



TOWN OF WEST SENECA

SHAWN P. MARTIN
TOWN ATTORNEY
shawn.martin@twsny.org

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
JOHN M. RUSINSKI

TO: Honorable Town Board Members
FROM: Shawn P. Martin, Town Attorney
DATE: July 18, 2012
RE: Independent Contractor Agreement Buffalo Niagara Riverkeeper

Kindly authorize the Town Supervisor to execute the attached contract. Please note that all fees to be paid to Buffalo Niagara Riverkeeper will be paid from the grant secured by Buffalo Niagara Riverkeeper in a coordinated effort with the Town last year.

JUL 23 2012
5.



INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement"), effective , 20 , (the "Effective Date") is by and between the Town of West Seneca and Buffalo Niagara Riverkeeper ("Contractor").

WITNESSETH:

WHEREAS, the Company desires to engage Contractor to perform advisory services for the Company; and

WHEREAS, Contractor agrees to provide such services upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Services. Company hereby engages Contractor to provide the services described on any Statement of Work ("Statement of Work") entered into and signed by the Company and Contractor. Each Statement of Work entered into and signed by the parties shall be deemed expressly incorporated into and subject to the terms and conditions of this Agreement. See attached Statement of Work.
2. Compensation. Company will compensate Contractor pursuant to the terms of the applicable Statement of Work.
3. Term. This Agreement shall become effective on the Effective Date and shall continue for a term as specified in accordance with the Statement of Work.
4. Warranty. Contractor represents and warrants to Company that Contractor will provide all services under each Statement of Work in a timely and professional manner and in accordance with all federal, state and local laws, rules and regulations applicable to such services.
5. Termination.
 - 5.1. Termination by the Company. Company may terminate any then uncompleted Statement of Work or this Agreement (which will include any then uncompleted Statement of Work), at any time for any reason by providing Contractor with written notice of termination. Company will pay Contractor for services actually performed to the date of termination at the rates set forth in any Statement of Work being terminated, provided that at the time of such termination, Contractor is not in breach of this Agreement or any of the terms of any applicable Statement of Work then in effect.
 - 5.2. Termination by Contractor. Contractor may terminate this Agreement by providing Company with thirty (30) days written notice of termination. Such termination shall be effective on the earlier of the date on which: (i) Company's client accepts completion of each

Statement of Work which was not completed at the time of the notice of termination, or (ii) Company elects to terminate the uncompleted Statement of Work.

6. Non-exclusive License. Company grants to Contractor a limited, non-exclusive license to use certain of the Company's information, documentation and technical data that is provided by Company to Contractor at Company's sole discretion ("Company Materials") in connection with Contractor's services pursuant to an uncompleted Statement of Work. The license granted pursuant to this Section 6 shall be in effect only until the Statement of Work is completed or otherwise terminated prior to completion.

7. Ownership. Contractor agrees that all work, including developments, designs, inventions, improvements, trade secrets, trademarks, copyrightable subject matter or proprietary information which the Contractor makes or conceives (the "Work") pursuant to the Agreement or any Statement of Work shall be considered to be "work made for hire" and shall be owned by the Company. In the event that any such Work, or portion thereof, is not construed to be a "work made for hire," Contractor hereby assigns to the Company all right, title and interest in such Work or portion thereof. Contractor agrees to execute any documents and take such other actions that the Company may consider necessary or desirable to protect, enforce or perfect the Company's rights and interests in the Work.

8. Confidentiality. Contractor acknowledges that during the course of this Agreement, Contractor will be exposed to and have access to Confidential Information of the Company and its clients. Contractor agrees to maintain in confidence and will not, without Company's prior express written consent, disclose to anyone or use in any way, any Confidential Information while this Agreement is in effect and after the Agreement is terminated or expires, except for the limited purpose of performing its obligations under this Agreement. Contractor shall return to Company all Confidential Information and all other property of Company upon the termination or expiration of this Agreement, or at such other time or times as may be required by the Company. For purposes of this Agreement, "Confidential Information" shall include Company Materials, trade secrets, know-how, formulas, patterns, compilations, manuals, programs, devices, methods, techniques, processes, discoveries, inventions, marketing information, business strategies, compensation information and any other information (whether or not in writing) which may be useful or have actual or potential economic value to the Company and which is not generally available to the public.

9. Non-Solicitation. Contractor will not solicit, in any way and for any purpose, any Company client for whom Contractor performs any services pursuant to a Statement of Work for two (2) years following the completion of the applicable Statement of Work without Company's prior written consent. The parties acknowledge and agree that the foregoing restriction shall also apply to any Statement of Work that is terminated prior to completion, regardless of the reason for termination.

10. Injunctive Relief/Survival. Contractor acknowledges and agrees that any breach or threatened breach of Sections 5, 6, 7, 8 and/or 9 of this Agreement by Contractor will result in irreparable harm to the Company for which the Company will have no adequate remedy at law. Contractor therefore consents to the issuance by any court of competent jurisdiction, without the requirement of filing or posting a bond, of an injunction or restraining order in favor of the

Company enjoying any such breach or threatened breach by Contractor of this Agreement or any part thereof, without prejudice to any other rights or remedies to which the Company may be entitled to at law or in equity. The parties agree that Sections 5, 6, 7, 8, 9 and 10 of this Agreement will survive any termination of this Agreement.

11. Indemnification. Contractor shall defend, indemnify and hold harmless Company, its officers, members, managers, employees, agents, successors and assigns from and against any and all claims, suits, costs or expenses, including without limitation reasonable attorney's fees, arising out of or related to the performance of services by Contractor or its agents or employees in connection with this Agreement, including without limitation, the negligence or willful misconduct of Contractor or its employees or agents, provided that this indemnification shall not apply to the extent that claims or damages arise out of the negligent or willful misconduct of Company.

12. Insurance. Contractor is responsible for its own insurance coverage and understands and acknowledges that neither Contractor nor its employees are covered under any of the Company's insurance policies, including without limitation unemployment insurance, workers' compensation, professional liability and/or general liability insurance, and hereby waives coverage thereunder. Contractor shall obtain, at its own expense, comprehensive general liability insurance in the amount set forth on the applicable Statement of Work. Such policy shall name the Company as an additional insured. Contractor agrees to furnish to the Company a certificate evidencing such policy prior to the commencement of any services to be provided under any applicable Statement of Work.

13. Independent Contractor Relationship. Contractor acknowledges and agrees that its relationship to the Company in performing the services required of it under this Agreement or any applicable Statement of Work is that of an independent contractor. Nothing herein shall be construed to be inconsistent with Contractor's status as an independent contractor or as creating an employer/employee relationship, partnership or joint venture between the Company and Contractor. Contractor shall have no authority to act for or on behalf of the Company, or to bind the Company in any manner, without the express written consent of the Company. Contractor acknowledges and agrees that the fees or other amounts the Company pays Contractor under this Agreement shall not be considered salary and neither Contractor nor its employees are entitled to participate in any benefit plans that the Company may provide to its employees, including but not limited to, any health insurance, pension, bonus, profit sharing or similar benefits, nor is Contractor entitled to unemployment insurance or workers' compensation benefits through the Company.

14. Taxes. Contractor shall be responsible for the payment of all payroll taxes or other such, in performing the services hereunder, and hereby agrees to indemnify and hold the Company harmless from and against any and all loss, cost or expense incurred by the Company due to Contractor's failure to withhold any such taxes or to make such contributions in respect of any fee Company pays to Contractor. The Company shall provide Contractor with the appropriate 1099 Forms as required by the Internal Revenue Service, and shall be responsible for complying with any reporting obligation as may be required of it under any applicable federal, state or local laws, rules, regulations or ordinances, but shall have no responsibility for any reporting requirements relating to Contractor's obligations under this Agreement and/or

Contractor's employees.

15. Notices. Any notice required or permitted to be given under this Agreement will be sufficient if in writing and personally delivered or sent by first-class or overnight mail to the address set forth above. Either party may, by notice in writing to the other party, change the address to which notices to that party are to be given.

16. Waiver. The waiver by one party of the breach of any provision of this Agreement by the other party will not operate or be construed as a waiver of any subsequent breach by that party.

17. Amendment; Assignment. No amendment of this Agreement or any Statement of Work will be valid unless it is in writing and duly executed by the parties. This Agreement and any applicable Statement of Work may not be assigned by either party without the prior written consent of the other party.

18. Governing Law. This Agreement will be construed in accordance with and governed by the laws of the State of New York.

19. Severability. The invalidity or unenforceability of any provision in this Agreement will in no way affect the validity or enforceability of any other provision.

20. Entire Agreement; Binding Effect. This Agreement is the entire agreement between the parties and supersedes any and all prior agreements and understandings between the parties. This Agreement will inure to and be binding on the parties, their heirs, representatives, successors and assigns.

21. Headings. The headings used in this Agreement are for convenience of the parties and will not affect the meaning or interpretation of this Agreement.

22. Venue; Attorney's Fees. Any suit or action with respect to this Agreement must be filed in Erie County, New York and the prevailing party will be reimbursed by the non-prevailing party for all attorney's fees, costs and expenses incurred in connection with the suit or action.

23. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

COMPANY:
Town of West Seneca

CONTRACTOR:
Buffalo Niagara Riverkeeper

By: _____

By: Jill J. Gellula
(Title) Executive Director

(Title) _____

STATEMENT OF WORK

Services:

Buffalo Niagara Riverkeeper as Contractor will provide the following services to the Town of West Seneca at the Town-owned portion of the oxbow wetland on Buffalo Creek off Clinton Street near Harlem Road:

Project Advisor:

- Assist the Project Manager with NFWF grant logistics including program scheduling, documentation and reporting.
- Advise/assist the Project Coordinator on conservation activities needed to complete Year 2 of the Oxbow Restoration Plan (see below).

Project Coordinator:

- Complete Year 2 activities as outlined in the 2011 Oxbow Habitat Restoration Plan including:
 - o Work to reduce Japanese Knotweed and Common Reed to <1% of plant composition on Town land
 - o Make progress towards increasing native plant composition to 70%
 - o Monitor and maintain wetland faunal species as compared to baseline.
 - o Support efforts to increase suitable wildlife habitat in adjacent parcels by at least 10% through acquisition and/or partnerships with landowners
- Support development of outreach programs/processes to oxbow neighbors, community residents and Town officials to enhance stream corridor conservation efforts in the Buffalo River Watershed
- Create an infrastructure of trained volunteers, equipment and materials for ongoing stewardship of the oxbow and other natural areas in the Town of West Seneca's Buffalo River tributary corridors.

Term:

The project term is March 15, 2012 – August 14, 2013

Compensation

Project Advisor - 156 hours at \$40./hour: \$6,240.

Project Coordinator - 780 hours at \$25/hour: 19,500.

Total: \$25,740.

50% to be paid upon signing contract;

25% to be paid upon receipt of mid-year report, December 2012;

25% to be paid upon receipt of final report, August 2013.