREFORE, in consideration of the foregoing, the parties, intending to be legally bound, hereby agree to the following:

1. **SCOPE OF SERVICE**. The City hereby engages the Consultant to perform a visual examination of the existing bridge across Fishkill Creek known as the Bridge Street Bridge (the "Bridge") and prepare a final report setting forth possible rehabilitation options. The Consultant's services shall include:

    a. Preliminary Visual Inspection: The Consultant and his assistant shall travel to the Bridge site to conduct a preliminary visual inspection of the Bridge. The Consultant and his assistant shall take digital photographs of the Bridge and take measurements of all bridge elements. The fees for this component of the services shall not exceed Two Thousand Seven Hundred ($2,700) Dollars. The Consultant's hourly rate is $125/hr and the hourly rate of any of his assistants is $40/hr.

    b. Structural Design: Dan Degenaro, P.E., whose hourly rate is $120/hr, shall prepare measured sketches and a structural design using pedestrian loading. The fees for this component of the services shall not exceed Two Thousand ($2,000) Dollars.

    c. Review Structural Reports: The Consultant shall review all available information and structural reports concerning the Bridge Street Bridge. The fees for this component of the services shall not exceed Five Hundred ($500) Dollars.

    d. Final Report: The Consultant shall prepare a report describing the existing condition of the Bridge and propose a plan to rehabilitate it. The final report shall set forth possible rehabilitation measures and a preliminary cost estimate for the recommended rehabilitation measures. The fees for this component for the services shall not exceed

Four Thousand ($4,000) Dollars. The Consultant acknowledges and agrees that his final report shall be submitted to the City of Beacon on or before July 1, 2018.

e. Presentation: The Consultant shall present a report to the appropriate City Board or to the City Council. The fees of this component of the services shall not exceed One Thousand Seventy ($1,070) Dollars. This Agreement includes one such presentation.

2. **COMPENSATION**. As full and complete consideration for the services so rendered, the City shall pay a total sum not to exceed Nine Thousand Two Hundred Seventy ($9,270) Dollars, which sum includes all costs and expenses incurred by the Consultant and any assistant or consultant in performing the services, unless otherwise adjusted by an amendment to this Agreement.

   Payment for the Consultant's services shall not be made to the Consultant until after the Consultant presents his final report to the appropriate City Board or to the City Council. Thereafter, payment of the above consideration shall be made to the Consultant following submission of invoices, in a form satisfactory to the City, setting forth dates, times and types of services rendered and fees payable.

3. **INSURANCE**. The Consultant shall, at its sole cost and expense, maintain the insurance coverage described in Schedule A, attached hereto, on its own behalf, and shall furnish to the City upon or prior to execution of this Agreement, certificate of insurance evidencing same and reflecting the effective date of such coverage.

4. **INDEPENDENT CONTRACTOR STATUS**. The Consultant and all employees, assistants, consultants and agents thereof shall be independent contractors to the City of Beacon and shall not claim or receive any benefit or privilege conferred to the City's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement or any other employment benefit. The City shall not be responsible for the Consultant's compliance with any local, state or federal law, regulation or requirement and shall not withhold any taxes, including payroll or income taxes, for the Consultant or any employee, assistant, consultant or agent thereof.

5. **DEFENSE AND INDEMNIFICATION**. The Consultant agrees to the fullest extent permitted by law to defend, indemnify and hold the City, its Administrator, officers, officials, and employees harmless from any and all losses, claims, liens, demands and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the City on behalf of any party, in connection with or arising directly or indirectly from the services provided pursuant to this Agreement and/or a breach of this Agreement by Consultant his employees, consultants or assistants.

6. **TERM**. This Agreement shall commence on the date set forth herein and shall continue in effect, through and including August 1, 2018, unless earlier terminated as provided herein, or unless extended by mutual written agreement signed by both parties.

7. **TERMINATION**. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. Upon termination, the Consultant shall cooperate with the City in transferring any files whether in paper, digital or any other format. The Consultant shall

be paid on an hourly basis (Consultant at $125/hr, Dan Degenaro at $120/hr, Assistants at $40/hr), for all work performed in accordance with this Agreement through the date of termination provided such compensation shall not exceed the total sum due under this Agreement ($9,270). Consultant shall not be entitled to any additional payments, whether on account of lost profits or otherwise.

8. **RIGHTS IN WORK PRODUCT**.

   a. Material or work produced under this Agreement by the Consultant shall be considered "work for hire" and owned exclusively by the City. The Consultant shall not claim or assert any interest, proprietary or otherwise, in any materials or work required to be produced or delivered under this Agreement. The Consultant assigns all rights, title, and interest to such materials and work to the City. The Consultant will cooperate and take all necessary action to facilitate such assignment to the City.

   b. Consultant warrants that any material produced pursuant to this Agreement shall be original except for such portion from copyrighted works that: (i) may be included with the copyright owner's permission; (ii) contain no libelous or unlawful statements or materials; and (iii) will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others.

9. **QUALIFICATION OF CONSULTANT**. Consultant specifically represents and covenants that he and his employees, consultants and assistants have and shall possess the licenses, experience, knowledge and skills necessary to qualify the Consultant, his consultants and assistants to perform the services described in Paragraph 1. The Consultant accepts the relationship of trust and confidence established between the City and the Consultant by this Agreement. The Consultant r represents that he is qualified and properly staffed to provide the services required of the Consultant under this Agreement, in a timely manner. The Consultant agrees to furnish his services in a manner consistent with the industry standard of care and to cooperate with the City and its representatives in performing his services and in furthering the interests of the City.

10. **COMPLIANCE**. The Consultant, his employees, consultants and assistants shall comply with all laws, rules and regulations applicable to the work and/or services to be performed hereunder.

11. **NON-ASSIGNMENT**. The Consultant may not assign, transfer or convey any of its respective rights or obligations under this Agreement or subcontract any portion of the services set forth herein, without prior written consent of the City, which consent may be withheld for any reason whatsoever or for no reason.

12. **NOTICE**. A bill, statement, notice or communication required to be given to the City pursuant to this Agreement shall be made in writing and addressed as follows:

    Anthony Ruggiero, City Administrator
    City of Beacon
    One Municipal Plaza
    Beacon, New York 12508

If such bill, statement, notice or communication is faxed or emailed, it shall be effective the next business day, if no notice of an error in transmission is received by the sender. If such bill, statement, notice or communication is personally served, it shall be effective immediately. If such bill, statement, notice or communication is given by an overnight carrier, the same shall be effective when received, but in any event, it shall be effective no later than two (2) business days after deposit with the overnight carrier. If such bill, statement, notice or communication is given by mail, the same shall be effective when received, but in any event, it shall be effective no later than five (5) days after deposit in the United State mail.

13. **NON-WAIVER**. No failure by the City to insist upon the strict performance of any term, covenant, agreement or provision of this Agreement or to exercise any right or remedy upon a breach thereof, and no acceptance by the City of any services during the continuance of any breach, shall constitute a waiver of any breach or of any term, covenant, agreement or provision.

14. **MODIFICATION OR AMENDMENT.** No amendment, change or modification of this Agreement shall be valid unless in writing, signed by both parties hereto.

15. **ENTIRE UNDERSTANDING**. This Agreement constitutes the entire understanding and agreement between the parties and any and all prior agreements, commitments, understandings and representations are merged herein and are of no further force and effect.

16. **GOVERNING LAW**. This Agreement shall be governed by the laws of the State of New York. Any litigation between the parties shall be venued in an appropriate court located in Dutchess County, New York.

17. **CONSTRUCTION**. This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.

18. **SEVERABILITY**. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby but shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this

_____ day of _____, 2018.

CONSULTANT

Dr. Francis E. Griggs, Jr.

CITY OF BEACON

Anthony Ruggierio

SCHEDULE A

The Consultant shall, at its sole cost and expense, maintain the following insurance coverage on its own behalf, and shall furnish to the City upon or prior to execution of this Agreement, one or more certificates of insurance evidencing same and reflecting the effective date of such coverage:

Worker's Compensation and Employers Liability Policy, covering operations in New York State. Alternatively, if Consultant maintains a solo-practice with no employees, provide an exemption from the Worker's Compensation Board.

Commercial General Liability Policy, with limits of no less than $1,000,000 Each Occurrence/$2,000,000 Aggregate limits for Bodily Injury and Property Damage.

Umbrella Liability, with limits of no less than $1,000,000, including coverage for General, Automobile and Professional Liability.

Professional Liability, with limits no less than $1,000,000.

Certificates shall provide that thirty (30) days written notice, by registered mail with return receipt requested, prior to cancellation or expiration be given to the City of Beacon. Policies that lapse and/or expire during term of work shall be recertified and received by the City of Beacon no less than thirty (30) days prior to expiration or cancellation.

Consultant shall furnish to City of Beacon Certificates of Insurance as evidence of coverage prior to commencement of work and naming the City of Beacon, its officers, officials and employees as an Additional Insured on the Commercial General Liability and Umbrella Policies.

The cost of furnishing the above insurance shall be borne by the Consultant.

All carriers listed in the certificates of insurance shall be A.M. Best Rated A VII or better and be licensed in the State of New York.