

**CONTRACT FOR ENGINEERING SERVICES  
BETWEEN  
TOWN OF JOHNSBURG, NEW YORK  
AND  
CEDARWOOD ENGINEERING SERVICES, PLLC**

***THIS AGREEMENT*** made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Town of Johnsburg, New York, located at Johnsburg Town Hall, 219 Main Street, Johnsburg, New York, 12853 (herein referred to as the Town), and Cedarwood Engineering Services, PLLC, having a place of business at 3903 Main Street, Warrensburg, New York 12885 (herein referred to as Cedarwood).

***WHEREAS***, the Town wishes to obtain engineering services of Cedarwood for a period of one (1) year, commencing January 1, 2021, until December 31, 2021, and thereafter on a quarterly basis by mutual agreement of the parties.

***NOW THEREFORE***, it is agreed before the parties that:

1. Cedarwood shall perform professional engineering services for the Town as deemed necessary by the Johnsburg Town Board and/or the any Town official approved to authorize work by the Town Board.
2. Cedarwood shall attend up to one (1) Town Board meeting per month, to be billed according to attached Rate Schedule.
3. It is agreed that during the period of this Contract, Cedarwood shall provide engineering services to the Town related to capital projects and non-capital projects. It is agreed that such services will be provided to the Town at the rates shown in the attached rate schedule or for an agreed upon fee.
4. Should it be necessary to hire subcontractors for services connected with the engineering services provided by Cedarwood, it is agreed that those

subcontractors' fees shall be passed through to the Town with no surcharge or mark-up of any kind to the Town, unless otherwise agreed to with the Town.

5. Services to be provided by Cedarwood shall be approved by the Town prior to performing such services.
6. Parties further agree that should modifications of this Contract be necessary the parties will negotiate in good faith to conform this Contract to the needs of both parties.
7. This Contract shall continue without modifications unless notice is given by the Engineer to the Town by ordinary mail of that party's intention to terminate this Contract within ninety (90) days. The Town may terminate this Contract with two (2) days' notice.
8. Invoices will be submitted to the Town on a monthly basis. Payment shall be made to Cedarwood within 45 calendar days of the date of invoice and forwarded to Cedarwood Engineering Services, PLLC, 464 Main Street, P.O. Box 1360, Oneonta, NY 13820.
9. Attachments
  - 2021 Rate Schedule
  - Standard Terms and Conditions

**TOWN OF JOHNSBURG, NEW YORK CEDARWOOD ENGINEERING  
SERVICES, PLLC**

By: \_\_\_\_\_  
Andrea Hogan, Supervisor

By: \_\_\_\_\_  
Jonathan Soukup, P.E.

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**CEDARWOOD ENGINEERING SERVICES PLLC  
2021 RATE SCHEDULE**

A. LABOR

<u>Personnel Category</u>	<u>Rate \$/Hour</u>
• Principal	\$130 - \$160
• Senior Project Engineer	\$120 - \$150
• Project Manager/Engineer	\$115 - \$140
• Project Scientist	\$115 - \$140
• Engineering Technician	\$90 - \$115
• Construction Inspector	\$75 - \$125 + per diem
• Technician/Operator	\$90 - \$110
• Clerical	\$55

B. DIRECT SUBCONTRACT COSTS – Per Contract

C. MATERIAL COSTS – At Cost + 15 Percent

D. DIRECT EXPENSES

- In-house Copies
 

8 ½ x 11	\$0.60 per page
24x36 Drawings	\$6.00 per page
  
- Overnight [estimate based on weight – FedEx, UPS, Courier] – actual cost of items to be invoiced at cost, no additional markup.
  
- US Mail At Cost
  
- Mileage At Federal Rate Per Mile
  
- Other Allowable Direct Costs At Cost

**1. STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CLIENT are specifically objected to.

**2. CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CLIENT. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

**3. SAFETY.** ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

**4. DELAYS.** If events beyond the control of CLIENT or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, ENGINEER shall be entitled to an equitable adjustment in compensation.

**5. TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CLIENT shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including CLIENT'S obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

**6. OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CLIENT only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CLIENT.

**7. RELATIONSHIP WITH CONTRACTORS.** ENGINEER shall serve as CLIENT'S professional representative for the Services, and may make recommendations to CLIENT concerning actions relating to CLIENT'S contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CLIENT'S contractors.

**8. CONSTRUCTION REVIEW.** For projects involving construction, CLIENT acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CLIENT agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

**9. INSURANCE.** ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER'S business requirements. Certificates evidencing such coverage will be provided to CLIENT upon request. For projects involving construction, CLIENT agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER'S coverages referenced above shall, in such case, be excess over contractor's primary coverage.

**10. HAZARDOUS MATERIAL.** Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ENGINEER and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. ENGINEER agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CLIENT acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. CLIENT shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize ENGINEER to execute such documents as CLIENT'S agent. CLIENT waives any claim against ENGINEER and agrees to defend, indemnify, and save ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER'S discovery of unanticipated hazardous materials or suspected hazardous materials.

**11. INDEMNITIES.** To the fullest extent permitted by law, CLIENT and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CLIENT and ENGINEER, they shall be borne by each party in proportion to its negligence.

**12. LIMITATIONS OF LIABILITY.** No employee or agent of ENGINEER shall have individual liability to CLIENT.

CLIENT agrees that, to the fullest extent permitted by law, ENGINEER'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER'S negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the total compensation received by ENGINEER under this Agreement or [alternative, in effect if strike through not in place] shall be limited in the aggregate to the amount of ENGINEER'S insurance or If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include as an attachment to this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

**13. ACCESS.** CLIENT shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

**14. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CLIENT for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at the CLIENT'S risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when CLIENT provides deliverables in electronic media to another entity. CLIENT agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. CLIENT shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, ENGINEER shall be advised and the inconsistency shall be corrected at no additional cost to CLIENT. Following the expiration of this 30-day period, CLIENT shall bear all responsibility for the care, custody and control of the electronic media. In addition, CLIENT represents that it shall retain the necessary mechanisms to read the electronic media, which CLIENT acknowledges to be of only limited duration. CLIENT agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CLIENT or others acting through CLIENT.

**15. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

**16. ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

**17. STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

**18. DISPUTE RESOLUTION.** Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute can not be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings.

**19. NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

**20. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CLIENT'S contractors, if any.

**21. SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

**22. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

**23. COMPENSATION.** ENGINEER will prepare and submit invoices to the CLIENT on a monthly basis. CLIENT shall make payment to the ENGINEER within 30 calendar days of the date of the invoice.

**24. ADDITIONAL SERVICES.** Additional services can be provided if deemed necessary and approved by the CLIENT. Compensation for additional services can be negotiated as needed. Additional work will be approved by the CLIENT prior to the execution of the additional tasks. Services not indicated or included in the above-listed scope of services or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.