



## TOWN OF ULYSSES

10 Elm Street, Trumansburg, NY 14886  
townofulyssesny.gov

Town Supervisor (607) 387-5767, Ext 232 • supervisor@townofulyssesny.gov  
Town Clerk (607) 387-5767, Ext 221 • clerk@townofulyssesny.gov

### Professional Services Agreement

This Professional Services Agreement (this “Agreement” or “Contract”), is made this \_\_\_\_ day of \_\_\_\_\_, 2023 between:

Michael Defone, hereinafter referred to as the “Contractor.”

**and**

Town of Ulysses, with an office and place of business located at 10 Elm Street, Trumansburg, NY, 14886, hereinafter referred to as the “Town”.

#### 1) TERM OF SERVICES

a) The term of this Contract shall be for the period of **4/26/2023** through **12/31/2023**.

#### 2) ACKNOWLEDGEMENT OF POLICIES

a) The Contractor acknowledges and adheres to all state and federal policies as it pertains to this Agreement.

#### 3) WORK TO BE COMPLETED

a) This Agreement is for facilities consulting work.

b) The Contractor has no decision making power for Town business and acts solely in an advisory role.

c) The Town and the Contractor will collaborate on prioritization of projects to be addressed.

d) The Contractor recognizes Town legal requirements and will help ensure activities related to this Agreement adhere to federal, state and local laws and policies, not limited to procurement and labor laws.

#### 4) CONSULTANT PROVIDED TERMS

a) The Town acknowledges and agrees to the terms provided by the Contractor:

##### i) Contractor Availability for Work

(1) The Town recognizes the Contractor’s full time employment status with another entity. Both the Town and the Contractor agree to best faith efforts to maintain professional boundaries regarding the Contractor’s full time employment status.

(2) For work activities associated with this Agreement, the Contractor is available for in-person meetings during the following times: Monday through Friday between 6:30am - 8:00am, or after 4:00pm; Saturday and Sunday if needed.

(3) The Town recognizes the Contractor is unable to meet during regular business hours, which for the purposes of this Agreement are known as Monday through Friday 8am to 4pm.

(4) The Town will assign a staff person to lead communications and work activities associated with this Agreement that are required to be done during regular business hours. In an emergency situation during regular business hours, the Town assigned staff person will be the primary contact to the Contractor.



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- (5) Phone calls to the Contractor, related to the work specified by this Agreement, made during regular business hours should be limited in duration and limited to emergency situations; phone calls taken by the Contractor are considered voluntary by the Contractor and will not be billed by the Contractor.
- (6) In order to mitigate potential scheduling issues and to ensure the Contractor is available for work outside of regular business hours, the Contractor will use their professional expertise for advanced planning, coordination and scheduling of projects associated with this Agreement.
- (7) Instances when work activities are scheduled during regular business hours will be at the discretion of the Contractor.

### 5) INDEMNITY AND SAVE HARMLESS AGREEMENT

- a) The Contractor agrees to protect, indemnify, hold harmless and defend the Town and its officers, employees, representatives, agents, successors and assigns from any and all damages, claims, suits, actions, causes of action, demands, judgments, losses, costs and expenses of any nature whatsoever, including attorneys' fees resulting from, any act or omission related to the services provided herein or negligence, active or passive, and for any actions or inactions of the Contractor, its employees, representatives, agents, subcontractors, successors and assigns related to this Contract.
- ~~b) Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities (both public and private). All damage, injury, or loss to any public or private property, by the Contractor, or any sub-contractor, shall be replaced or restored to at least the original condition to the satisfaction of the Town at the Contractor's expense.~~
- c) Nothing in this Contract shall constitute a waiver by the Town of any statutory limits or immunities from liability.
- d) In claims against any person or entity indemnified in this contract by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### 6) LIABILITY

- a) The Town shall have no liability for any injury to the Contractor when providing services on Town Property, except for gross negligence or reckless misconduct of the Town.

### 7) NYS PROHIBITION OF ASSIGNMENT OF CONTRACTS

- a) In accordance with the provisions of Section 109 of the General Municipal Law of the State of New York, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Contract, or of its right, title or interest in this Contract, or its power to execute this Contract, to any other person or corporation without the previous consent in writing of the Town. If the Contractor assigns, transfers, conveys, sublets or otherwise disposes of such contract, or his right, title or interest therein, or his power to execute such contract, without previous consent in writing of the Town, then the Contractor's action shall revoke and annul the Contract and the Town shall be relieved and discharged from any and all liability and obligations out of the Contract to the Contractor.



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### 8) OWNERSHIP OF RECORDS

- a) The Contractor will take no action to compromise the Town's legal obligation to maintain records and adequate documentation transactions of public business. The Contractor agrees that records and other documentation produced from this work are the property of the Town.

### 9) RECOGNITION OF NEW YORK STATE FREEDOM OF INFORMATION LAW

- a) The Contractor acknowledges that the Town of Ulysses shall adhere to The New York State Freedom of Information Law, Public Officers Law, Article 6, which provides for public access to information.

### 10) SEVERABILITY

- a) In the event any provision or part of this Contract is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Contract, will be inoperative.

### 11) TIME OF PERFORMANCE

- a) Contractor will commence work as directed by the Town and will proceed with work in a prompt and diligent manner in accordance with project schedule.

### 12) PAYMENT

- a) The Town agrees to pay the Contractor a rate of \$48 per hour.
- b) Prior to the first payment, the Contractor will provide the Town the required paperwork.
- c) The Town processes all invoices for payments on the second Tuesday of every month.
- d) Contractor invoices shall be delivered to the Town prior to the first Tuesday of every month.

### 13) TERMINATION

- a) Termination for Cause: If through any cause, one party shall fail to fulfill in timely and proper manner, its obligations under this Contract, or if one party shall violate one of the covenants, agreements, or stipulations of this Contract, the other party shall thereupon have the right to terminate this Contract hereunder by giving written notice of such termination. In case of termination, all finished and unfinished documents shall become the property of the Town.

In the event of termination, the Contractor shall be compensated payment of an amount equal to the services or goods actually provided by the Contractor to the Town as of the date of termination.

- b) Termination for Convenience: The Town may terminate this Contract at any time for any reason, upon submitting to Contractor 10 (ten) days prior written notice of its intention to terminate. Upon receipt of such notice, Contractor shall immediately cease to incur expenses pursuant to this Contract unless otherwise directed in the termination notice. Contractor shall promptly notify the Town of costs incurred to date of termination and the Town shall pay all such reasonable and supportable costs which payment shall not exceed the unpaid balance due on this Contract.
- c) Return of Property: Upon termination, Contractor shall immediately return to the Town without limitation, all documents, plans, drawings, tool and items of any nature whatever, supplied to Contractor by the Town.



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- d) Production of Documents: All records, documents, data, reports or other material, regardless of form or finish, produced by the Contractor as a result of services provided hereunder, are work for hire, and shall become the property of the Town upon creation. The Contractor may not assert any right, title or interest in any product produced under this Contract.

The Town may request at any time during and/or after the termination of the Contract any records, documents, data, reports or other materials produced by the Contractor under this Contract.

### 14) NO PARTNERSHIP OR JOINT VENTURE; CONTRACTOR NOT EMPLOYEE

- a) The parties to this Contract are not partners or joint venturers with each other and nothing herein shall be construed to make them partners or joint venturers or impose any liability as such on either of them.
- b) In performing the Services set forth in this Contract, the Contractor will have neither express or implied power to execute agreements on behalf of Town or in any manner bind the Town as to any matter not within the scope of this Contract.
- c) It is expressly agreed that the relationship between the Contractor and the Town shall not constitute employment by the Town.
- d) The Town shall have no liability under this Contract to Contractor or anyone else beyond funds appropriated and available for this Contract.

### 15) MISCELLANEOUS

- a) This Contract may be amended or modified only by a written instrument signed by authorized representatives of each of the parties hereto.
- b) This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For all purposes, an electronic or facsimile signature shall be deemed the same as an original signature.
- c) The headings of sections in this Contract are for convenience of reference only and are not intended to qualify the meaning of any section. Any reference to a section number shall refer to a section of this Contract, unless otherwise stated.
- d) The parties intend this statement of their Contract to constitute the complete, exclusive, and fully integrated statement of their agreement and is the sole expression of their Contract and supersedes all prior agreements and understandings, either oral or written with respect thereto.
- e) The parties to this Contract agree and covenant that this Contract will be enforceable in the Town of Ulysses, New York. If legal action is necessary to enforce this Contract, exclusive venue will lie in Tompkins County, New York.
- f) This Contract and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws.
- g) The parties intend this statement of their Contract to constitute the complete, exclusive, and fully integrated statement of their agreement and is the sole expression of their Contract and supersedes all prior agreements and understandings, either oral or written with respect thereto.



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**16) REQUIRED PROVISIONS OF LAW**

- a) Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to have been inserted herein. If any such provision is not inserted, through mistake or otherwise, then upon the application of either party, this Contract shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:
  - i) Labor Law section 220-e and Executive Law sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and providing equal opportunity.
  - ii) Affirmative action as required by the Labor Law.
  - iii) Prevention of dust hazard required by Labor Law section 222-a.
  - iv) Preference in employment of persons required by Labor Law section 222.
  - v) Eight-hour workday as required by Labor Law section 220(2).
  - vi) New York State Sexual Harassment Training Requirements
  - vii) New York State Workplace Violence Training Requirements
  - viii) The Standard Clauses of New York State Contracts, a copy of which is attached hereto as Appendix E and made a part hereof.



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**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned officers' thereunto duly authorized as of the day and year first above written.**

Dated: The \_\_\_\_ day of \_\_\_\_\_ 2023

By: \_\_\_\_\_

**Michael Defone**

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

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned officers' thereunto duly authorized as of the day and year first above written.**

Dated: The \_\_\_\_ day of \_\_\_\_\_ 2023

**Accepted: Town of Ulysses**

By: \_\_\_\_\_

Ulysses Town Supervisor

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