

AGREEMENT

This AGREEMENT dated as of April 6, 2018 by and between the TOWN OF OWASCO ("Town") a municipality having its principal place of business located at 2 Bristol Avenue, Auburn, New York 13021; the CITY OF AUBURN ("City"), a municipality having its principal place of business located at 24 South Street, Auburn, New York 13021; CAYUGA COUNTY ("County"), a municipality having its principal place of business at 160 Genesee Street, Auburn, New York 13021, and the OWASCO LAKE WATERSHED MANAGEMENT COUNCIL, INC. ("Management Council"); a not-for-profit, 501(c)(3) local development corporation having its principal place of business located at 160 Genesee St, Auburn, New York 13021.

RECITALS

WHEREAS, Owasco Lake is a source of the public water supply for both the City, the Town and many County residents; and

WHEREAS, Section 1100 of the Public Health Law provides that the New York State Department of Health may make rules for the protection from contamination of any public supply of potable water; and

WHEREAS, Title 10 of the New York Codes of Rules and Regulations (NYCRR) Section 104.1 provides that the City and the Town must inspect and report compliance with the regulations to ensure that the waters of Owasco Lake and its tributaries remain free from contamination; and

WHEREAS, the parties to this Agreement have determined that they want to protect and improve the purity of waters in Owasco Lake through an effective Watershed Inspection Program (the "Program"); and

WHEREAS, an earlier agreement was signed on January 1, 2011, by the City, Town, County and Cayuga County Soil and Water Conservation District, which was intended to support the work and purposes of the Program until such time as the Management Council was able to assume full administration of the Program; and

WHEREAS, the Management Council is now able to assume full administration of the Program; and

WHEREAS, this AGREEMENT has an effective date as of January 1, 2018; and

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreements hereinafter set forth, the mutual benefits expected to be derived from the performance thereof and other good and valuable consideration, the parties agree as follows:

A: It is mutually agreed:

1. The Program staff will be “officers or duly appointed representatives” of the City and Town in accordance with Section 104.1 to Part 104 of Subchapter A of Chapter III of Title 10 of the NYCRR. The Program staff will perform their duties pursuant to 10 NYCRR Section 104.1 (e), as amended from time to time. However, notwithstanding the foregoing, the Management Council shall hire and shall be the legal employer of the Program staff employees. The Management Council agrees to provide Workers’ Compensation and Disability Coverage for its Program staff employees. As an employee of the Management Council, these individuals will be entitled to the same fringes and benefits as any other employee of the Management Council.
2. Beginning the calendar year of 2018, expenses of the Program will be set at \$167,000.
3. Any proposed increase by the Management Council of the annual expenses above \$167,000 will require the written approval of the Town and City and shall be annexed hereto as an addendum to this Agreement.
4. Funds obtained from the Town and City as set forth in Section B will only be used to offset the expenses of the Program. Any funds obtained, from whatever source, in a given year in excess of the expenses incurred will be maintained in a separate dedicated interest bearing account to offset future expenses.
5. The parties to this Agreement will strive to maintain open communication, foster a cooperative and coordinated relationship, and preserve the quality of Owasco Lake.
6. The parties to this Agreement will be regularly advised of the Program staff’s activities through the monthly reports disseminated to the City, Town and County and regular reporting to the Management Council’s Watershed Inspection Committee (“WIC”) meetings, during which these activities will be presented, discussed, and reviewed.
7. The WIC will hold meetings with the Program staff to direct and oversee their activities and review their finances, and make monthly reports to the Management Council of the same. The Secretary of the Management Council shall be responsible for organizing and scheduling the meetings of the WIC.
8. That on 12/31/2017, the fund balances, all equipment, computer(s), printer(s), vehicles, office furniture, and other property of the 2011-2017 Program shall transfer “as is” back to the Town and the City for further transfer, thereafter, to the Management Council, in accordance with a memorandum of agreement between to be entered into by the parties separate and apart from this Agreement.

B: The Town and the City agree to fund the Program as follows:

1. For the purpose of funding the Program, as of January 1, 2018, the Town currently adds a fee onto all of their customers' quarterly water bills as follows: \$1.00 for the first 7,500 gallons of water and \$0.10 for every additional 1,000 gallons of water consumed. The Town will transfer all such funds received and raised by said increase to the Management Council within 45 days after the close of each calendar quarter. The City agrees to provide \$150,000 to the Management Council each year. The City will transfer \$37,500 to the Management Council within 45 days after the close of each calendar quarter. For example, for the quarter beginning 1/1/18 and ending 3/31/18, the funds from the Town and the City are to be transferred to the Management Council by May 15, 2018. The Management Council shall deposit and keep the funds in a Separate Interest Bearing Account dedicated to paying the actual expenses for the Program pursuant to this Agreement. Any funds obtained from whatever source, in a given year in excess of the expenses incurred, will be maintained in a separate dedicated interest bearing account to offset future expenses.
2. The Town and the City agree to provide to the parties hereto and on or before April 15 of each year an annual financial statement and annual report of all such funds received and raised as set forth in Paragraph B (1) above.

C: The Management Council agrees to:

1. Be the employer of the Program staff.
2. Be responsible for the hiring, discipline, and review of the Program staff.
3. Be responsible for maintaining a separate accounting for all of the funds, financial record-keeping expenses and shall make written reports regarding these finances at semi-annual meetings of the parties of this Agreement.
4. Ensure that the Program staff performs the duties necessary to satisfy the intent of the Public Health Law and regulations including, but not limited to, 10 NYCRR Section 104.1 and that the Program staff reports all violations to the Town, City, County, Management Council and all appropriate agencies in a timely manner.
5. Ensure that the Program staff will attend the monthly WIC meetings to report the Program staff's activities and status of situations that have been found.
6. Retain all records of the Program staff including, but not limited to, written and electronic records of all finances, work, inspections, activities and reviews.
7. Provide to the parties hereto an annual financial statement and annual report by April 15 of each year. These audits and financial reports will be prepared in accordance with generally accepted accounting principles by a firm of independent accountants of recognized national standards.

8. Comply with all laws, rules and regulations of any governmental authority.
9. Agrees to abide by the requirements of the Occupational Safety and Health Act of 1970 as amended (hereinafter referred to as "the Act"), and all other federal, state, and local laws, rules and regulations or ordinances relating to the Work, including, but not limited to, the maintenance of records required by the Act at the site, immediate compliance with any OSHA officer's request or notice of the violation, and compliance with all standards of the Act nor or in the future.
10. Assume full responsibility for initiating, maintaining and supervising all safety precautions and programs in connection with the work and the work site. Acknowledge and agree that it is fully responsible for the supervision and control of the Work and of its employees, subcontractors, or supplies and the manner in which the Work is performed.

D. The County agrees to:

1. Provide office space for the Program staff. The office space provided by the County shall be of a sufficient level necessary to support their duties and efforts.
2. Take reasonable and necessary actions to coordinate and support the Program staff with all technical and educational resources available through the County Departments on the Cayuga County Water Quality Management Agency.
3. Assist the Program staff in disseminating an annual report.

E. TERM:

1. The Agreement shall begin from January 1, 2018 and continue for a period of not less than two (2) years. After the expiration of two (2) years, any party may terminate this Agreement upon six (6) months written notice to the other parties.
2. If the Agreement is terminated, monies collected by the Management Council that remain after covering all expenses to the date of termination will be returned to the Town and the City in proportion to the Town and City's contributions.

F. INSURANCE:

1. The Management Council shall maintain during the life of this contract the following insurance with the Town, City and County as additional insureds with respect to subparagraphs (a) and (b), covering the premises, equipment, vehicle(s) and operations of the Management Council to be used or available to be used by the Program staff.
 - a. Commercial General Liability - including Products and Completed operations \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 excess liability each occurrence;
 - b. Comprehensive Auto Liability - \$1,000,000 each accident; and
 - c. Workers' Compensation for the Program staff statutory coverage. Statutory Workers' Compensation, Employers' Liability for all employees.

2. The County shall maintain during the life of this contract the following insurance with the City, Town and Management Council as additional insureds covering the premises where the office is located for Program staff:
 - a. Commercial General Liability - including Products and Completed Operations \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 excess liability each occurrence.
3. The policy naming a party as an additional insured shall:
 - a. Be an insurance policy from an A.M. Best rated "secured" New York State licensed insurer.
 - b. Contain a 30-day notice of cancellation.
 - c. State that the organization's coverage shall be primary coverage for the other entity, its Board, employees and volunteers.
 - d. Each party shall be listed as an additional insured by using endorsement CG 2010 10 85 or broader. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.

G. SERVICE OF NOTICE:

1. Notices or communications provided for in this Agreement shall be in writing and shall be delivered to the parties either in person or by United States mail via certified mail return receipt requested addressed to the parties as follows:
2.
 - a. Supervisor, Town of Owasco, 2 Bristol Avenue, Auburn, NY 13021;
 - b. City Manager, City of Auburn, 24 South Street, Auburn, NY 13021;
 - c. Chair, Owasco Lake Watershed Management Council, 8 Dill Street, Auburn, NY 13021; and
 - d. Chairman, Cayuga County Legislature, 160 Genesee Street, Auburn, NYH.

H. INDEMNITY:

1. The Management Council shall be solely responsible for all physical injury, including death, to any persons and for damage to any property of any person resulting from or claimed to result from, relating to or arising out of the work of the Program staff, or any neglect, fault, omission, commission or default of the Program staff and agents, officials or employees of the Management Council or arising out of or as a consequence of this Agreement.
2. The Management Council shall, at its own cost and expense, fully protect, defend, indemnify and save harmless the Town, City and County against all claims, liability, judgments, damages, costs and expenses, including attorney's fees and costs, arising from any and all such claims relating to the work performed by the Program staff or arising out of or as a consequence of this Agreement.

3. The County shall, at its own cost and expense, fully protect, defend, indemnify and save harmless the City, Management Council and Town against all claims, liability, judgments, damages, costs and expenses, including attorney's fees and costs, arising from any and all claims solely relating to the office of the Program staff on County Property.
4. The parties expressly understand and agree that any insurance required by this Agreement and otherwise provided by a party shall in no way limit the responsibility to indemnify and defend as provided herein.

I. GENERAL PROVISIONS:

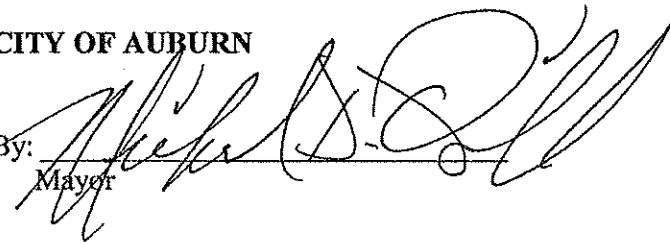
1. Modification or Amendment. No official or agent of any party shall have the power to amend, modify or alter this contract or waive any of its conditions so as to bind any party by making any promise or representation not contained herein.
2. Mutual Cooperation. All parties shall cooperate at all times in the enactment and enforcement of any necessary conservation and environmental, health or other emergency laws, rules and regulations that may be considered necessary to insure the safe supply of potable water to both the Town and City's users.
3. Assignment or Transfer. This Agreement shall not be assigned or transferred by any party without the written consent of all the other parties, except as otherwise provided in this Agreement.
4. Choice of Law. This Agreement shall be construed according to the Laws of the State of New York and any clause or provision deemed by a Court of this State to be unconstitutional or otherwise unenforceable shall be deemed deleted from this Agreement and all other parts of portions of this Agreement shall remain in full force and effect.
5. Complete Understanding. This Agreement supersedes all prior written and oral agreements that may have been entered into between the County the Town, the City and the Management Council regarding the subject matter hereof. This Agreement constitutes the complete understanding of the parties.
6. The terms of this Agreement are binding upon the assigns, successors, heirs and representatives of the parties hereto.

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

TOWN OF OWASCO

By: 
Supervisor

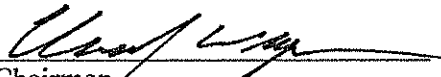
CITY OF AUBURN

By: 
Mayor

CAYUGA COUNTY LEGISLATURE

By: 
Chairman

OWASCO LAKE WATERSHED MANAGEMENT COUNCIL, INC.

By: 
Chairman

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

On this 29th day of March 2018, before me, the undersigned personally appeared Edward Wagner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as **CHAIR OF THE OWASCO LAKE MANAGEMENT COUNCIL, INC.**, and that by his signature on the instrument, the individual or the person on behalf the individual acted executed the instrument.

Michelle Lowe
Notary Public

MICHELLE LOWE
Notary Public, State of New York
No. 01LO6330777
Qualified in Cayuga County
Commission Expires September 21, 2019

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

On this 29th day of March 2018, before me, the undersigned personally appeared Edward Wagner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as **SUPERVISOR OF THE TOWN OF OWASCO**, and that by his signature on the instrument, the individual or the person on behalf the individual acted executed the instrument.

Michelle Lowe
Notary Public

MICHELLE LOWE
Notary Public, State of New York
No. 01LO6330777
Qualified in Cayuga County
Commission Expires September 21, 2019

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

On this 29th day of March 2018, before me, the undersigned personally appeared ~~Edward Wagner~~ Michael Quill, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as **MAYOR OF THE CITY OF AUBURN**, and that by his signature on the instrument, the individual or the person on behalf the individual acted executed the instrument.

Michelle Lowe
Notary Public

MICHELLE LOWE
Notary Public, State of New York
No. 01LO6330777
Qualified in Cayuga County
Commission Expires September 21, 2019

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

On this 10th day of April 2018, before me, the undersigned personally appeared Peter G. Mahunka, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as **CHAIRMAN OF THE CAYUGA COUNTY LEGISLATURE**, and that by his signature on the instrument, the individual or the person on behalf the individual acted executed the instrument.

Frederick R. Westphal
Notary Public

FREDERICK R. WESTPHAL
Notary Public, State of New York
Qualified in Cayuga Co. No. 02WE6221908
My Commission Expires May 10, 2020