AGREEMENT FOR SERVICES BETWEEN AQUAWORKS DBO, INC. AND CLIENT

3252 Williams Street, Denver, CO 80205 | (303) 477-5915 | www.AquaWorksDBO.com

PROJECT	Drinking Water & Wastewater Treatment Compliance Consulting
CLIENT	Town of Oak Creek
LOCATION	Routt County, Colorado
DESCRIPTION	Assist the Town with addressing the requirements of its wastewater treatment discharge permit and potable water system limits.
TYPE OF SERVICE	Compliance Consulting & Preliminary Engineering
CLIENT REP	Mr. Tom Holliday
PROJECT NUMBER	3479
PREPARED BY	Adam Sommers, P.E.

SCOPE OF SERVICES

1. Review existing information, designs, reports, and applications prepared by others for the drinking water and wastewater treatment systems.
2. Make a site visit to the Town to review the treatment process and condition of the existing treatment systems.
3. Review the existing Discharge Permit and ability of the existing system to meet current and proposed limits.
4. Provide a list of additional analytical sampling to the Town should take at the raw water source, WTP, WWTP, and receiving water.
5. Provide the CDPHE updates the Town is making to address meeting the limits.
6. Provide preliminary recommendations for the treatment systems.
7. Assist the Town with responding to compliance schedule requirements.
8. Any other services requested by client.

BUDGET FOR SERVICES

CONTRACT TYPE	Time and Materials
NOT TO EXCEED FEE TOTAL	$10,000

Payment Terms and Conditions

1. Subconsultant expenses, fees, and additional services not specified within the scope of services which are required either directly by the client, its agents, or otherwise incurred in the performance of this agreement will be billed as additional services, according to the enclosed terms.
2. Changes in scope will require additional compensation to AquaWorks DBO according to existing or extended terms, or existing standard hourly rates in lieu of a written agreement for additional services.
3. Invoicing will be performed monthly or as close as practical. The invoiced amount is due within 30 days of receipt, after 30 days an interest charge of 1.5% per month or portion thereof will be incurred.

FEE SCHEDULE

HOURLY FEES

PRINCIPAL/SENIOR PROJECT MANAGER	$ 205/hr
PROJECT MANAGER	$ 195/hr
SENIOR ENGINEER	$ 185/hr
SENIOR PROJECT ENGINEER	$ 175/hr
PROJECT ENGINEER	$ 165/hr
WORD PROCESSING/ ADMINISTRATIVE	$ 65/hr

OTHER DIRECT CHARGES

MILEAGE	Current IRS Rate

REIMBURSEABLE EXPENSES

(Subject to actual cost) May include, but are not limited to:

- Additional outside professional services provided beyond those stipulated in the scope of work
- Additional copies of reports, drawings, etc. beyond those stipulated in the scope of work
- Postage, courier fees, and shipping
- Other owner-approved, project-related purchases

ACCEPTANCE AND AUTHORIZATION

CLIENT'S DESIGNATED REPRESENTATIVE		AQUAWORKS DBO DESIGNATED REPRESENTATIVE	
Company:	Town of Oak Creek	Company:	AquaWorks DBO, Inc. 3252 Williams Street Denver, CO 80205
Name:	Tom Holliday	Name:	Adam Sommers
Title:	Public Works Director	Title:	President
Signature:		Signature:	Adam Sommers
Date:		Date:	4/19/2023

Signature indicates that individual is qualified as the Client's representative to enter into an agreement for services.
Notice to Proceed: Provide by returning acceptance and authorization, to be effective as of date of signature.

A. CONTRACTOR shall be responsible for the acts, errors and omissions of itself and its employees, consultants, agents, and any other persons employed or retained on behalf of CONTRACTOR in connection with the Project and for the acts, errors and omissions of the Project's owners and users. Within the limitations of the Colorado Constitution and statutes, CONTRACTOR agrees to indemnify, hold harmless, and defend the OWNER and its directors, officers, employees, agents, and attorneys for the actions, errors and omissions of CONTRACTOR and CONTRACTOR'S employees, consultants, agents, and any other persons employed or retained on behalf of CONTRACTOR in the performance of this Contract and for the acts, errors and omissions of the Project's owners and users. The parties recognize that the OWNER is a governmental entity subject to the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Neither Party waives, and both Parties are relying upon, the immunities, limitations of liability and protections of that Act.

B. At its sole cost CONTRACTOR, or at CONTRACTOR's cost shall purchase and maintain in effect through Project completion insurance which will protect it and the OWNER from claims which may arise out of, result from or be related to CONTRACTOR'S performance of the work on the Project, whether such performance be by itself or by anyone directly or indirectly retained or employed by CONTRACTOR or by anyone for whose acts, errors, or omissions any of them may be liable. Such insurances required herein shall be written for limits of liability as follows:

Commercial General Liability:
i) Bodily Injury and Property Damage: $2,000,000 each occurrence/$2,000,000 aggregate
II)Personal Injury: $2,000,000 each occurrence/$2,000,000 aggregate

Workers' Compensation and Employer's Liability:
i) Compensation: Statutory
ii)Employer's Liability:
$100,000 each accident
$100,000 disease – each employee
$500,000 disease – policy limit

C. The Commercial General Liability and Commercial Automobile Liability policies required hereunder shall include the OWNER named as primary, non-contributory, additional insured. If CONTRACTOR'S SUBCONTRACTOR is providing the necessary insurance CONTRACTOR shall also be named as primary, non-contributory, additional insured. CONTRACTOR shall supply the OWNER with a certificate of each insurance policy required herein at least thirty (30) days prior to the estimated commencement date, unless otherwise agreed upon by the parties. The certificates of insurance shall evidence that the premium has been paid and contain a valid provision or endorsement that the policies may not be canceled, terminated, changed, or modified without thirty (30) days written notice to the OWNER.

D. Neither CONTRACTOR nor OWNER intend by this Contract to create a multi-year fiscal obligation of either Party. All financial obligations of the Parties are subject to appropriation of funds in years subsequent to the current fiscal year.

Client Services. AquaWorks DBO through and by its officers, employees and subcontractors is an independent consultant and agrees to provide client, for its sole benefit and exclusive use, consulting services set forth in this proposal. No third party beneficiaries are intended by this Agreement.

Payment Terms. Client agrees to pay AquaWorks DBO's invoice within 30 days. Client agrees to pay a service charge of 1.5% per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from AquaWorks DBO's invoice for retainage.

Standard of Care. AquaWorks DBO's services under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the vicinity of the project. No other warranties, express or implied are made.

Insurance. AquaWorks DBO maintains insurance to statutory and professional standards for comparable work of this type in this area at the time of service.

Limitation of Liability. In recognition of the relative risks and benefits of the project to both the Client and AquaWorks DBO, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of AquaWorks DBO and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of AquaWorks DBO shall to be limited to $1,000,000 per occurrence or $2,000,000 aggregate. This limitation applies to all claims of any kind arising out of this agreement.

Site Operations. Client will arrange right-of-entry to the property for the purposes of performing project management, studies, review of existing conditions and evaluations pursuant to the agreed services. Client represents that it possesses necessary right-of-entry authority, permits, and licenses required for its activities at the site.

Documents. AquaWorks DBO will furnish Client the agreed upon number of written reports, plans, and supporting documents as identified in the scope. These instruments of service are furnished for Client's exclusive use and reliance, but not for advertising or other type of distribution, and are subject to the following:

a. Client shall furnish documents or information reasonably within Client's control and deemed necessary by AquaWorks DBO for proper performance of its services. AquaWorks DBO may rely on Client-provided documents in performing the services under this Agreement; however, AquaWorks DBO assumes no responsibility or liability for their accuracy. Client provided documents will remain the property of the Client, but AquaWorks DBO may retain one confidential file copy as needed to support its report or designs.

b. Removed.

c. Upon Client's request AquaWorks DBO's work product may be provided on electronic or digital media. By such request, Client agrees that the written copy provided to the Client shall be the official base document. AquaWorks DBO makes no warranty or representation to Client that the electronic or digital copy is accurate or complete, but will correct in good faith any omissions or errors brought to AquaWorks DBO's attention by the Client during the course of this Agreement. Any modifications of such electronic or digital copy by Client shall be at Client's sole risk and without liability to AquaWorks DBO. Such electronic or digital copy is subject to all other conditions of this Agreement.

Opinions of Cost. If requested, AquaWorks DBO will use its experience on similar projects to provide opinions of cost for construction as appropriate based on reasonably available data, AquaWorks DBO's designs, or AquaWorks DBO's recommendations. Such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise, in writing with AquaWorks DBO. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor's skill, and many other factors beyond AquaWorks DBO's control.

Credit for Work. Client agrees to the best of ability to give appropriate credit to AquaWorks DBO in any publicity releases, awards, submissions, publications, and identification in on-site signs which identify other professionals and/or contractors working on this project.

Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Any claim or dispute arising out of this Agreement shall be brought in the courts of Routt County, State of Colorado.

Confidentiality. AquaWorks DBO will maintain as confidential any documents or information provided by the Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction.

Priority over Form Agreement/Purchase Orders. The parties agree that the provisions of these terms and conditions shall control over and govern as to any form writings signed by the Parties, such as Client Purchase Orders, Work Orders, or other agreement forms, and that such forms may be issued by Client to AquaWorks DBO as a matter of convenience of the Parties without altering any of the terms or provisions hereof.

Survival. All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and AquaWorks DBO shall survive the completion of services and/or the termination of this agreement.

Severability. In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.

Assignment. This Agreement cannot be assigned by either party without prior permission of the other.

Integration. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

Consequential Damages. Neither Client nor AquaWorks DBO shall be liable to one another for incidental, indirect, indirect, or consequential damages rising out of AquaWorks DBO's services under this Agreement. This mutual waiver of damages includes, but is not limited to, claims for loss of use, rent, income, profit, financing, business and reputation, claims for delay damages and damages due to either party's termination under this agreement.

Claims. In the event of a dispute, Client agrees to make claim against AquaWorks DBO as a corporate entity only and not against any individual employee, owner, officer, director, or agent of AquaWorks DBO.

Unilateral Changes. If Client makes any unilateral modifications to this Agreement, such shall not become part of this Agreement and shall not be enforceable unless and until initialed by an authorized representative of Consultant.

Job Site Safety. Client agrees that the Contractor is solely responsible for job site safety and for health and safety precautions required by regulatory agencies. AquaWorks DBO shall have no obligation to direct or control the Contractor's job site activities or the means and methods of construction and shall have no liability for job site safety.

Time for Performance. AquaWorks DBO shall perform services under this Agreement in a timely manner, consistent with the exercise of independent, professional judgment. AquaWorks DBO shall not be responsible for delays in completion of its services caused by Client or third parties.

Termination. Either Client or AquaWorks DBO may terminate this Agreement without cause upon 10 days written notice to the other party. AquaWorks DBO may terminate this Agreement within 7 days after a demand for payment of outstanding invoices. Upon termination, AquaWorks DBO shall be paid for all outstanding services performed through the date of termination.

Dispute Resolution. The parties agree that any claim or dispute arising out of their respective obligations under this Agreement shall be subject to voluntary mediation as a pre-condition to the initiation of legal proceedings. Mediation shall be conducted pursuant to the construction industry rules of the American Arbitration Association within 30 days of a demand thereof.

Exclusions. The following services, including those which are not considered normal or customary Basic Services are not included in the Scope of Services. Additional or Supplemental Services beyond the above Scope of Work shall be performed only upon mutual agreement in writing between AquaWorks DBO and Client.

a. Services resulting from significant changes in the extent of the Project or its design including, but not limited to, changes in size, complexity, Client's schedule, or character or construction or methods of financing; and revising previously accepted studies, reports, design documents or Contract Documents when revisions are due to causes beyond AquaWorks DBO control.
b. Water rights investigations, consulting, or certification.
c. Furnishing the services of land surveying, geotechnical, geological, or hydrogeological consultants.
d. Land use or regional (council of governments) planning documents including, but not limited to, 208 plans and amendments, 1041 permit, and zoning amendments.
e. Permit or application fees of any kind, including CDPHE fees or County or City permit fees.
f. Services of an Attorney and associated fees.
g. Bidding or construction engineering services.