

**CONTRACT AGREEMENT**

Project No. 42-1702

This is an Agreement made as of \_\_\_\_\_, 2017 between the Montgomery County Sanitary District #1 (hereinafter called the CLIENT), and JOHN M. McDONALD ENGINEERING (hereinafter called McDonald Engineering).

A. CLIENT and McDonald Engineering, for the mutual consideration hereinafter set forth, agree as follows:

McDonald Engineering will provide engineering services in connection with the WWTP Clarifier Rehabilitation and Leachate Acceptance Modification Project as outlined in a proposal to Robert Bergen, Superintendent, dated January 26, 2017, copy attached.

B. CLIENT agrees to pay John M. McDonald Engineering as compensation for services as follows:

On an hourly basis, for a fee not to exceed \$48,700, unless authorized in writing by the CLIENT. Hourly rates for billing purposes will be as follows:

Principal Engineer	\$175.00	Project Engineer I	\$110.00
Senior Project Engineer II	\$155.00	Design Engineer	\$ 95.00
Project Engineer II	\$130.00	Project Coordinator	\$ 60.00
		Field Representative	\$ 75.00

CLIENT shall reimburse John M. McDonald Engineering for the actual cost of all expenses, authorized by the CLIENT, including but not limited to: consultants, materials testing, bond premiums, title company charges, application fees and permits.

Fees and other charges will be invoiced every 4 weeks. The amount of each invoice shall be due at the time of billing.

C. CLIENT shall furnish the following: N/A

D. This Agreement includes Standard Terms and Conditions shown on the back of this document, and the applicable Standard Terms and Conditions as contained in the Standard Form of Agreement, prepared by the Engineers' Joint Contract Documents Committee, and incorporated herein by this reference.

E. The person signing this Agreement warrants he/she has authority to sign as, or on behalf of, the CLIENT. If such person does not have such authority, it is agreed that he/she will be personally liable for all breaches of this Agreement, and that in any action against them for breach of such warranty, a reasonable attorney's fee shall be included in any judgment rendered.

AGREED TO:

AGREED TO:

MONTGOMERY COUNTY SANITARY  
DISTRICT #1

JOHN M. McDONALD ENGINEERING

\_\_\_\_\_  
(Client's Name)

\_\_\_\_\_  
(Authorized Signature/Date)

BY: \_\_\_\_\_

BY: John M. McDonald, P.E. \_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature/Date)

\_\_\_\_\_  
(Authorized Signature/Date)

Title: Chairman \_\_\_\_\_

Title: Vice President, NY Division \_\_\_\_\_

## STANDARD TERMS AND CONDITIONS OF AGREEMENT

- EXTRA WORK:** Extra work shall include, but not be limited to, additional office or field work caused by policy or procedural changes or governmental agencies, changes in the project, and work necessitated by any of the causes described in Paragraph 5 hereof. All extra work to be authorized by CLIENT in writing prior to commencement by JOHN M. McDONALD ENGINEERING.
- OWNERSHIP OF DOCUMENTS:** All tracings, specifications, computations, survey notes and other original documents as instruments of service are and shall remain the property of JOHN M. McDONALD ENGINEERING unless otherwise provided by law. CLIENT shall not use such items on other projects without JOHN M. McDONALD ENGINEERING's prior written consent. JOHN M. McDONALD ENGINEERING shall not release CLIENT's data without authorization.
- LIMITATIONS OF COST ESTIMATES:** Any estimate of the cost of the project or any part thereof is not to be construed, nor is it intended, as a guarantee of the total cost.
- APPROVAL OF WORK:** The work performed by JOHN M. McDONALD ENGINEERING shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within 30 days of the invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective.
- DELAY:** Any delay, default or termination in or of the performance of any obligation of JOHN M. McDONALD ENGINEERING under this agreement caused directly or indirectly by strikes, accidents, acts of God, shortage or unavailability of labor, materials, power or transportation through normal commercial channels, failure of CLIENT or CLIENT's agents to furnish information or to approve or disapprove JOHN M. McDONALD ENGINEERING's work promptly, late, slow or faulty performance by CLIENT, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of JOHN M. McDONALD ENGINEERING's work, or any other acts of the CLIENT or any other Federal, State or local government agency, or any other cause beyond JOHN M. McDONALD ENGINEERING's reasonable control, shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend the obligations of JOHN M. McDONALD ENGINEERING as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.
- TERMINATION:** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, JOHN M. McDONALD ENGINEERING shall be paid for all services rendered to the date of termination, as well as for all reimbursable expenses and termination expenses. For purposes of this section, the failure of the CLIENT to pay JOHN M. McDONALD ENGINEERING within thirty (30) days of receipt of an invoice shall be considered such a substantial failure. In the event of a substantial failure on the part of the CLIENT, JOHN M. McDONALD ENGINEERING, in addition to the right to terminate set forth in this paragraph, may also elect to suspend work until the default in question has been cured. No delay or omission on the part of JOHN M. McDONALD ENGINEERING in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.
- INDEMNIFICATION:** CLIENT shall indemnify, defend and hold JOHN M. McDONALD ENGINEERING harmless for any and all loss, cost, expense, claim, damage or liability of any nature arising from: (a) soil conditions; (b) changes in plans or specifications made by CLIENT or others; (c) use by CLIENT or others of plans, surveys or drawings unsigned by JOHN M. McDONALD ENGINEERING or for any purpose other than the specific purpose for which they were designed; (d) job site conditions and performance of work on the project by others' (e) inaccuracy of data or information supplied by CLIENT; and (f) work performed on material or data supplied by others, unless said loss was solely caused by JOHN M. McDONALD ENGINEERING's own negligence.
- LITIGATION:** Should litigation be necessary to collect any portion of the amounts payable hereunder, then all costs and expenses of litigation and collection, including without limitation, fees, court costs and attorney's fees (including such costs and fees on appeal), shall be the obligation of the CLIENT.
- REPLACEMENT OF SURVEY STAKES:** JOHN M. McDONALD ENGINEERING, if included in Paragraph A of the Agreement, will provide necessary construction stakes. In instances where it is determined that negligence on the part of the client or others results in the need for restaking, the cost of such restaking will be billed as an extra to the CLIENT on a time basis. It will be the CLIENT's responsibility to provide adequate protection of the stakes against his own negligence or the negligence of those working for or with him and against vandalism by others. If staking is ordered by the CLIENT or others prematurely and construction does not take place, it will also be the CLIENT's responsibility to protect said stakes until such time as construction takes place.
- OBSERVATION AND TESTING OF CONSTRUCTION SAFETY:** The observation and testing of construction is not included herein unless specifically agreed upon in the Scope of Services as set forth in Paragraph A of this Agreement. It should be understood that the presence of JOHN M. McDONALD ENGINEERING's field representative will be for the purpose of providing observation and field testing. Under no circumstances is it JOHN M. McDONALD ENGINEERING's intent to directly control or supervise the physical activities of the contractor's work. JOHN M. McDONALD ENGINEERING will provide the CLIENT with a continuing source of information based upon the field representative's observations of the contractor's work, but does not include any superintending, supervision, or direction of the actual work of the contractor or the contractor's workmen. The contractor should be informed that neither the presence of JOHN M. McDONALD ENGINEERING's field representative nor observation and testing personnel shall excuse the contractor in any way for defects discovered in his work. It is understood that JOHN M. McDONALD ENGINEERING will not be responsible for job or site safety on the project.
- RESTRICTIONS ON USE OF REPORTS:** It should be understood that any reports rendered under this Agreement will be prepared in accordance with the agreed Scope of Services and pertain only to the subject project and are prepared for the exclusive use of the CLIENT. Use of the reports and data contained therein for other purposes is at the CLIENT's sole risk and responsibility.
- LIMITATIONS OF CONSULTANT'S LIABILITY:** The CLIENT agrees that JOHN M. McDONALD ENGINEERING's liability for damages to the CLIENT for any cause whatsoever in connection with this project, and regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the greater of Fifty Thousand Dollars (\$50,000.00), or JOHN M. McDONALD ENGINEERING's, total fee for services rendered on the project.
- CONTROLLING LAWS:** This Agreement is to be governed by the Laws of the State of New York.
- INSURANCE:** JOHN M. McDONALD ENGINEERING shall procure and maintain throughout the period of this Agreement, at JOHN M. McDONALD ENGINEERING's own cost, insurance for protection from claims under worker's compensation, temporary disability and other similar insurance required by applicable State and Federal laws. Certificates for all such policies of insurance shall be provided to the CLIENT upon written request. JOHN M. McDONALD ENGINEERING shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.
- SUCCESSORS AND ASSIGNS:** Neither CLIENT or JOHN M. McDONALD ENGINEERING shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law.
- ARBITRATION:** All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this "Agreement or breach thereof may, at the option of JOHN M. McDONALD ENGINEERING be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any such arbitration shall take place in the City of Schenectady, Schenectady County, New York.
- NOTICES:** All notices called for by this Contract shall be in writing and shall be deemed to have been sufficiently giving or served when presented personally and when deposited in the mail, postage prepaid, certified and return receipt requested, addressed as follows:

JOHN M. McDONALD ENGINEERING  
7 South Church Street  
Schenectady, NY 12305