

**AGREEMENT
AMONG
CITY OF ITHACA, TOWN OF ITHACA AND TOWN OF DRYDEN
AND
SourceOne, INC.**

THIS AGREEMENT is made this ____ day of _____, 2016 among the **CITY OF ITHACA**, a municipal corporation with offices at 108 East Green Street, Ithaca, New York 14850, the **TOWN OF ITHACA**, a municipal corporation with offices at 215 N. Tioga St., Ithaca, New York 14850, the **TOWN OF DRYDEN**, with offices at 93 East Main Street, Dryden, New York 13053 (hereinafter collectively referred to as the "Municipal Owners"), and **SourceOne, INC.**, a Massachusetts corporation with offices at 53 State St., 14th Floor, Boston, MA 02109 (hereinafter referred to as the "Contractor").

WHEREAS, the Ithaca Area Wastewater Treatment Facility (IAWTF) is owned and operated by the Municipal Owners, with oversight provided through a Special Joint Committee ("SJC") composed of representatives from the three Municipal Owners; and

WHEREAS, Contractor completed a NY Prize Phase One Microgrid Feasibility Study funded by a grant from NYSERDA ; and

WHEREAS, on July 13, 2016, the SJC recommended approval of a professional services contract with Contractor to perform the preliminary design phase of the recommended improvements at a cost not to exceed \$48,960.00, contingent on approval by the Municipal Owners and attorneys.

NOW, THEREFORE, the Municipal Owners and Contractor agree as follows:

1. Services to be Performed. Contractor agrees to perform the services described in Schedule A, which is attached hereto and made a part hereof, pursuant to the schedule described in Schedule A.

2. Fees. The Contractor shall be paid a fixed amount of forty-eight thousand and nine hundred and sixty dollars and No Cents (\$48,960.00) for services provided, including all travel, time and expenses associated with providing these services to the Municipal Owners. Payments will be made in accordance with the procedures in Section 5 below.

3. Term of Agreement. The term of this Agreement shall be from _____, 2016 to December 31, 2016 unless earlier terminated by the Municipal Owners or Contractor. Notwithstanding the term set forth above, this Agreement

may be terminated by the Municipal Owners or Contractor at any time without cause upon seven (7) days prior written notice to the other party, in which case the Contractor shall be paid pro rata for the satisfactory work performed to the date of termination. This Agreement may be terminated immediately by the Municipal Owners or Contractor upon the breach of any of its terms by the other party. Termination shall be effected by the breaching party's receipt of a written notice of termination setting forth the manner in which the party is in default. In the event of Municipal Owners' termination for Contractor's default, the Contractor will be paid only for services performed in accordance with this Agreement. If it is later determined by the Municipal Owners that the Contractor had an excusable reason for not performing, such as a strike, fire, flood, or other events which are not the fault of or are beyond the control of Contractor, the Municipal Owners may allow the Contractor to continue work, or treat the termination as a termination without cause.

4. Quality of Work. The work to be performed hereunder shall be of good workmanship and quality. If this Agreement is for the performance of services, the Contractor shall perform its services using that degree of skill and care ordinarily exercised under similar conditions by experienced, qualified, competent and reputable professionals practicing in the same field in the same or similar locality at the time of performance.

5. Payment for Services. Requests for payments for services shall be submitted on the standard City of Ithaca voucher and will list the activities or products, expenses, the dates on which performed, supplied or incurred, and, if applicable, the time spent on each indicated date for which the Municipal Owners are being billed. The vouchers shall be submitted to the City on a monthly basis and shall be based upon the proportion of the fixed amount earned (the percentage of work satisfactorily completed through the date indicated on the voucher). Municipal Owners will pay for the services and/or products after they are reviewed and approved by the City on behalf of the Municipal Owners in compliance with their statutory duties to audit claims for payment. In no event will the total payments to Contractor exceed the fixed amount stated in Section 2 above.

6. Relationship. The Contractor is, for all purposes (including, without limitation, withholding of income tax and payment of FICA taxes) an independent contractor and no employer-employee relationship is intended, implied or created by this Agreement. As an independent contractor, the Contractor shall receive no fringe benefits from the Municipal Owners, including but not limited to medical insurance, retirement benefits, workers' compensation, disability, unemployment insurance or any other benefits or remuneration other than that set forth in Section 2 above. Contractor shall determine the times and manner of performance of any services for the Municipal Owners hereunder consistent with the overall obligations to complete the work contemplated by this Agreement. Contractor shall be free to devote such portions of its time not required for the

performance of services to the Municipal Owners in such manner as Contractor sees fit and for such other persons, firms, or entities as Contractor deems advisable, provided that such other services do not constitute a conflict of interest with the interests of the Municipal Owners.

7. Ownership of Products of Service. All work products of any services to be performed hereunder shall be the property of the Municipal Owners, and the Municipal Owners are vested with all rights therein, including the right to use, duplicate, distribute, share or sell such materials, without any further compensation of any nature to Consultant. If patents or copyrights may be obtained with respect to such work, the Municipal Owners shall own same and have all rights to same without further compensation to the Consultant. The Consultant also retains the right to use the work products.

8. Insurance Requirements.

A. Throughout the term of this Agreement, Contractor shall procure and maintain the insurance described in this Section 8.

B. Notwithstanding any terms, conditions or provisions in any other writing between the parties, Contractor hereby agrees to effectuate the naming of the City of Ithaca, Town of Ithaca, Town of Dryden and Special Joint Committee as unrestricted additional insureds on Contractor's insurance policies, with the exception of workers' compensation and professional liability.

C. The policies naming the City of Ithaca, Town of Ithaca, Town of Dryden and Special Joint Committee as additional insureds shall:

- Be an insurance policy from an A.M. Best rated "secured" (or better) New York State admitted insurer.
- State that the Contractor's coverage shall be primary coverage for the City of Ithaca, Town of Ithaca, Town of Dryden, Special Joint Committee and their respective Boards, officers, employees, members, agents and volunteers.
- The City of Ithaca, Town of Ithaca, Town of Dryden and Special Joint Committee shall be listed as additional insureds by using endorsement CG 2010 or broader. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.
- Be written on an occurrence basis.

D. The Contractor agrees to indemnify the Municipal Owners for any applicable deductibles.

E. Required Insurance:

- **Commercial General Liability Insurance**

\$1,000,000 per occurrence / \$2,000,000 general and products/completed operations aggregates. The general aggregate shall apply on a per-project basis.

- **Automobile Liability**

\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.

- **Workers' Compensation and N.Y.S. Disability**

Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees.

- **Excess Liability**

\$2,000,000 per occurrence / \$2,000,000 aggregate, with the City of Ithaca, Town of Ithaca, Town of Dryden, and Special Joint Committee named as additional insureds.

- **Professional Errors and Omissions Insurance**

\$1,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the Consultant performed under this Agreement.

F. The insurance producer must indicate whether or not it is an agent for the companies providing the coverage.

G. Contractor acknowledges that failure to obtain such insurance on behalf of the Municipal Owners and SJC constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Municipal Owners. The Contractor is to provide the Municipal Owners with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the Municipal Owners to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the Municipal Owners.

H. The Town of Ithaca and Town of Dryden are members/owners of the NY Municipal Insurance Reciprocal (NYMIR). The Contractor further

acknowledges that the procurement of such insurance as required herein is intended to benefit not only the City of Ithaca, Town of Ithaca, Town of Dryden and SJC, but also the NYMIR, as the Town of Ithaca's and Town of Dryden's insurer.

9. Workers Compensation and Disability Insurance. Prior to execution of this Agreement, the Contractor shall present to the Municipal Owners proof either that the Contractor provides the levels of workers' compensation and disability coverage required by the State of New York or that the Contractor is not required to provide such coverage. For reference purposes only an informational sheet and sample forms from the New York State Workers' Compensation Board are attached hereto in Schedule B.

10. Indemnity. The Contractor agrees to fully defend, indemnify and hold harmless the City of Ithaca, Town of Ithaca, Town of Dryden, SJC and their respective elected officials, public officers, Boards, employees, members and agents from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees and costs), whether or not involving a third party claim, which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, or contamination of or adverse effects on the environment, caused by the negligent or intentional wrongful acts or omissions of Contractor or Contractor's employees, agents or subcontractors, in connection with this Agreement. To the extent the Municipal Owners are negligent, Contractor's duty to indemnify the Municipal Owners shall not extend to the proportion of loss attributable to the Municipal Owners' negligence. For claims that fall within the scope of Contractor's professional liability insurance policy and no other insurance policy, Contractor's duty to defend shall be limited to the terms and conditions of Contractor's professional liability insurance policy (i.e., if Contractor's professional liability insurance does not provide for third party defense of such claims, Contractor shall not have the duty to defend Municipal Owners and the other entities listed above for such claims).

11. Nondiscrimination. The Contractor shall not discriminate against any employee, applicant for employment, sub-contractor, supplier of materials or services, or program participant because of actual or perceived: age, creed, color, disability, ethnicity, familial status, gender, height, immigration or citizenship status, marital status, national origin, race, religion, sexual orientation, socio-economic status, or weight.

12. Contractor May Not Assign. This Agreement may not be assigned by the Contractor without the previous written consent to such assignment from the Municipal Owners, which consent may be withheld entirely at the discretion of the Municipal Owners, it being understood that the Municipal Owners are making this Agreement personally with the Contractor and are not intending that it be performed by any other person or entity.

13. Binding Nature of Agreement. This Agreement is binding upon the parties, their respective representatives and successors and, when assignment is permitted, assigns.

14. Governing Law, Jurisdiction, and Enforcement. This Agreement is made in New York, and shall be construed under the laws of the State of New York without regard to, or the application of, New York State's choice of law provisions. The parties consent that if any action is brought to enforce this Agreement, it shall be brought only in an appropriate Court in Tompkins County, New York, and the parties consent to the jurisdiction of such court.

15. Notices. Any notices or other communications given under or in relation to this Agreement shall be deemed duly given if served personally or by commercial courier service upon the other parties at the addresses set forth above, or if mailed by certified mail to the other parties at the addresses set forth above, return receipt requested. All notices shall be effective on a party upon the date of receipt. Any party may change the address to which notices are sent by giving notice of such change in the manner set forth above to the other parties.

16. Entire Agreement. This Agreement constitutes the entire agreement among the parties and supersedes any and all prior written or oral agreements, negotiations or understandings, existing among the parties. This Agreement may be amended only by written instrument signed by each party.

17. Survival. The rights and obligations of the respective parties under Section 10 (Indemnity), Section 13 (Binding Nature of Agreement), Section 14 (Governing Law, Jurisdiction, and Enforcement), and Section 18 (Claims and Disputes Arbitration) shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect.

18. Claims and Disputes Arbitration. The Municipal Owners may elect to subject disputes arising out of this Agreement to resolution by mediation or arbitration or litigation. This election can be made at any time up until sixty (60) days after the claim or dispute arises in writing. If the Municipal Owners do not make an election, the dispute shall be subject only to litigation. Unless otherwise agreed by the parties at the time of such election, the rules governing mediation or arbitration invoked by the Municipal Owners shall be the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Contractor hereby waives the right to elect the method of dispute

resolution and agrees that this waiver is supported by sufficient and appropriate consideration.

19. Severability. If any provision of this Agreement is deemed to be invalid or inoperative for any reason, that part may be modified by the parties to the extent necessary to make it valid and operative, or if it cannot be so modified, then it shall be deemed severed, and the remainder of this Agreement shall continue in full force and effect as if this Agreement had been signed with the invalid portion so modified or eliminated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

CITY OF ITHACA

By: _____ Date: _____
Svante L. Myrick
Mayor

GHD CONSULTING SERVICES INC.

By: _____ Date: _____
Bruce G. Munn, P.E.
Principal-Wastewater

TOWN OF ITHACA

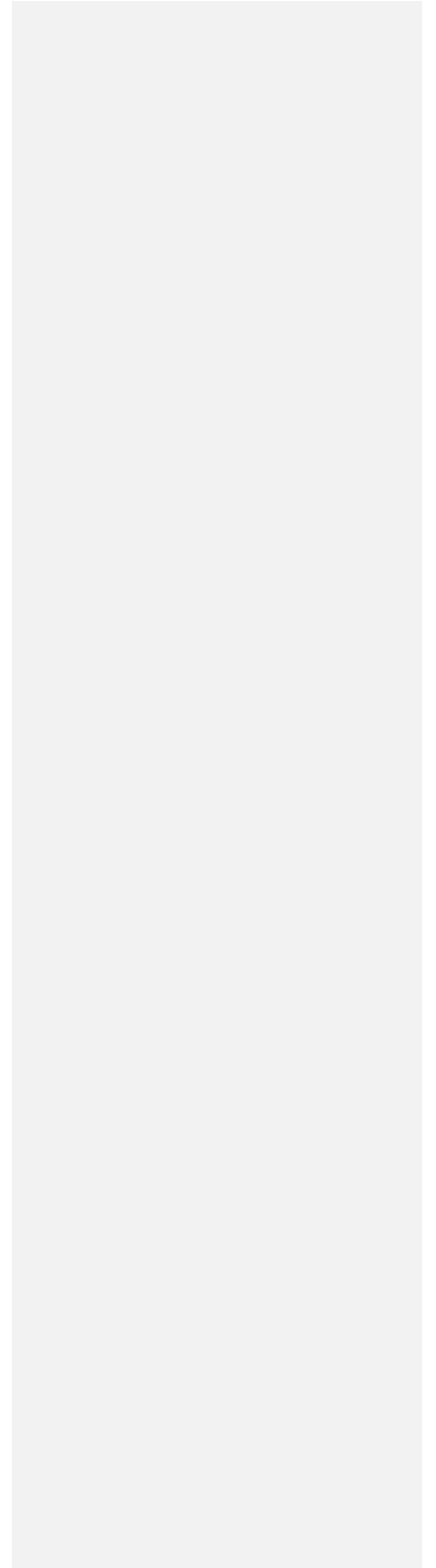
By: _____
Bill Goodman
Supervisor

Date: _____

GHD CONSULTING SERVICES INC.

By: _____
Bruce G. Munn, P.E.
Principal-Wastewater

Date: _____



TOWN OF DRYDEN

Comment [BM1]: Make this a separate page

By: _____ Date: _____
Jason Leifer
Supervisor

By: _____ Date: _____
Linda Lavine
Councilperson

By: _____ Date: _____
Dan Lamb
Councilperson

By: _____ Date: _____
Kathrin Servoss
Councilperson

By: _____ Date: _____
Deborah Cipolla-Dennis.
Councilperson

GHD CONSULTING SERVICES INC.

By: _____ Date: _____
Bruce G. Munn, P.E.
Principal-Wastewater