

**RESOLUTION AUTHORIZING EXECUTION OF PROFESSIONAL SERVICES
AGREEMENT WITH C.T. MALE ASSOCIATES**

WHEREAS, the Rensselaer County Industrial Development Agency (the "Agency") is in need of professional engineering services with respect to the South Troy Industrial Park Site Environmental Remediation Project, including the conduct of inspections and the preparation of an annual report to the New York State Department of Environmental Conservation (the NYSDEC) as required by the project Site Management Agreement; and

WHEREAS, the engineering firm of C.T. Male Associates did provide the required engineering services during the remediation project at the site, and is fully familiar with the site and with the ongoing obligations of the Agency with respect to the Site Management Agreement entered into between the Agency and the NYSDEC, and is in the best position to provide the engineering services currently required with respect thereto; and

WHEREAS, such services are in the nature of professional services as the same are contemplated by the Agency's procurement policy; and

WHEREAS, C.T. Male has shown itself to have the necessary skills and professional services expertise to provide such services in a competent, timely and cost efficient manner; and, has shown itself to possess the required qualities of accountability, reliability, responsibility, skill, reputation, education and training, judgment, integrity and moral worth; and does not appear to have any conflicts of interest; and

WHEREAS, the engagement of C.T. Male for the needed services would assure the valuable component of continuity of service to the Agency, in this important area of Agency operations; and

WHEREAS, the Agency and C.T. Male Associates are both desirous of executing a formal contract for such services provided and to be provided during 2017, and C.T. Male Associates has submitted a proposal therefore to the Agency, which is attached hereto; and

WHEREAS, the execution of such an agreement with C.T. Male Associates is authorized and permitted under Section 4(A) of the procurement policy heretofore adopted by the Agency; now, therefore, be it

RESOLVED, that the Chairman of the Agency shall be and hereby is authorized on behalf of the Agency to execute a 2017 professional services agreement with C.T. Male Associates, *nunc pro tunc*, substantially as set forth in the attached agreement, at a fixed cost for Task One not to exceed the amount set forth in the proposed agreement, plus Time and Materials for additional tasks at the rates set forth therein, all subject to the approval as to the form of such agreement by Agency counsel.

Resolution ADOPTED by the following vote:

Ayes:

Nays:

Abstain:

November 9, 2017


STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

I, the undersigned (Assistant) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 12, 2017 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 12th day of October, 2017.



(Assistant) Secretary

(SEAL)

C.T. MALE ASSOCIATES

CONTRACT AGREEMENT

Project No.: 07.7549

Agreement made this 19th day of October, 2017, by and between C.T. MALE ASSOCIATES ENGINEERING, SURVEYING, ARCHITECTURE & LANDSCAPE ARCHITECTURE, D.P.C., a Design Professional Corporation registered in New York State and authorized to do business in the State of New York, (hereinafter called C.T. MALE ASSOCIATES); and RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (hereinafter called the CLIENT).

CLIENT and C.T. MALE ASSOCIATES agree as follows:

A. CLIENT and C. T. MALE ASSOCIATES, for the mutual consideration hereinafter set forth, agree as follows:

Task 1: Perform a site visit and complete a Site Management Periodic Review Report (PRR) and IC/EC Certification Submittal for the South Troy Industrial Park Site (ERP Site No. B00163) located at East Industrial Parkway in Troy, New York following the requirements of NYSDEC's PRR Reminder Letter dated August 1, 2017.

Task 2: Conduct surveying services (locate property lines, collect topographic data and compare to record drawings) to evaluate the potential impacts to the surface cover system. This includes hand excavating in the disturbed area to confirm where the demarcation barrier is located with respect to the total thickness of surface cover.

Task 3: Preparation of a Corrective Action Plan, if necessary, to correct site condition deficiencies required by the Site Management Plan and interaction with NYSDEC by a NYS licensed PE (Marx) at \$138.00 per hour.

B. CLIENT agrees to pay C. T. MALE ASSOCIATES as compensation for services as follows:

Task 1: Lump Sum fee of \$2,500.00.

Task 2: Time and Materials fee for an estimated budget of \$2,100.00.

Task 3: Time and Materials fee for an estimated budget of \$1,104.00.

Total Estimated Fee of \$5,704.00.

CLIENT shall reimburse C. T. MALE ASSOCIATES for the actual cost of all travel-related expenses (including but not limited to meals, lodging, transportation) for project related work performed away from C.T. MALE ASSOCIATES' office. CLIENT shall reimburse C.T. MALE ASSOCIATES for other project related expenses, including but not limited to, blueprints and reproduction costs, shipping, survey monuments, computer charges, at charged rates. Telephone toll charges shall be invoiced at fixed rates. Other expenses, including but not limited to, outside consultants, materials testing, bond premiums, title company charges, application fees, permits, shall be invoiced at cost plus a 10% service fee for handling and administration.

Fees and other charges will be invoiced monthly. The amount of each invoice shall be due at the time of billing. When bills are not paid within 30 days, a late payment service charge will be charged on any unpaid balance at the rate of 1.25% compounded monthly (annual rate of 15%) or the highest rate allowable under applicable State law, whichever is higher.

C. CLIENT shall furnish the following:

Access to the site, data, and reports or other information regarding the environmental condition of the site.

D. This Agreement, as signed by the CLIENT and/or his/her representative, includes the following Standard Terms and Conditions 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.

F. CLIENT shall provide C.T. MALE ASSOCIATES personnel with any information regarding potential hazards or whether personal protective measures are required when working on project site(s) associated with this contract and that C.T. MALE ASSOCIATES personnel be afforded the opportunity to review any health and safety plan available for site(s) that they will be working on.

AGREED TO:

RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

1600 7th Avenue
Troy, NY 12180
Phone: (518) 270-2914
Fax: (518) 270-2981

AGREED TO:

C.T. MALE ASSOCIATES ENGINEERING, SURVEYING, ARCHITECTURE & LANDSCAPE ARCHITECTURE, D.P.C.

50 Century Hill Drive
Latham, NY 12110
Phone: (518) 786-7400
Fax: (518) 786-7299

By: _____
(Authorized Signature/Date)

By: _____
Jeffrey A. Marx, P.E. (Date)

Title: _____ Title: Project Manager / Sr. Environmental Engineer

STANDARD TERMS AND CONDITIONS OF AGREEMENT

1. **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 C.T. MALE ASSOCIATES.
2. **OWNERSHIP OF DOCUMENTS AND/OR ELECTRONIC MEDIA FILES:** All tracings, specifications, computations, survey notes and media files and other original documents as instruments of service are and shall remain the property of C.T. MALE ASSOCIATES unless otherwise provided by law. CLIENT shall not use such items on other projects without C.T. MALE ASSOCIATES' prior written consent. C.T. MALE ASSOCIATES shall not release CLIENT's data without authorization.
3. **LIMITATIONS OF PROBABLE COST ESTIMATES:** Any estimate of the probable construction cost of the project or any part thereof is not to be construed, nor is it intended, as a guarantee of the total cost.
4. **APPROVAL OF WORK:** The work performed by C.T. MALE ASSOCIATES 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.
5. **DELAY:** Any delay, default, or termination in or of the performance of any obligation of C.T. MALE ASSOCIATES 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 C.T. MALE ASSOCIATES' 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 C.T. MALE ASSOCIATES' work, or any other acts of the CLIENT or any other Federal, State, or local government agency, or any other cause beyond C.T. MALE ASSOCIATES' reasonable control, shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend the obligations of C.T. MALE ASSOCIATES as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.
6. **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, C.T. MALE ASSOCIATES 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 C.T. MALE ASSOCIATES 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, C.T. MALE ASSOCIATES, 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 C.T. MALE ASSOCIATES in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.
7. **INDEMNIFICATION:** CLIENT shall indemnify, defend and hold C.T. MALE ASSOCIATES 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 C.T. MALE ASSOCIATES 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 C.T. MALE ASSOCIATES' own negligence.
8. **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.
9. **REPLACEMENT OF SURVEY STAKES:** C.T. MALE ASSOCIATES, 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.
10. **MAPPING:** Areas obscured by dense vegetation or shadow will be labeled as "DENSE WOODS", "SHADOW", or "OBSCURED AREA". C.T. MALE ASSOCIATES cannot certify as to the accuracies within these areas. Field verification of such area(s) must be undertaken and is not included within the scope of this Agreement unless explicitly stated.
11. **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 C.T. MALE ASSOCIATES' field representative will be for the purpose of providing observation and field testing. Under no circumstances is it C.T. MALE ASSOCIATES' intent to directly control or supervise the physical activities of the contractor's workmen to accomplish the work on this project. The presence of C.T. MALE ASSOCIATES' field representative at the site is to 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 C.T. MALE ASSOCIATES' field representative nor observation and testing personnel shall excuse the contractor in any way for defects discovered in his work. It is understood that C.T. MALE ASSOCIATES will not be responsible for job or site safety on the project.
12. **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.
13. **RISK ALLOCATION:** The CLIENT agrees that C.T. MALE ASSOCIATES' 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 \$50,000, or C.T. MALE ASSOCIATES' total fee for services rendered on the project.
14. **CLIENT RESPONSIBILITIES:** Client shall be responsible for providing all reasonable assistance required by C.T. MALE ASSOCIATES in connection with Services, including, without limitation, any assistance specified in the Proposal. In particular, Client will provide the following:
Reasonable ingress to and egress from the Site by C.T. MALE ASSOCIATES and/or its subcontractors and their respective personnel and equipment.
Clean, secure, and unobstructed space and areas at the Site for C.T. MALE ASSOCIATES equipment and vehicles or those of C.T. MALE ASSOCIATES' subcontractors.
Information in the possession of Client (including, without limitation, facility and/or Site schematics, engineering drawings and plot plans) detailing the construction of facilities located underground or above ground at the Site that pertain to the stated scope of work or are necessary to assist C.T. MALE ASSOCIATES in performing Services and/or to successfully carry out the project.
Prior to any boring, drilling, and/or excavation work being commenced by C.T. MALE ASSOCIATES, the specific location(s) of such work will be provided to Client. Prior to any boring, drilling, excavation or other intrusive subsurface activities on the Site, Client or Client's representative shall identify any private and public subsurface obstruction or utility that Client or its representative knows or believes to exist at the Site. C.T. MALE ASSOCIATES, at its discretion, may contact the local public utility locator and, if agreed by Client, a private utility locator to determine the existence and location of subsurface obstruction or utilities. Client or Client's representative will provide C.T. MALE ASSOCIATES with prior approval of each location where C.T. MALE ASSOCIATES will carry-out any intrusive activity on the Site. Client agrees that if C.T. MALE ASSOCIATES or its subcontractor causes damage to a subsurface obstruction or utility that was not properly identified by Client, or marked by the public utility locator or private utility locator, if any, the Client shall indemnify, defend and hold harmless C.T. MALE ASSOCIATES, its officers, directors, employees and independent contractors from and against any and all claims, costs, fines, or other liability arising out of, or in connection with any damage to any such subsurface obstruction or utilities, except to the extent such claims, costs, fines, or other liability are caused by C.T. MALE ASSOCIATES' negligence or willful misconduct.
15. **CONTROLLING LAWS:** This Agreement is to be governed by the laws of the State of New York.
16. **INSURANCE:** C.T. MALE ASSOCIATES shall procure and maintain throughout the period of this Agreement, at C.T. MALE ASSOCIATES' 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. C.T. MALE ASSOCIATES shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.
17. **SUCCESSORS AND ASSIGNS:** Neither CLIENT nor C.T. MALE ASSOCIATES 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.
18. **MEDIATION:** CLIENT and C.T. MALE ASSOCIATES agree to make every effort to resolve all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this agreement through mediation. The parties further agree that the CLIENT will require, as a condition for

C.T. MALE ASSOCIATES

participation in the project and their agreement to perform labor or services, that all contractors, subcontractors, subcontractors and material-persons, whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties shall agree to this procedure.

19. EQUAL EMPLOYMENT OPPORTUNITY: C.T. MALE ASSOCIATES is committed to equal employment opportunity for all persons regardless of race, color, sex, age, national origin, marital status, handicap, or veteran's status. In striving to eliminate discrimination in the workplace, it is our policy to deal only with sub-contractors, vendors, suppliers, and other affiliates who recognize and support equal employment opportunity and comply with all applicable State and Federal Equal Employment Opportunity laws and regulations including the annual filing of Standard Form EEO-1.

20. NOTICES: All notices called for by this Contract shall be in writing and shall be deemed to have been sufficiently given or served when presented personally and when deposited in the mail, postage prepaid, certified and return receipt requested.