

MASTER AGREEMENT FOR CONSULTING SERVICES

This Agreement (the "Agreement") is made this _____ day of _____, 20__ by and between the County of Oneida, a municipal corporation with offices at 800 Park Avenue, Utica, NY 13501 ("Owner") and _____, a _____ with principal officers at _____ ("Engineer").

RECITALS

WHEREAS, the Owner is the County of Oneida; and

WHEREAS, the Engineer is a licensed engineering consulting firm in the business of providing professional Engineering, scientific, and consulting services to public and private clients; and

WHEREAS, the Owner desires to retain the Engineer as an independent contractor and the Engineer desires to be so retained by the Owner to render services in accordance with the following terms and conditions;

NOW, THEREFORE, the Owner and the Engineer agree as follows.

TERMS AND CONDITIONS

Article 1 – Scope of Services

The Owner hereby retains the Engineer to perform services (the "Work") as requested by the Owner. The Project ("Project") is defined as those various services that will be performed on an as-needed basis when authorized by the Owner via written Task Order and are intended to support the Owner in undertaking emergency and small projects related to Oneida County-owned wastewater infrastructure. The Scope of Services and associated costs will be determined on a task order basis. Each issued Task Order will become incorporated into this Agreement. This Agreement shall continue until the Work is completed but is not expected to run later than December 31, 2023. _____.

Upon mutual agreement between the Owner and Engineer, this Agreement may be renewed for up to four (4) additional one-year terms.

Oneida County will negotiate the scope of services and the cost basis with the selected Consultant prior to the authorization of a contract or task order.

Article 2 – Compensation

The Owner shall pay the Engineer compensation for Work rendered as set forth in each Task Order issued to the Engineer under this Agreement. The Owner shall pay the Engineer at the rate set forth below:

[insert rate/billing schedule]

Article 3 – Payment

The Engineer shall submit payment invoices to the Owner during the accounting period following the period in which the costs are incurred or entered into the Engineer's accounts. Such payment shall be made by the Owner after receipt of vouchers presented by the Engineer on forms prescribed by the Owner and after audit and approval by the Owner's Department of Audit and Control and the Owner's Comptroller. Payment by the Owner shall be made within 30 days following receipt of the invoice, wherever possible.

Article 4 – Termination/Suspension

Either party shall have the right to terminate the Engineer's services or abandon or suspend any of the Work under this Agreement at any time, for any reason, so long as either party provides the other with a minimum of 30 days' prior written notice. In the event of termination, abandonment, or postponement by the Owner at any time prior to completion of the Work, the amount due and payable under Article 2 at the time shall represent the complete and final payment to the Engineer under this Agreement and the Owner shall have no further obligation to the Engineer.

Article 5 – Additional Services

If the Owner desires additional services by the Engineer, an amended Task Order may be prepared and signed by the Owner and the Engineer.

Article 6 – Assignment

The Engineer shall not assign any interest in this Agreement without written consent by the Owner.

Article 7 – Owner to Secure Approvals

The Owner shall secure any approvals from affected landowners or other parties which may be required for the Engineer to perform the Work under this Agreement, unless otherwise specified in the assigned Task Orders

Article 8 – Owner to Provide Information

The Owner, in a timely manner, shall provide the Engineer with information in the Owner's possession which is necessary for the Engineer to perform the Work.

Article 9 – Ownership of Work Products

All notes, memoranda, drawings, designs, specifications, reports and copies thereof prepared by the Engineer shall become the Owner's property when the Work is complete, and the Engineer has received final payment for the services under this Agreement. All documents, including Drawings and Specifications prepared by the Engineer pursuant to this Agreement, are instruments of service with respect to the Project. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project.

Any reuse without written approval or adaptation by the Engineer for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Engineer; and the Owner shall indemnify, defend, and hold harmless the Engineer from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation requested by the Owner will entitle the Engineer to further compensation at rates to be agreed upon by the Owner and the Engineer.

Article 10 – Patents

Without the Owner's prior written approval, neither the Engineer nor any of its subcontractors will use or designate for use in connection with the Work, any patented or patent-pending article, method or device which involves or requires payment of any license, fee or royalty in addition to the purchase price, and the Engineer agrees to indemnify the Owner against any cost or expense incurred in the connection with the payment for such license, fee, or royalty in the event the Owner's prior approval is not obtained. The provisions of this article shall survive the performance of this Agreement.

Article 11 – Confidentiality

To provide the services under this Agreement, it may be necessary for the Owner to disclose certain confidential information to the Engineer and for the Engineer to disclose certain confidential information to the Owner. All confidential information shall be designated in writing as "confidential" by clear marking. In addition, any and all oral communications between the Owner and the Engineer in furtherance of this Agreement shall be presumed to be confidential information.

Each party agrees not to disclose any confidential information to any third party unless:

- (a) disclosure is required by law and, if so, advance written notice of disclosure is given;
- (b) the information was actually and demonstrably known to the disclosing party before it was obtained from or developed in cooperation with the other party;
- (c) the information is or becomes available to the public in general through a widely disseminated publication where such publication does not arise directly or indirectly from the breach of any obligation of secrecy to either of the parties to this Agreement;
- (d) the information is obtained or acquired by the disclosing party in good faith from a third party who acquired it in good faith and was not under any direct or indirect obligation of secrecy to the other party or;
- (e) a written release is obtained by the Engineer from the Owner.

The provisions of this article shall survive the performance of this Agreement. Furthermore, the provisions of this Article apply to any confidential information exchange between the parties prior to and including the date of this Agreement.

Article 12 – Insurance

Engineer shall carry and maintain no less than the following insurance, evidence of which will be provided to the Owner, prior to the start of any Work:

- (a) Worker's Compensation and disability benefits covering the Engineer's employees or agents as required by law;
- (b) Commercial General and Employer's Liability, including premises and operations, products and completed operations, contractual liability, broad form property damage, independent contractors and personal injury written on an occurrence basis - \$1,000,000.00 each occurrence, \$3,000,000.00 aggregate. Owner, and anyone required by Owner, shall be included as additional insureds on the policy. Coverage for these additional insureds shall be on a primary and non-contributing basis;
- (c) Automobile Liability - \$ 1,000,000.00 combined single limit bodily injury and property damage covering motor vehicles owned, non-owned, hired or otherwise used by, or furnished for, or used in connection with, the services under this agreement. Owner, and anyone required by Owner, shall be included as additional insureds on the auto policy. Coverage for these additional insureds shall be on a primary and non-contributing basis;
- (d) Professional Liability and errors and omissions coverage - \$1,000,000.00 for all professional services to be provided by the Engineer under this Agreement;
- (e) Waiver of Subrogation: the Engineer waives all rights against the Owner and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Workers Compensation, Employers Liability or Professional Liability insurance maintained per requirements stated above;

Certificates of Insurance: Prior to the start of any of the Work, the Engineer shall provide certificates of insurance to the Owner. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of the Engineer's insurance policies. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

Article 13 – Indemnification

The Engineer shall indemnify, hold harmless and defend the Owner, its officers, agents, employees, and servants, from and against all claims, damages, losses, judgments, and expenses, including but not limited to reasonable attorney's fees, arising from, or related to the Engineer's services under this Agreement to the extent caused by any negligent or culpable act or omission of the Engineer or the Engineer's officers, agents, employees, servants, or subcontractor(s). In the event the claims, damages, losses, judgments, and expenses, including but not limited to reasonable attorney's fees, are caused by the Owner's negligence, the Owner shall indemnify and hold harmless the Engineer. In the event the claims, damages, losses, judgments, and expenses, including but not limited to reasonable attorney's fees, are the result of the negligence of both the Owner and the Engineer, or its subcontractor(s), the Owner and the Engineer shall be liable to the extent or degree of their respective negligence, as determined by mutual agreement of the Owner and the Engineer or as determined by adjudication of comparative negligence.

Article 14 – Status

In the performance of this Agreement, the Engineer shall be an independent contractor. Officers, agents, directors and employees of the Engineer, or any of the Engineer's subcontractor(s), in accordance with the status of the Engineer as an independent contractor, covenant and agree that they will conduct themselves consistent with such status; that they will neither hold themselves out as, nor claim to be, officers or employees of the Owner by reason thereof, and they will not by reason thereof, make any claim, demand or application to, or for, any right or privilege applicable to an officer or employee of the Owner, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

Article 15 – Non-discrimination

The Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, sexual preference, or national origin and it agrees to comply with all laws or ordinances relating thereto, and all orders, rules and regulations issued pursuant thereto including, without limitation, Executive Order 11246 (as amended by Order 11375). Engineer further agrees to comply with Executive orders 11701 (Employment of Veterans) and 11758 (Employment of Handicapped). If any of the aforementioned laws, ordinances, orders, rules, or regulations require any particular provision, representation, or agreement to be set forth in this Agreement, the same is hereby incorporated by reference as if it were fully written.

Article 16 – Notices

The Engineer agrees to accept service of process in any action by the Owner, or the Owner against the Engineer, arising out of this Agreement, by certified mail to the addresses designated below.

All notices required or permitted under this Agreement shall be in writing and shall be served either personally or by certified mail, return receipt requested, addressed to the party’s address as set forth in this Agreement, or to such other address as party may be later designate by written notice. All notices shall be effective upon receipt.

Owner: Oneida County
Oneida County Department of Law
Oneida County Office Building
800 Park Avenue
Utica, NY 13501

With a copy to:

Oneida County Department of Water Quality and Water Pollution Control
Attn: Commissioner
51 Leland Avenue
PO Box 442
Utica, NY 13503-0442

Engineer:

Article 17 – Force Majeure

Any delay in or failure of performance of, either party to this Agreement shall not constitute a default nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences beyond the control of the party affected, including but not limited to, acts of God or the public enemy, expropriation or confiscation of facilities or compliance with any order or request of governmental authority, affecting to a degree not presently existing, the supply, availability , or use of personnel or equipment, acts of war, public disorder, insurrection, rebellion, sabotage, flood, riot, strikes or any causes a party unable , with reasonable diligence, to prevent. A party who is prevented from performing for any reason shall immediately notify the other party in writing of the reason for the non-performance and the anticipated extent of any delay.

Article 18 – Entire Agreement

The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Addendum I (Standard Oneida County Conditions). No wavier, alterations or modifications of and provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

Article 19 – Binding Effect

This Agreement shall inure to the benefit of and be binding upon the party’s successors or assigns.

Article 20- Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, exclusive of its choice of laws, rules and principles. The parties agree that any legal action shall be filed in a court of competent jurisdiction in Oneida County, New York.

Article 21 – Advice of Counsel

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this Agreement.

Article 22 – Waiver

The failure of either party to insist upon strict performance of any term of this Agreement shall not be deemed a waiver of any rights or remedies that such party may have for any subsequent breach, default, or nonperformance and either party’s rights and remedies shall not be affected by any previous waiver or course of dealing.

The foregoing is established by the following signatures.

OWNER

ENGINEER

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Attachments: Addendum I (Standard Oneida County Conditions)

