

INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This Agreement made this ___ day of May, 2020, by and between 4A Wastewater Operations, having offices at 38 Mathews Street, Harrison, New York 10528 (hereinafter “Contractor”) and the City of Beacon, having offices at One Municipal Plaza, beacon, New York 12508 (hereinafter “City”).

WITNESSETH:

1. Services. The City hereby engages Contractor to perform the following services:

The service will generally include overseeing the operation and maintenance of the Wastewater Treatment Plant utilizing existing staff, preparation of general plant optimization recommendations, and providing other Wastewater Treatment Plant assistance and recommendations as needed. Minimum 20 hours per week of on-site supervision that time will include Supervision of Staff, SPDES compliance, review process and make recommendations, monthly reports to the City Administrator, meet with City Engineer to discuss ongoing project and make recommendations for future projects, meet with regulatory agencies i.e. NYSDEC, USEPA when necessary.

Contractor represents that it has the requisite knowledge and skills to provide all such services and has the requisite 4A Operator license and/or certification to provide such services and will maintain such license, certification and qualification throughout the term of this Agreement. Contractor recognizes that this Agreement does not grant Contractor the exclusive right to perform the above-described services for the City and that the City may enter into agreements with other contractors for the same or similar services.

2. Compensation. The City shall pay Contractor as follows:

Sixty Five (\$65.00) Dollars per hour.

- a. Payment pursuant to this Agreement is dependent upon the satisfactory completion of the services by Contractor, faithful compliance with the Agreement by Contractor, acceptance of Contractor's services by the City and the submission of an invoice(s) following completion of the services in whole or at agreed upon intervals to the City.
- b. The above compensation is inclusive of any and all of the expenses incurred by Contractor in performing the above-described services for the City, including, without limitation, for such things as travel, copying expenses, postage, facsimile and telephone charges, mobile/cellular telephone service charges. The above compensation also is inclusive of any fees, fines, licenses, certificates, certifications, bonds or taxes required of or imposed against Contractor or its officers, employees or agents in connection with the performance of the above-described services.

3. Duration. This Agreement shall be in full force and effect commencing on May 5, 2020 and terminating on May 4, 2021, unless terminated sooner in accordance with the provisions of this Agreement.

4. Independent Contractor Status. Contractor shall not be considered as having employee status and enters into this Agreement and will remain throughout the term hereof an independent contractor of the City. Contractor and Contractor's officers, employees and/or agents, if any, are retained by the City only for the purposes and to the extent set forth in this Agreement. Contractor acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of the City. Contractor shall not hold itself out as anything other than an independent contractor of the City.

- a. Contractor, its officers, employees and/or agents shall not be entitled to any rights or benefits afforded to the City's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement or any other employment benefit. Contractor is responsible for providing, at Contractor's sole expense, disability, unemployment, workers'

compensation and all other forms of insurance, training, permits and licenses for Contractor and for Contractor's officers, employees and/or agents, if any. Contractor, its officers, employees and/or agents shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement.

- b. Contractor, its officers, employees and/or agents, shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between the City and any of its employees.
- c. The City shall not be responsible to pay Contractor for any expenses paid or incurred for the services provided under this Agreement unless specifically provided for elsewhere in this Agreement or agreed to in a writing signed by both parties.
- d. As an independent contractor, Contractor retains full responsibility for complying with income reporting and other requirements by federal, state and/or local tax laws. Because Contractor is an independent contractor, the City will not make deductions from payments to Contractor for income taxes, social security, unemployment insurance, workers' compensation or other employment/payroll taxes. The City will issue a 1099 form at the end of each taxable period for monies paid to Contractor. Contractor shall be responsible for paying, when due, all income or other taxes incurred as a result of the compensation paid by the City to Contractor for services provided under this Agreement. Contractor will indemnify the City for any tax liability, interest, and/or penalties imposed upon the City by any taxing authority based upon the City's failure to withhold any amount from the payments for tax purposes.
- e. The City shall make no payments and shall not report Contractor's services to any State retirement system for purposes of pension credit.

5. Principal Contact Person. The principal contact person of the City shall be the City Administrator and all correspondence, reports and inquiries regarding this Agreement shall be directed to that person.

6. Invoices. Contractor will submit an invoice for services rendered on a bi-weekly basis, and payment to Contractor shall be made within thirty (30) days following the date the City receives the invoice. The invoice shall include the dates on which services were rendered, who rendered the services, a description of services rendered on each date and the fees payable.

The City shall give Contractor notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of the City' rights or prevent the City from availing itself of any remedy or course of action it has at law or in equity at a later date.

7. Right to Examine Records. The City shall have the right to examine any and all accounting records of Contractor, its officers, employees and/or agents as they pertain to the services provided pursuant to this Agreement.

8. Confidential Information. Contractor understands that in performing this Agreement it may have access to or acquire confidential information in possession of the City or others, including, but not limited to names, facts or information about individuals, businesses and families. Contractor may also have access to or acquire confidential information, potentially including but not limited to personnel information and records; confidential business information; trade secrets; information regarding sensitive, confidential or internal City matters and other protected information or data. It is agreed that the definition of confidential information includes all documentary, electronic or oral information made known to Contractor through any activity related to this Agreement, except information available to Contractor from third parties on an unrestricted basis. Contractor agrees it, its officers, employees and/or agents shall keep all confidential information in a secure place and further agrees not to publish, communicate, divulge, use, or disclose, for their own benefit or for the benefit of another, either during or after the performance of this Agreement, the content of such confidential information, directly or indirectly to any third-party, except as explicitly provided for in this Agreement or as explicitly authorized in writing by the Principal Contact Person of the City.

Contractor understands that any unauthorized disclosure, publication and/or communication of such confidential information shall be considered a breach of this Agreement. Contractor agrees that if it receives a request for disclosure of confidential information obtained from the City pursuant to a statute, subpoena or court order, it shall notify the City prior to disclosing the City's confidential information, unless providing notice of the disclosure is expressly prohibited by the statute, subpoena or court order. The parties further agree that the terms and conditions set forth in this Confidentiality section shall survive the expiration and/or termination of this Agreement.

9. Termination.

- a. This Agreement may be terminated by either party with or without cause upon thirty (30) days prior written notice to the other party. Upon such termination, Contractor shall be paid for all work performed in accordance with this Agreement through the date of termination. Contractor shall not be entitled to any additional payments, whether on account of lost profits or otherwise. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder.
- b. This Agreement may be terminated for cause by the City in the event of a breach of this Agreement by Contractor, upon five (5) days' written notice from the City to Contractor, unless a shorter period of time is specifically provided for elsewhere in this Agreement. In the event of such termination, the City shall only be responsible to pay for services actually rendered by Contractor in full compliance with this Agreement prior to the termination on a pro rata basis and may deduct from such sums owed any costs incurred by the City as a result of Contractor's breach.

10. Insurance. Contractor shall maintain, in full force and effect, during all times this Agreement is in force, the types and amounts of insurance specified in the attached Insurance Requirements Schedule. All such insurance shall be underwritten by an insurer authorized and/or licensed to issue the applicable types of insurance in New York State and shall reflect that the City, its City Council, employees, officers and agents are additional insureds thereunder and that the City shall receive no less than 15 days written notice in the event of the termination

thereof. Contractor shall provide the City with Certificates of Insurance reflecting the information required in this paragraph and as set forth in attached Insurance Requirements Schedule and evidencing that the City, its City Council, employees, officers and agents have been named as additional insureds. Contractor shall comply with all insurance requirements specified in the attached Insurance Requirements Schedule.

11. Contractor Records. Contractor shall be required to file documents and/or reports in compliance with Speedys.

12. Compliance with Law. Contractor shall comply, at its own cost and expense, with all applicable Federal, State and local statutes, rules, regulations and ordinances.

- a. Contractor shall obtain and maintain any necessary permits, licenses, registration and/or approvals of governmental authorities that are applicable to the services to be provided pursuant to this Agreement.
- b. In addition, Contractor shall comply with any of the City's written safety policies, codes or regulations that are generally applicable to visitors and contractors entering City property.
- c. Contractor shall adhere to all requirements, protocols, policies and regulations of the City applicable to the services to be provided hereunder.
- d. Contractor also acknowledges and agrees that it and its employees may be subject to a criminal history record check. In such event, Contractor agrees to cooperate with the City and to complete any and all necessary forms or procedures to obtain criminal history checks.

13. Indemnification. Contractor agrees that it shall defend, indemnify and hold harmless the City, its employees, officers, agents and City Council for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed claim, liability, action, suit or proceeding of whatever name or nature as the same may relate, in any manner, to the services provided by Contractor and its employees, officers, directors, and agents to the City pursuant to this

Agreement, including but not limited to any act, error or omission, misstatement, misleading statement, neglect or breach of duties by Contractor or any of its officers, directors, agents or employees taken or made with respect to this Agreement. Said indemnification and defense shall apply to any claim, liability, suit, proceeding and action in which the City, its employees, officers, agents and/or City Council may be named as a party, notwithstanding that Contractor may deem said claim, liability, suit, proceeding or action frivolous or without merit.

14. Non-Discrimination Requirements. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor agrees it shall not discriminate against any employee or applicant for employment or individual associated with the City because of race, creed, color, sex, national origin, sexual orientation, gender identity or expression, age, disability, predisposing genetic characteristics, military status, familial status, marital status, status as a victim of domestic violence or any other basis protected by law. The services provided pursuant to this Agreement shall be provided without regard to a student's actual or perceived race, creed, color, weight, gender, sex, sexual orientation, national origin, ethnic group, religion, religious practice, age or disability.

15. Sexual Harassment. Federal and state laws and the policies of the City prohibit sexual harassment of employees. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that create a hostile or offensive working environment for City employees. Contractor shall exercise control over its employees, agents, and consultants so as to prohibit acts of sexual harassment of City employees. In the event the City, in its reasonable judgment, determines that Contractor, its officers, directors, employees, agents and/or consultants have committed an act of sexual

harassment, upon notice from the City, Contractor shall cause such person to be removed from servicing the City and shall take such other action as may be reasonably necessary to cause such sexual harassment to cease.

16. No Assignment. Contractor 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 the prior written consent of the City, which consent may be withheld for any reason whatsoever or for no reason.

17. Cooperation in the Event of Litigation. In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person against the City, Contractor, shall, at its own cost and expense, provide the City with all reasonable information and assistance in the defense or other disposition thereof.

18. Notices. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing and shall be validly given or made to the other party if personally served or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested and addressed to the party, as set forth above. If such notice, demand or other communication is served personally, it shall be effective immediately. If such notice, demand or other 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 States mail addressed to the party to whom such notice, demand or other communication is to be given, at the address set forth above. Either party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

19. No Waiver of Default. 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 such breach, shall constitute a waiver of any such breach or of any such term, covenant, agreement or provision.

20. Entire Understanding. This Agreement constitutes the entire understanding and agreement between the parties and any and all prior agreements, commitments, understandings and representations are superseded and are of no further force and effect. No amendment, change or modification of this Agreement shall be valid unless in writing, signed by both parties hereto.

21. Conflicts of Interest. Contractor hereby warrants that there is no conflict of interest between Contractor's other employment, if any, or other contracts, if any, and the activities to be performed hereunder. Contractor shall advise the City if a conflict of interest arises in the future.

22. Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of New York without regard to conflict of laws principles. The Parties irrevocably agree that any action or proceeding brought to enforce any rights, duties or obligations under this Agreement shall be brought in the Supreme Court of the State of New York in Dutchess County, or in the United States District Court for the Southern District of New York in Westchester County. The Parties irrevocably consent to jurisdiction and venue of any action or proceeding brought to enforce any rights, duties or obligations under this Agreement in the Supreme Court of the State of New York in Dutchess County, or in the United States District Court for the Southern District of New York in Westchester County.

23. 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.

24. Authority to Enter Agreement. The undersigned representative of Contractor hereby represents and warrants that the undersigned is the owner or an officer, director, or agent of Contractor with full legal rights, power and authority to enter into this Agreement on behalf of Contractor and to bind Contractor with respect to the obligations enforceable against Contractor in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

4A WASTEWATER OPERATIONS

CITY OF BEACON

Signature

Signature

Print Name

Print Name

Print title

Print title

Social Security or Federal ID Number

Date

Date