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AMY M. MEYER, RECORDER
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Resolution No. 2016-13
A RESOLUTION OF THE CITY OF TROY, ILLINOIS
AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR PROFESSIONAL
SERVICES WITH THOUVENOT, WADE & MOERCHEN, INC., FOR A WASTEWATER
TREATMENT FACILITIES PLAN

Adopted by the City Council
of the City of Troy, Illinois
This 18TH Day of APRIL, 2016.

RESOLUTION NO. 2016 -13

**A RESOLUTION OF THE CITY OF TROY, ILLINOIS
AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES WITH THOUVENOT, WADE &
MOERCHEN, INC., FOR A WASTEWATER TREATMENT
FACILITIES PLAN**

WHEREAS, the City of Troy, Illinois, has selected Thouvenot, Wade & Moerchen, Inc. ("TWM"), to provide professional engineering services with regard to a Wastewater Treatment Facilities Plan for the City of Troy, Illinois; and

WHEREAS, the City Council for the City of Troy, Illinois, has determined that it is in the best interests of the City of Troy, Illinois, to enter into an agreement between the City and TWM for professional engineering services for the Wastewater Treatment Facilities Plan; and

WHEREAS, both the City Council for the City of Troy, Illinois, and TWM desire to enter into said agreement; and

WHEREAS, a copy of said agreement is attached hereto, marked "Exhibit A," and made a part hereof; and

WHEREAS, the City of Troy, Illinois, and TWM have negotiated the terms and conditions of said agreement attached hereto as "Exhibit A" and the City of Troy, Illinois, believes that same are in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:

1. The recitals set forth above are hereby incorporated herein as if fully set forth.
2. The Mayor of the City of Troy, Illinois, is hereby authorized to enter into the attached agreement with TWM and is further authorized to take all actions and sign all documents necessary to fulfill the intent of this Resolution.
3. This Resolution shall be in effect following its passage, approval and publication as provided by law.
4. Any and all Resolutions, sections or subsections of Resolutions in conflict herewith are hereby repealed.

PASSED by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 18th day of April, 2016.

Those voting aye: DeCarli, Dyer, Greenfield, Hendrickson, Italiano, Jackson, Partney, Turner.

Those voting nay: _____


Those absent: _____

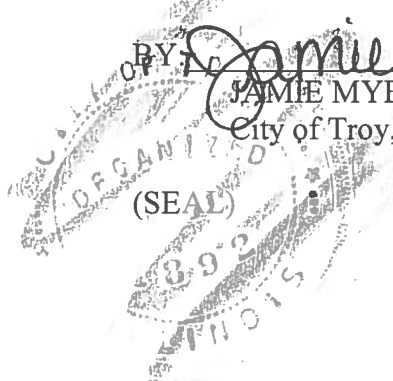
APPROVED:

By:  _____

ALLEN P. ADOMITE, Mayor
City of Troy, Illinois

ATTEST:

BY: 
JAMIE MYERS, Clerk
City of Troy, Illinois





**IEPA Step 1 – Wastewater Treatment Facility and
Collection System Improvements
FACILITY PLAN**

**PROFESSIONAL ENGINEERING SERVICES
CONTRACT AGREEMENT**

**AGREEMENT BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT, made as of April 12, 2016 between the City of Troy, whose mailing address is 116 Market Street, Troy, Illinois 62294, hereinafter known as **OWNER** and Thouvenot, Wade & Moerchen, Inc., whose mailing address is 4940 Old Collinsville Road, Swansea, Illinois 62226, hereinafter known as **ENGINEER**. **OWNER** intends to prepare and submit to the IEPA (Illinois Environmental Protection Agency), a Wastewater Treatment Facility Plan. Said Facility Plan is Step 1 in the IEPA three step process to construct and obtain a NPDES (National Pollutant Discharge Elimination System) permit for new sanitary sewers and improvements and expansion to the City of Troy Wastewater Treatment Facilities, located at 610 Center Street, as situated near the intersection of Illinois Route 162 and Cheshire Road. When completed and submitted by the **ENGINEER**, and subsequently approved by the IEPA, said Facility Plan shall provide the **OWNER** with a feasible implementation plan and IEPA approval to proceed with IEPA Step 2 (Design Phase) and Step 3 (Construction Phase). Said Wastewater Treatment Facility Plan shall also meet the planning requirements necessary for the **OWNER** to acquire an IEPA Low Interest Loan from the State of Illinois IEPA Low-Interest Revolving Loan Program to finance Step 2 and Step 3 costs.

OWNER and **ENGINEER** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **ENGINEER** and the payment for those services by **OWNER** as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 **ENGINEER** shall provide for **OWNER** professional engineering services in all phases of the **Project** to which this Agreement applies as hereinafter provided. These services will include serving as **OWNER**'s professional engineering representative for the **Project**, providing professional engineering consultation and advice and furnishing customary environmental engineering services.

1.1.2 The **ENGINEER** agrees to take affirmative steps to assure that small, minority, and women's business enterprises are utilized when possible as sources of suppliers, equipment, construction and services in accordance with Part 35.3145 (d). As required by the award conditions of USEPA's Assistance Agreement with the IEPA, the **ENGINEER** acknowledges that the fair share percentages are 5% of MBE's and 12% for WBE's.

1.2 IEPA Facility Plan

The Facility Plan will be completed in conformance with the Illinois Environmental Protection Agency's requirements for Step 1 Facility Plans as prepared by Thouvenot, Wade & Moerchen, Inc.

Services performed under this Step 1 Phase will include:

- 1.2.1** Introduction and Current Assessment of the City's background information including location, historical population, makeup of customer base, conditions affecting growth, and 20 year design population/customer base.
- 1.2.2** Map(s) of existing FPA boundaries and discussion of any necessary modifications. Note: Although FPA boundaries do not define service areas, IEPA still reviews FPA boundary modifications and may entail additional requirements, review and sign-offs.
- 1.2.3** Detailed description of the existing collection system and treatment facilities, along with a clear identification for the need of the proposed project(s).
- 1.2.4** Discussion of existing and proposed NPDES Permit limits. Detailed discussion of the chosen alternative's capability to maintain compliance with all applicable laws and regulations in addition to addressing the identified system need(s).
- 1.2.5** Basis of Design for Chosen Alternative. The preliminary engineering data will include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc. to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm Code 370.
- 1.2.6** The discharge from the existing Wastewater Treatment Facility is to an unnamed tributary to Wendell Creek. According to the Illinois' 2014 303(d) List, Wendell Creek is not listed as an impaired waterway. The Facility Plan will review information regarding an anti-degradation analysis pursuant to Ill. Adm. Code 35 Section 302.105 for a new or modified NPDES Permit.

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- 1.2.7 Inventory of environmental impacts of chosen alternative and a discussion of the measures required during design and construction to mitigate or minimize negative environmental impacts.
- 1.2.8 Reproducible 8.5 x 11-inch map(s) showing the project(s) location(s) relative to the community.
- 1.2.9 Detailed cost estimate for the alternative selected, including both capital and O, M & R costs over the 20-year planning period. The estimate will include cost items for design engineering, construction engineering, bidding, legal, construction and contingency.
- 1.2.10 Implementation plan for the proposed project including the anticipated construction schedule, the financial schedule, including necessary financial arrangements for assuring adequate annual debt service and O,M & R coverage requirements and a description of the dedicated source of revenue necessary for loan repayment. List any other funding involved in the project.
- 1.2.11 Detailed description of the existing residential rate structure, average water consumption or the basis for billing, current average monthly residential bill, any proposed rate changes and the proposed average monthly residential bill as a result of the project(s).

Three Copies of the Facilities Plan and related documents will be submitted to Infrastructure Financial Assistance Section (IFAS), Illinois Environmental Protection Agency

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

If authorized in writing by **OWNER**, **ENGINEER** shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.7 inclusive. These services are not included as part of Basic Services except to the extent provided in paragraphs 1.1 and 1.2; these will be paid for by **OWNER** as indicated in Section 5.

- 2.1.1 Services resulting from significant changes in the general scope, extent or character of the **Project** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond **ENGINEER's** control.
- 2.1.2 Providing renderings or models for **OWNER's** use.
- 2.1.3 Preparing alternate planning documents requested by **OWNER** after submission of Facility Plan to the IEPA for approval.
- 2.1.4 Assisting the **OWNER** with services for easement acquisitions and/or negotiations for real estate purchases.
- 2.1.5 Preparation of operating, maintenance and staffing manuals.
- 2.1.6 Preparation of modified or new NPDES permit.
- 2.1.7 Preparing to serve or serving as a consultant or witness for **OWNER** in any litigation, arbitration or other legal or administrative proceeding involving the **Project**.
- 2.1.8 Additional services in connection with the **Project**, including services that are to be furnished by **OWNER** in accordance with Section 3, and services not otherwise provided for in this Agreement.
- 2.1.9 Conducting any IEPA required Sewer System Evaluation Survey (SSES)

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of **ENGINEER**.

- 3.1 The City Administrator is to act as **OWNER's** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER's** policies and decisions with respect to **ENGINEER's** services for the **Project**.
- 3.2 Provide all criteria and full information as to **OWNER's** requirements for the **Project**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which **OWNER** will require to be included in the **Project**.

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- 3.3 Assist **ENGINEER** by placing at **ENGINEER's** disposal all available information pertinent to the **Project** including previous reports and any other data relative to design or construction of the **Project**.
- 3.4 Arrange for access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under this Agreement.
- 3.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ENGINEER**, obtain advise of an attorney, insurance counselor and other consultants as **OWNER** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.
- 3.7 Furnish approvals and permits from all governmental authorities having jurisdiction over the **Project** and such approvals and consents from others as may be necessary for completion of the **Project**.
- 3.8 Furnish, or direct **ENGINEER** to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.
- 3.9 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIODS OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for **ENGINEER's** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **Project**.
- 4.2 After acceptance by **OWNER** of the **ENGINEER's** Facility Plan and issuance of an IEPA approval, the services to be rendered under this contract shall be considered complete.
- 4.3 If **OWNER** has requested significant modifications or changes in the general scope, extent or character of the **Project**, the time of performance of **ENGINEER's** services shall be adjusted equitably.
- 4.4 This contract shall remain in force for a period of 15 months or until IEPA approval for the Facility Plan has been issued.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER

5.1.1 For Basic Services. **OWNER** shall pay **ENGINEER** for Basic Services rendered under Section 1.

Lump sum fee \$85,900. Engineer shall provide Owner with payment milestones associated with the major submittals outlined in Section 1.2

5.1.2 Other Provisions Concerning Payments

If **OWNER** fails to make any payment due **ENGINEER** for services and expenses within thirty days after receipt of **ENGINEER'S** statement therefor, **ENGINEER** has the right to increase the amounts due at the rate of 1% per month from said thirtieth day, and in addition, **ENGINEER** may after giving seven days written notice to **OWNER**, suspend services under this Agreement until **ENGINEER** has been paid in full all amounts due for services, expenses and charges.

5.1.3 For Additional Services. **Owner** shall pay **ENGINEER** for Additional services rendered under Section 2 as follows:

5.1.3.1 General. For Additional Services of **ENGINEER'S** principals and employees engaged directly on the **Project** and rendered pursuant to paragraph 2.1 (except services as a consultant or witness under paragraph 2.1.6), on an hourly basis in accordance with the then current Fee Schedule.

5.1.3.2 Serving as a Witness. For services rendered by **ENGINEER's** principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding in accordance with paragraph 2.1.6, at the rate of \$1,200 per 8-hour day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph 5.1.3.1).

5.1.4 For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, **OWNER** shall pay **ENGINEER** the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.



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SECTION 6 - GENERAL CONSIDERATION

6.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice to the other party.

6.2 Reuse of Documents

Upon full payment of all sums due by Owner to Engineer under this Agreement, and upon performance of all of Engineer's obligations, the latest original Drawings and Specifications, as well as the latest electronic data prepared by the Engineer of behalf of the Owner for the Project, shall become the Owner's property. The City agrees to indemnify and hold harmless Engineer from any claim, damage, loss and/or expenses, including attorneys' fees, which is the subject of reuse by a third party.

6.3 Insurance

6.3.1 ENGINEER shall procure and maintain insurance for protection from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

6.3.2 ENGINEER shall also procure Professional Liability / Errors & Omissions Insurance, and maintain same throughout the design and construction of the Project, and for a period of two years following substantial completion.

6.3.3 OWNER may request that ENGINEER secure and provide project specific insurance for a specific length of time and with higher limits than ENGINEER would normally carry, provided that OWNER also agrees to pay for the higher cost of the premiums for said insurance.

6.4 Controlling Law

This Agreement is to be governed by the law of the State of Illinois.

6.5 Successors and Assigns

6.5.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

6.5.2 Neither OWNER nor ENGINEER 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. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

6.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

6.6 Access to Records

6.6.1 ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance of Agency loan work under this agreement consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accounts Professional Standard (666 Fifth Avenue, New York, New York 10019; June 1, 1987). The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The ENGINEER will provide facilities for such access and inspection.

6.6.2 Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.



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6.6.3 The **ENGINEER** agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection 6.6.1 above, to the Agency. Where the audit concerns the **ENGINEER**, the auditing agency will afford the **ENGINEER** an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

6.6.4 Records under subsection 6.6.1 above shall be maintained and made available during performance on Agency loan Work under this agreement and until three years from day of final Agency loan audit for the **PROJECT**. In addition, those records which relate to any "dispute" appeal under an Agency loan agreement, or litigation, or the settlement of claims arising out of such performance, costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

6.7 Contingent Fees

ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage of contingent fee.

6.8 Certification Regarding Debarment, Suspension and other Responsibility Matters.

ENGINEER certifies that the services of anyone that has been debarred or suspended under Federal Executive Order 12549 has not or will not be used for planning, design and construction. See attached Exhibit A.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement.

- 7.1.1 Exhibit A Certification Regarding Debarment Suspension and other Responsibility Matters**
- Exhibit B General Terms and Conditions**
- Exhibit C Current Fee Schedule**

7.2 This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between **OWNER** and **ENGINEER** and supersede prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

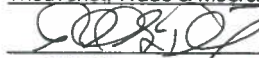

OWNER:

ENGINEER:

City of Troy


Allen Adornite
Mayor

Thouvenot, Wade & Moerchen, Inc.


(President)

(Vice President)

Address for giving notices:

Address for giving notices:

116 Market Street
Troy, Illinois 62294

4940 Old Collinsville Road
Swansea, Illinois 62226



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**EXHIBIT A - CERTIFICATION REGARDING DEBARMENT SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

EPA Project Control Number _____

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicated for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Roland G. Thouvenot, President
Typed Name & Title of Authorized Representation

Signature of Authorized Representative

Date

4/12/16

I am unable to certify the above statements. My explanation is attached.

EXHIBIT B - GENERAL TERMS AND CONDITIONS

TITLES. The paragraph titles used in this Agreement, and in any attachments, are only for general reference and are not part of the Agreement.

SEVERABILITY AND SURVIVAL. If any provision of this Agreement is later held unenforceable for any reason it will be deemed void, but all remaining provisions will continue in full force and effect. Notwithstanding completion or termination of this Agreement for any reason, **OWNER's** rights, duties and obligations, as well as **ENGINEER's**, will survive the completion of the Work or the termination of the Agreement, and remain in full force and effect until they are fulfilled.

SUSPENSION OF SERVICES. If **OWNER** suspends Work on the project for more than thirty (30) calendar days in the aggregate, **ENGINEER** is entitled to compensation for the services performed and the charges incurred prior to that suspension. Upon resumption, **ENGINEER** may also be entitled to a fair adjustment to its fees to help offset the resulting demobilization and remobilization costs, as well as a fair adjustment in the project schedule because of the suspension. **OWNER** also agrees that **ENGINEER** is entitled to be paid, and that **OWNER** will pay **ENGINEER**, for all the services provided, even if **OWNER** subsequently decides not to proceed with the Project.

TIMELINESS OF PERFORMANCE; DELAYS. **ENGINEER** will perform its services with due and reasonable diligence consistent with sound professional practices. However, **ENGINEER** is not responsible for delays caused by factors beyond **ENGINEER's** reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, **OWNER's** failure to furnish timely information or approve or disapprove of our services or work product promptly, or delays caused by **OWNER's** faulty performance or by Contractors at any level. When such delays beyond **ENGINEER's** reasonable control occur, **OWNER** agrees that **ENGINEER** is not responsible for damages, nor shall **ENGINEER** be deemed to be in default of this Agreement.

INFORMATION PROVIDED BY OTHERS. **ENGINEER** may need **OWNER** to provide some specific information so **ENGINEER** can perform its Scope of Services. **OWNER** is also obligated to provide **ENGINEER** with any additional information available to **OWNER** or to **OWNER's** other consultants or contractors that might be applicable, necessary or helpful to **ENGINEER** in performing its Scope of Services. With all such information **OWNER** acknowledges that **ENGINEER** has to trust the accuracy, completeness and sufficiency of information when it is provided by **OWNER** or someone else. Still, there are a number of possible reasons why the information may not be accurate, including that errors or omissions may have occurred in the information when assembled and provided by **OWNER**, or **OWNER** may fail to produce all the necessary or appropriate documents or information. Even so, **OWNER** agrees that for any information provided by **OWNER** or others, **ENGINEER** is entitled to rely upon it, and to assume that it is accurate, complete, and in compliance with applicable rules, regulations, codes and laws. **OWNER** therefore also agrees to indemnify and hold **ENGINEER** harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should **OWNER** provide documents or other information for **ENGINEER's** use, and an injury, claim or loss arises or is alleged based upon errors, omissions, inaccuracies or code violations contained within the information **OWNER** or someone else provides. **ENGINEER** remains responsible for any and all negligence, professional errors and/or omissions caused by **ENGINEER** in performance of its services.

UNDERGROUND UTILITIES & SUBSURFACE CONDITIONS. **ENGINEER's** Scope of Services may require that **ENGINEER** indicate the location of underground utilities on survey or plans. If so, **ENGINEER** will request that the location of those underground utilities be identified by surface markings. **ENGINEER** does this by calling J.U.L.I.E. (State of Illinois) or DIG-RITE (State of Missouri) or any other appropriate "one-call" utility location service. **OWNER** also agree to provide **ENGINEER** with any information **OWNER** might have about easements, pipelines, personal communication cables, or any subsurface conditions that might not otherwise be known or located. **ENGINEER** then prepares the survey / plans indicating the locations of existing underground utilities, as they have been marked, or disclosed by **OWNER**. However, **OWNER** again recognizes and understand that in order for **ENGINEER** to provide this service, **ENGINEER** is dependent upon information provided by others, and that the information upon which **ENGINEER** must rely may contain errors or be incomplete for a number of reasons, including: 1) joint utility location services or their members may refuse to locate buried utilities during the design phase of a project; 2) the actual location of utilities sometimes deviates from the surface location marked by joint location services; 3) not all utilities are members of joint location services and therefore may not be notified by them, and; 4) member utilities may not respond to all requests for utility location. **OWNER** should also recognize and understand that surface location markings do not identify the depth of underground utilities. **OWNER** therefore agrees to indemnify and hold **ENGINEER** harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should the markings provided by a utility location service prove inaccurate or incomplete, and property damage, injury or economic loss arises or is alleged because of a contractor's reliance on underground utility information contained in plans prepared by **ENGINEER**. **ENGINEER** remains responsible for any and all negligence, professional errors and/or omissions caused by **ENGINEER** in performance of its services.

While **ENGINEER** will indicate subsurface utilities on its plans and surveys in a manner consistent with the ordinary standard of care, unless specifically required to do so in the Scope of Services, **ENGINEER** will not excavate, uncover or inspect actual underground utilities to indicate a more precise location, condition or capacity, or to try to determine the existence of any subsurface condition that might impact the eventual construction of the project.

ENVIRONMENTAL & HEALTH HAZARDS. Both **OWNER** and **ENGINEER** acknowledge that **ENGINEER's** scope of work does not include any services related to asbestos or hazardous or toxic materials. However, while working on the site, should **ENGINEER** encounter any materials or conditions that **ENGINEER** suspects could be hazardous or toxic, **ENGINEER** will notify **OWNER** of that suspicion so that **OWNER** can investigate. In that event, or in the event that any other party encounters or suspects asbestos or hazardous or toxic materials at the jobsite or any areas adjacent, **ENGINEER** may, at its option and without liability for consequential or any other damages, suspend the performance of **ENGINEER's** services on the project until **OWNER** retains an appropriate specialist, consultant, or contractor to identify, abate and/or remove the hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations.

CHANGED CONDITIONS. Once this Agreement is in place, it is possible that conditions change, and that something occurs or is discovered that was not originally contemplated or known by **ENGINEER**. **OWNER** agrees to rely on **ENGINEER's** judgment as to the continued adequacy of this Agreement in such cases. Should **ENGINEER** identify changed conditions that in **ENGINEER's** opinion necessitate renegotiation of this Agreement, both **ENGINEER** and **OWNER**

EXHIBIT B - GENERAL TERMS AND CONDITIONS (CONTINUED)

will promptly, and in good faith, enter into that renegotiation. If the parties cannot agree to new Agreement terms, each have the absolute right to terminate this Agreement, in which case **OWNER** agrees to pay for the services **ENGINEER** has rendered through the date of termination.

STANDARD OF CARE. Services provided by **ENGINEER** 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.

Both **OWNER** and **ENGINEER** owe a duty of care to the public that requires both parties to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety. **OWNER** will make no request of **ENGINEER** that, in **ENGINEER**'s reasonable opinion, would be contrary to **ENGINEER**'s professional responsibilities to protect the public. **OWNER** will take all actions and render all reports required of them in a timely manner. Should **OWNER** fail or refuse to take any required actions or render any required notices to appropriate public authorities in a timely manner, **OWNER** agrees that **ENGINEER** has the right to exercise **ENGINEER**'s professional judgment in reporting to appropriate public officials or taking other necessary action. **OWNER** agrees to take no action against **ENGINEER** or attempt to hold **ENGINEER** liable in any way for carrying out what **ENGINEER** reasonably believes to be **ENGINEER**'s public responsibility. **OWNER** also agrees that in this situation, **ENGINEER** has the right to immediately terminate this Agreement and cease providing services, without the notice **ENGINEER** would normally provide under the Termination or Suspension of Services sections of this Agreement.

JOBSITE SAFETY. **ENGINEER**'s employees will perform their work in a safe manner and in accordance with applicable rules and regulations. **ENGINEER** is responsible for the safety of **ENGINEER**'s own employees on the jobsite but will follow instructions of the General Contractor when those employees are in an area of the jobsite controlled by the General Contractor. Neither **ENGINEER**'s professional activities, nor the presence of **ENGINEER**'s employees or subconsultants at a construction site, will relieve the General Contractor or any other entity of their responsibility for jobsite safety or for their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Neither **ENGINEER** nor any of **ENGINEER**'s employees has the authority to exercise any control over any construction contractor or other entity or their employees in connection with their Work or any health or safety precautions. **OWNER** also agrees that in order to further protect both parties, **OWNER**, **ENGINEER**, and any subconsultants **ENGINEER** employs, will be indemnified and made additional insureds under the General Contractor's general liability insurance policy, endorsed under ISO Form CG 20 10 11 85, unless a different form is proposed and accepted by **ENGINEER**.

CONFIDENTIALITY. If any data or information furnished to **ENGINEER** by **OWNER** is marked **CONFIDENTIAL**, or if **OWNER** directs **ENGINEER** to keep confidential any data generated by **ENGINEER** for this project, **ENGINEER** will not disclose that data or information to any person or entity, other than **ENGINEER**'s own employees, any subconsultants working for **ENGINEER** on the project, the general contractor and subcontractors, or any appropriate or required governmental or regulatory agency. These provisions do not apply to information in whatever form that comes into the public domain, nor do they restrict **ENGINEER** from giving notices required by law or from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction. These provisions also do not apply to information that in **ENGINEER**'s opinion is necessary for **ENGINEER** to defend itself from any suit or claim.

OWNER agrees that the technical methods, techniques and pricing information contained in any proposal submitted by **ENGINEER** pertaining to this project or contained in this Agreement or any Addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party, subject to the Freedom of Information Act.

UNAUTHORIZED CHANGES. In the event **OWNER** allows, authorizes, consents to or approves of anyone else making changes to any plans, specifications or other construction documents prepared by **ENGINEER**, and those changes are not approved in writing by **ENGINEER**, **OWNER** recognizes that said changes and the results thereof are not **ENGINEER**'s responsibility. **OWNER** therefore agrees to indemnify and hold **ENGINEER** harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should **OWNER**, or any of **OWNER**'s agents or representatives other than **ENGINEER**, make unauthorized changes to drawings and data provided by **ENGINEER**.

SUPPLANTING DESIGN PROFESSIONAL. All work by Engineer will be completed to a Standard of Care appropriate for the type of services being provided. The City agrees to indemnify and hold harmless Engineer from any claim, damage, loss and/or expenses, including attorney's fees, arising from the unauthorized use of and/or modification to Engineer's work by the City or any party acting on its behalf. The City shall not be required to indemnify Engineer from Engineer's own negligence.

DEFECTS IN SERVICE. Should **OWNER** discover what **OWNER** suspects to be a defect in **ENGINEER**'s work or services, **OWNER** agrees to promptly report that suspicion to **ENGINEER** as soon as **OWNER** becomes aware of it, so that **ENGINEER** can investigate and take measures to correct any such defect and to minimize the consequences of it. **OWNER** further agrees to impose a similar notification requirement on all **OWNER**'s contractors, and that they do so with all subcontractors, at any level. The intent is to avoid the potentially higher cost of change orders by identifying and correcting any such defects as early as possible. Therefore, failure by **OWNER** or **OWNER**'s contractors or subcontractors to notify **ENGINEER** as required in this section, will limit **ENGINEER**'s cost of remedying any such defects to the sum that remedy would have cost had **ENGINEER** been given prompt notification.

BETTERMENT. Betterment, or unjust enrichment, means that a person, who is negatively impacted because of an alleged error, recoups not only their actual losses caused by the error, but gains an advantage or profit because of it. This Agreement does not allow betterment or unjust enrichment. Therefore, if due to an oversight by **ENGINEER**, any required item or component of the project is omitted from the project construction documents, **ENGINEER**'s responsibility is



**IEPA Step 1 – Wastewater Treatment Facility and
Collection System Improvements
FACILITY PLAN**

**PROFESSIONAL ENGINEERING SERVICES
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limited to the cost over and above what it would have cost OWNER had the component or item been designed, specified and constructed in the first place. In other words, not the cost of the item itself, but only the premium cost to add the omitted item out of normal sequence.

CERTIFICATIONS, GUARANTEES, & WARRANTIES. ENGINEER will not be required to sign any documents, no matter who makes the request, which would result in ENGINEER having to certify, guarantee, or warrant the existence of conditions, when ENGINEER did not observe the existence of those conditions and cannot otherwise determine their existence. OWNER agrees not to make the resolution of any dispute with ENGINEER, or the payment of any amount due to ENGINEER, in any way contingent upon ENGINEER signing any such certification. In addition, ENGINEER will not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in ENGINEER's sole judgment, increase ENGINEER's contractual or legal obligations or risks, or the availability or cost of ENGINEER's professional or general liability insurance.

NON-SOLICITATION OF EMPLOYEES. During the term of this agreement and for a period of two (2) years afterwards, OWNER agree that OWNER will not solicit to hire any of ENGINEER's employees, whether or not OWNER became aware of them through the performance of this Agreement. Furthermore, OWNER agree for the same time period not to participate or facilitate in any way in the attempt of any other company to solicit to hire or hire any of ENGINEER's employees.

Nothing prohibits ENGINEER from proceeding with any legal action necessary to enforce the payment provisions of this Agreement, should OWNER fail to pay for services rendered by ENGINEER.

STATUTES OF REPOSE. Any legal action by either OWNER or ENGINEER against the other arising out of or in any way connected with the services to be performed under this Agreement, is barred after any statute of limitation set by state law, or after five (5) years have passed from the date the project or project phase is substantially completed, whichever is shorter, and under no circumstances will any such claim be initiated by either OWNER or ENGINEER beyond those dates. In the event this Agreement is terminated early, the date of Agreement termination will be used in place of a substantial completion date.

THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement should be interpreted to create a contractual relationship with, or a cause of action in favor of, a third party against either OWNER or ENGINEER. ENGINEER's services under this Agreement are being performed solely for OWNER's benefit, and no other entity shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of services under this Agreement. OWNER agrees to include a provision in all of OWNER's contracts with contractors and other entities involved in this project to carry out the intent of this Section.

FAILURE TO PAY FOR SERVICES PROVIDED. If Engineer terminates this Agreement, payment shall only be made by Owner if a useful receivable is obtained as outlined in the expected payment milestones. The City shall not be obligated to pay for work that is incomplete or did not result in a useful outcome if the Engineer terminates this Agreement.

GENERAL INDEMNIFICATIONS. ENGINEER agrees to indemnify and hold OWNER (as well as OWNER's officers, directors and employees and their heirs and assigns) harmless 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 ENGINEER's negligent acts, errors or omissions under this Agreement, or those of anyone for whom ENGINEER is legally liable.

OWNER agrees to indemnify and hold ENGINEER (as well as ENGINEER's officers, directors, employees and their heirs and assigns, and any individuals and entities ENGINEER retain for performance of the services under this Agreement, including but not limited to ENGINEER's subconsultants and their officers, directors, employees, heirs and assigns) harmless 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 OWNER's negligent acts, errors or omissions in connection with the Project, or those of OWNER's contractors, subcontractors or other consultants, or anyone for whom OWNER is legally liable.

OWNER is not obligated to indemnify ENGINEER in any manner whatsoever for ENGINEER's own negligence. ENGINEER is not obligated to indemnify OWNER in any manner whatsoever for OWNER's own negligence. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of both parties, they shall be borne by each party in proportion to each party's negligence.

LIMITATION OF LIABILITY. The potential risks of the project, in recognition of the relative benefits to both OWNER and ENGINEER, have been allocated in such a manner that OWNER agrees to limit ENGINEER's liability, and the liability of ENGINEER's subconsultants, to OWNER, and to all construction contractors and subcontractors on the project, for any and all claims, losses, costs, and damages of any nature whatsoever, or claims or expenses from any cause or causes. As such, unless a higher limit is requested by OWNER and agreed to by ENGINEER, the total aggregate liability for ENGINEER and ENGINEER's subconsultants to all those named, defaults to, and shall not exceed the total compensation received by Engineer from Owner under this Agreement. This limitation applies regardless of cause of action or legal theory, pled or asserted.

Limitations on liability and indemnities in this Agreement are business understandings between OWNER and ENGINEER and shall apply to all the different theories of recovery, including breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action. However, these limitations on liability and indemnities will not apply to any losses or damages that have been found by a trier of fact to have been caused by ENGINEER's sole or gross negligence or ENGINEER's willful misconduct.

ENTIRE AGREEMENT. This Agreement contains the entire agreement between OWNER and ENGINEER and supersedes any prior understanding or agreements, whether verbal or in writing, in relation to this project and the specific Scope of Services outlined in this Agreement.