

DESIGN ENGINEERING SERVICES AGREEMENT

This Design Engineering Services Agreement ("Agreement") effective this July 22, 2022, is by and between [REDACTED] Joint WWTP, a California corporation, ("Client"), and NOTE: [REDACTED] Technical Services, Inc. a Michigan Corporation, [REDACTED] Technical Services, Inc., a California corporation, ([REDACTED]) each also referred to individually as ("Party") and collectively as ("Parties").

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. SCOPE OF SERVICES

1.1 [REDACTED] shall perform the services set forth in EXHIBIT A ("Services"), incorporated herein by reference.

1.2 [REDACTED] will provide the work products specifically commissioned by Client for delivery by [REDACTED] to Client and listed in EXHIBIT A ("Deliverables") in accordance with the schedule ("Project Schedule").

2. **TERM OF AGREEMENT** Upon execution by the Parties, this Agreement shall have the effective date set forth above. This Agreement shall remain in force until all obligations related to the Services, other than those obligations which survive termination of this Agreement under Article 27, have been fulfilled, unless this Agreement is sooner terminated as set forth herein.

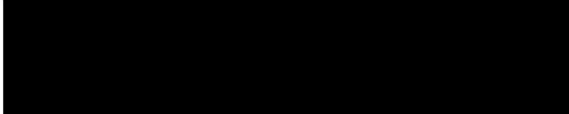
3. **COMPENSATION AND PAYMENT** [REDACTED] shall be paid for the performance of the Services in accordance with EXHIBIT B ("Compensation and Payment"), incorporated herein by reference.

4. **NOTICE** All notices, requests, claims, demands and other official communications herein shall be in writing. Such notices shall be given (i) by delivery in person, (ii) by a nationally recognized commercial courier service; or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery to the other Party at the following addresses:

TO CLIENT:



TO [REDACTED]



Claims-related notices shall be copied to:
[REDACTED] ClaimNotices@[REDACTED].com

or to which address the receiving Party may from time to time give notice to the other Party. Rejection or other refusal to accept, or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept, or inability to deliver. Claims-related notices need to include the [REDACTED] project name and number found in this Agreement as well as contact information of the person submitting the notice.

5. [REDACTED] RESPONSIBILITIES

5.1 [REDACTED] shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same locality under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project. The full extent of [REDACTED] responsibility with respect to the Services shall be to perform in accordance with the above standards and to remedy any material deficiencies or defects in the Deliverables at [REDACTED] own expense, provided that [REDACTED] is notified by Client, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after [REDACTED] completion or termination of the Services. [REDACTED] MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT OR OTHERWISE.

5.2 [REDACTED] will endeavor in good faith, as needed, to obtain from the appropriate authorities their interpretation of applicable codes and standards and will apply its professional judgment in interpreting the codes and standards as they apply to the Project at the time of performance of the Services. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from [REDACTED] original interpretation through no fault of [REDACTED] and that additional costs necessary to conform to such changes or interpretations during or after execution of the Services will be subject to an equitable adjustment in the Compensation and Project Schedule.

5.3 [REDACTED] shall be responsible for its performance and that of [REDACTED] lower-tier subcontractors and vendors. However, [REDACTED] shall not be responsible for health or safety programs or precautions related to Client's activities or operations or those of Client's other contractors and consultants or their respective subcontractors and vendors ("Contractors"). [REDACTED] shall have no responsibility for (i) construction means, methods, techniques, sequences or procedures; (ii) the direction of Contractors' personnel; (iii) selection of construction equipment; (iv) coordination of Contractors' work; (v) placing into operation any plant or equipment; or (vi) Contractors' failure to perform the work in accordance with any applicable construction contract. [REDACTED] shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client, Contractors or others at the project site ("Project Site") other than [REDACTED] employees, subconsultants and vendors. So as not to discourage [REDACTED] from voluntarily addressing health or safety issues while at the Project Site, in the event [REDACTED] does identify such issues by making observations, reports, suggestions or otherwise, [REDACTED] shall have no authority to direct the actions of others not under [REDACTED] responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of [REDACTED] actions or forbearance.

5.4 Notwithstanding anything contained in this Agreement, [REDACTED] shall have no responsibility for the discovery, presence, handling, removal, transportation, storage or disposal of, or exposure of persons to hazardous materials in any form related to the Project. [REDACTED] shall not be responsible for Client's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of [REDACTED]

5.5 In the event that the Services include construction observation or similar field services, [REDACTED] responsibility shall be limited to determining general conformance with [REDACTED] design. Visits by [REDACTED] to the Project Site and observations made by [REDACTED] shall not relieve the Contractors of their obligation to conduct comprehensive inspections of the construction work sufficient to ensure conformance with the intent of the construction contract documents, and shall not relieve the Contractors of their responsibility for means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work and for all safety precautions incidental thereto.

5.6 Any opinions of probable construction costs provided by [REDACTED] represent [REDACTED] good faith professional judgment in light of its experience, knowledge and the information reasonably available to [REDACTED] at the time of preparation of the opinion. However, since [REDACTED] has no control over the market, economic conditions or the bidding procedures, [REDACTED] its directors, officers and employees and subconsultants do not make any guarantees or warranties whatsoever, whether express or implied, with respect to such opinions and

accept no responsibility for any loss or damage arising therefrom or in any way related thereto. Any reliance upon such opinions, whether by Client or third parties, do so at the relying party's own sole risk.

6. CLIENT'S RESPONSIBILITIES

6.1 Client shall provide in writing any specific Client requirements or criteria for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

6.2 Client shall furnish all information and technical data in Client's possession or under its control reasonably required for [REDACTED] proper performance of the Services prior to [REDACTED] commencement of the Services or at such other times as Client and [REDACTED] mutually agree. [REDACTED] is entitled and will rely upon the accuracy, completeness, currency and non-infringement of information and data provided by Client or obtained from generally accepted sources within the industry, except to the extent such verification by [REDACTED] may be expressly required as a defined part of the Services. [REDACTED] will not be responsible for defects in its Services attributable to its reliance upon or use of such information and data.

6.3 Client shall arrange for access and make all provisions necessary for [REDACTED] to enter upon public and/or private property as required for [REDACTED] to properly perform the Services. Client shall disclose to [REDACTED] any known or suspected hazards at the Project Site which may pose a threat to human health, property or the environment.

6.4 If any document or inquiry requires Client to approve, comment, or to provide any decision or direction with regard to the Services, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the Project Schedule, or if not identified in the Project Schedule, within a reasonable time to facilitate the timely performance of the Services.

7. **INDEPENDENT CONTRACTOR** Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or create a relationship of employer/employee or principal/agent between Client or Client's Contractors and [REDACTED]

8. CONFIDENTIALITY

8.1 [REDACTED] shall treat as confidential information and data delivered to it by Client or developed in the performance of the Services that are specified in writing by Client to be confidential ("Confidential Information"). Confidential Information shall not be disclosed to third parties by [REDACTED] without the consent of Client, except to the extent reasonably believed necessary by [REDACTED] for its performance of the Services, for a period of 5 years following completion or termination of this Agreement.

8.2 Notwithstanding the above, these restrictions shall not apply to Confidential Information which (i) is already known to [REDACTED] at the time of its disclosure; (ii) becomes publicly known through no wrongful act or omission of [REDACTED] (iii) is communicated to a third party with the express written consent of Client and not subject to restrictions on further use or disclosure; (iv) is independently developed by [REDACTED] or, (v) to the extent such Confidential Information is required by Law to be disclosed; provided that the information required for disclosure shall remain Confidential Information as to all other persons or entities pursuant to the terms of this Agreement, and provided further that [REDACTED] shall promptly provide Client with written notice of such requirement.

8.3 Upon termination of this Agreement or upon Client's written request, [REDACTED] shall return the Confidential Information to Client or destroy the Confidential Information in [REDACTED] possession or control. Notwithstanding the above, [REDACTED] shall not be required to destroy Confidential Information held electronically in archive or back-up systems in accordance with general systems archiving or backup policies or required for preservation by law, regulation, audit, data retention or corporate archival purposes or per regulatory, judicial or governmental order. All such retained Confidential Information shall be kept confidential by [REDACTED] subject to and in accordance with the terms of this Agreement.

9. DATA RIGHTS

9.1 All right, title and interest in and to any Deliverables, and excluding any [REDACTED] Intellectual Property, shall be assigned by [REDACTED] to Client upon full payment for the Deliverables. Client acknowledges and agrees that [REDACTED] is the author of, and retains all rights, title and interest in all other intellectual property, including work papers, templates, details, designs, drawings, plans, renderings, analyses, calculations, models, software, macros, applications, specifications, processes, procedures, interim or draft documents, methodologies, know-how, and any other instruments of service: (a) belonging to [REDACTED] or its consultants prior to the effective date of this Agreement; (b) developed by [REDACTED] or its consultants outside the scope of, or not exclusively pursuant to, this Agreement; (c) licensed by [REDACTED] or its consultants from a third-party; and (d) included within the Deliverables but which are generic, generally applicable to or standard in [REDACTED] business (collectively, "[REDACTED] Intellectual Property"). To the extent the Deliverables contain, or Client's receipt of the Services require the use of [REDACTED] Intellectual Property, to the extent of [REDACTED] ownership and control thereof, [REDACTED] hereby grants to Client, upon full payment for the Deliverables and Services, a limited, non-exclusive, non-assignable, royalty-free license to use and sublicense said [REDACTED] Intellectual Property solely and to the extent necessary to achieve the purposes stated in **EXHIBIT A**.

9.2 Nothing in this Agreement shall be construed to prohibit [REDACTED] or its consultants from using for other purposes, clients or projects the skills, knowledge and experience gained by [REDACTED] or its consultants in the performance of the Services and provision of the Deliverables pursuant to this Agreement, provided that [REDACTED] and its consultants do not use Client's Confidential Information.

9.3 [REDACTED] in developing solutions, testing hypotheses, or documenting designs, may employ advanced technologies for simulation, information modeling, generative design, and the development of project documentation ("Technical Tools"). While these Technical Tools may result in digital files and/or simulations or models ("Datasets"), when not specifically defined within this Agreement, these Datasets will not constitute a Deliverable or portion thereof. Rather, the Technical Tools and Datasets will be a byproduct of [REDACTED] internal processes and will be [REDACTED] sole proprietary information. Notwithstanding anything to the contrary in this Agreement, any ownership and data rights provisions will not apply to such Technical Tools and Datasets and [REDACTED] will remain the sole owner of such Technical Tools and Datasets.

9.4 Client understands and accepts that the Services and Deliverables provided by [REDACTED] pursuant to this Agreement are intended by [REDACTED] for the sole use by Client for the specific purpose stated in **EXHIBIT A**. Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless [REDACTED] and its consultants and their directors, officers, employees, agents, representatives, affiliated and parent companies, ("[REDACTED] Indemnities") against any and all claims, suits, causes of action, damages, losses, costs, expenses and liabilities (including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings or claims), including reasonable attorneys' fees and costs of defense, to which [REDACTED] or any of the [REDACTED] Indemnities may become subject as a consequence of any use or modification of, reliance upon, or transmission to a third party of, said Services, Deliverables, [REDACTED] Intellectual Property, by Client outside the scope of this Agreement without the express, written permission by [REDACTED].

10. RECORD DRAWINGS Client shall direct the Contractors to provide [REDACTED] with updated red-line documentation which accurately and completely reflects any changes between the original design and the final construction. Record drawings to be delivered by [REDACTED] to Client as a part of the Services ("Record Drawings") reflect the design provided by [REDACTED] as modified by such updated information. Consistently with [REDACTED] defined Services, [REDACTED] shall not have an obligation to independently validate such information related to the actual construction. [REDACTED] makes no warranty or guarantee with regard to the accuracy or completeness of the information provided by the Contractors and third parties and shall bear no responsibility for any errors or omissions arising from or related to any defects or deficiencies in such information.

11. ELECTRONIC FILES

11.1 Electronic files to be delivered under this Agreement, if any, contain information to be used for the production of contract documents for the Project and are provided solely as an accommodation to Client. The official Contract Documents of Record ("Contract Documents") are those documents produced by [REDACTED] which bear seals and/or signatures. Unless otherwise expressly set forth in the Services, no electronic files delivered under this Agreement are Contract Documents.

11.2 The electronic files, if any, were created to supplement the official Contract Documents. Due to the possibility that files of this nature can be modified, either unintentionally or otherwise; or that the information contained in these files can be used in a manner for which they were not originally intended; or that electronic data may be corrupted by electronic transmission, [REDACTED] makes no representation that the files, after delivery, will remain an accurate representation of the source data in [REDACTED] possession, or are suitable for any other purpose or use.

11.3 All indications of [REDACTED] and [REDACTED] subconsultants' involvement, including but not limited to seals and signatures, shall be removed from each electronic display and shall not be included in any prints produced therefrom.

11.4 Client understands and agrees that the right to use the electronic files, if such are provided under this Agreement, is specifically limited to the Project and the purpose defined by [REDACTED] and is conditioned upon proper payment for such use.

11.5 If a third-party license is required to access or use electronic files, Client acknowledges its responsibility at its own expense to obtain all applicable hardware and software needed to legally access the electronic files. [REDACTED] shall have no liability for third parties' use of or reliance on such files.

12. CERTIFICATION

12.1 For purposes of this Agreement, "certification" means to state or declare a professional opinion based on the standard of performance set forth in Section 5.1 above.

12.2 [REDACTED] shall not be required to execute certificates that would (i) result in [REDACTED] having to certify, guarantee or warrant the existence of conditions whose existence [REDACTED] cannot reasonably ascertain under the existing Services; (ii) require knowledge, services or responsibilities beyond the Services; or (iii) may, in [REDACTED] reasonable judgment, require [REDACTED] to make a certification that would not normally be covered by [REDACTED] professional or other liability insurance. In addition, Client agrees not to make resolution of any dispute with [REDACTED] or payment of any amount due to [REDACTED] in any way contingent upon [REDACTED] executing such certificates.

12.3 A professional's certification in no way relieves other parties from meeting their respective requirements imposed by contract or other means, including commonly accepted industry standards and practices. If required as a part of its Services, [REDACTED] will provide a written report stating whether, in [REDACTED] professional opinion and based on periodic site visits, the construction work complies generally with the Contract Documents.

13. CHANGED SITE CONDITIONS The discovery of hazardous materials, hazardous wastes, pollutants, contaminants or concealed obstructions or utilities that could not reasonably have been anticipated from information provided to and reasonably apparent to [REDACTED] constitutes a changed site condition. To the extent that such changed site condition increases the health and safety risks associated with the Services or requires [REDACTED] to perform services different or in excess compared to those set forth in the Services, [REDACTED] may, at its sole discretion, elect to suspend and/or terminate the related Services and shall be paid for the related Services up through the date of such termination. To the extent that the changed site conditions impact the cost, level of effort or schedule of the Services, equitable adjustments shall be made to the Services, schedule and fee under this Agreement.

14. **MATERIALS AND SAMPLES** Any items, substances, materials or samples removed from the Project Site for testing, analysis, or other evaluation will be returned to the Project Site unless otherwise agreed to by the Parties in writing. Client recognizes and agrees that [REDACTED] is acting as a bailee and at no time assumes title to said items, substances, materials or samples.

15. **COMPLIANCE** The Parties shall comply with applicable treaties, compacts, statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and other requirements of governmental or judicial entities that have jurisdiction over the Services ("Law").

16. **FORCE MAJEURE** Neither Party shall be responsible for a delay or disruption in, or inability to provide its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by events or contingencies, existing or future, beyond the reasonable control of the claiming Party, including "acts of God," abnormal weather conditions or other natural catastrophes, war (whether declared or not), terrorism, sabotage, computer viruses, civil unrest, strikes, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, virus (e.g., SARS Cov-2), disease (e.g. COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, discovery of hazardous materials, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other Force Majeure Events), or any other events or circumstances not within the reasonable control of the party affected, whether or not of a similar kind or nature to any of the foregoing (a "Force Majeure Event"). The Party seeking application of this provision shall notify the other Party in writing promptly upon learning of the impact of the Force Majeure Event upon the notifying Party's performance of its obligations under this Agreement. Upon the occurrence of a Force Majeure Event, [REDACTED] shall be entitled to an equitable adjustment to the project schedule and compensation sufficient to compensate [REDACTED] for any increase in the time or costs necessary to perform the Services under this Agreement. Should a Force Majeure Event substantially prevent or be reasonably likely to substantially prevent [REDACTED] performance of the Services for more than thirty (30) days, then [REDACTED] shall be entitled to terminate this Agreement without breach. In case of such termination, [REDACTED] shall be entitled to compensation for those Services performed as of the date of termination.

17. INSURANCE

17.1 [REDACTED] will maintain the following insurance coverages and amounts:

- 17.1.1 Workers Compensation insurance as required by Law;
- 17.1.2 Employer's Liability insurance with coverage of \$1,000,000 each accident/employee.
- 17.1.3 Commercial General Liability insurance with coverage of \$2,000,000 per occurrence/aggregate;
- 17.1.4 Automobile Liability insurance with coverage of \$1,000,000 combined single limit; and
- 17.1.5 Professional Liability insurance with coverage of \$2,000,000 per claim/aggregate.

18. INDEMNITY

18.1 [REDACTED] agrees to indemnify Client, its officers, directors and employees, from third party claims of loss or damage, exclusive of defense obligations, for bodily injury or property damage ("Claims"), to the proportional extent caused by [REDACTED] negligence or willful misconduct.

18.2 If Services include [REDACTED] performance during the construction phase of the Project, Client shall require Client's Contractors working on the Project Site to include [REDACTED] its directors, officers and employees in any indemnity and in any insurance benefits that Client requires such Contractors to provide to Client.

19. CONSEQUENTIAL DAMAGES WAIVER NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY, ITS PARENTS, AFFILIATES AND SUBSIDIARIES OR THEIR RESPECTIVE DIRECTORS OFFICERS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND [REDACTED] HEREBY RELEASES CLIENT AND CLIENT HEREBY RELEASES [REDACTED] FROM ANY SUCH LIABILITY.

20. RISK ALLOCATION AND RESTRICTION OF REMEDIES THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER THIS AGREEMENT AGAINST [REDACTED] ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, (" [REDACTED] COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE [REDACTED] COVERED PARTIES SHALL NOT EXCEED \$250,000 OR THE ACTUAL PAID COMPENSATION FOR THE SERVICES, WHICHEVER IS GREATER. THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.

21. DISPUTES RESOLUTION

21.1 Either Party may initiate a dispute resolution by providing written notice to the other Party setting forth the subject of the claim, dispute or controversy and the requested relief. The recipient of such notice shall respond within 5 business days with a written statement of its position and a recommended solution to the Claim.

21.2 If the Parties cannot resolve the dispute through negotiation, either Party may refer the claim, dispute or controversy to a panel ("Panel") consisting of a designated senior representative from each Party ("Representative"), who shall have the authority to resolve it. The Representatives shall not have been directly involved in the Services and shall negotiate in good faith. No written or verbal representation made by either Party in the course of any Panel proceeding or other settlement negotiations shall be deemed to be a Party's admission. If the representatives are unable to resolve the dispute within 15 business days, either Party may pursue its respective legal and equitable remedies.

22. GOVERNING LAW All contract issues and matters of law will be adjudicated in accordance with the laws of the state where the Project is located, excluding any provisions or principles thereof which would require the application of the laws of a different jurisdiction.

23. TERMINATION

23.1 This Agreement may be terminated for convenience by either Party upon 30 days advance written notice. On termination, [REDACTED] will be paid for all Services performed up through the termination date.

23.2 This Agreement may be terminated for cause by either Party if the other Party materially fails to perform its obligations under this Agreement, does not commence correction of such non-performance within 10 business days of receipt of written notice and/or fails to diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.

24. ASSIGNMENT

24.1 Neither Party may assign this Agreement without the written consent of the other Party, which unconsented-to assignment shall be void ab initio.

24.2 Notwithstanding Section 24.1 above, the Parties recognize that [REDACTED] has affiliated companies who have specialized expertise, necessary certifications/registrations or other capabilities that may make use of such affiliates more suitable for the performance of all or part of the Services. [REDACTED] shall be entitled, without additional consent, to assign this Agreement or performance of the Services, in whole or in part, to any of [REDACTED] subsidiaries or affiliates upon written notice to Client.

25. PARTIES IN INTEREST Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties any right or remedy under or by reason of this Agreement. The provisions of this Agreement shall bind and inure solely to the benefit of the Parties and their respective successors and permitted assigns.

26. WAIVER Either Party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving Party. No waiver by any Party of a breach of any provision of this Agreement shall be construed to be a waiver of any subsequent or different breach.

27. SEVERABILITY AND SURVIVAL The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provisions were omitted. Articles 4 (Notice), 5 ([REDACTED] Responsibilities), 6.2 (Reliance on Data), 8 (Confidentiality), 9 (Data Rights), 10 (Record Drawings), 11 (Electronic Records), 12 (Certification), 14 (Materials and Samples), 17 (Insurance), 18 (Indemnity), 19 (Consequential Damages Waiver), 20 (Risk Allocation), 21 (Disputes Resolution), 22 (Governing Law), 24 (Assignment), 25 (Parties in Interest) and 27 (Severability and Survival) shall survive termination of this Agreement. To the extent any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, said provision shall be revised to the limited extent necessary to make that provision legal and enforceable and, to the fullest extent permitted by law, consistent with Parties' original intent.

28. PREPARATION OF AGREEMENT Each Party has had the opportunity to avail itself of legal advice and counsel. Neither Party shall be deemed to be the drafter or author of this Agreement. In the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement, or any portion hereof, against either Party as the drafter of this Agreement.

29. SIGNATURES Each person executing this Agreement warrants that he/she has the necessary authority to do so on behalf of the respective Party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

30. ORDER OF PRECEDENCE

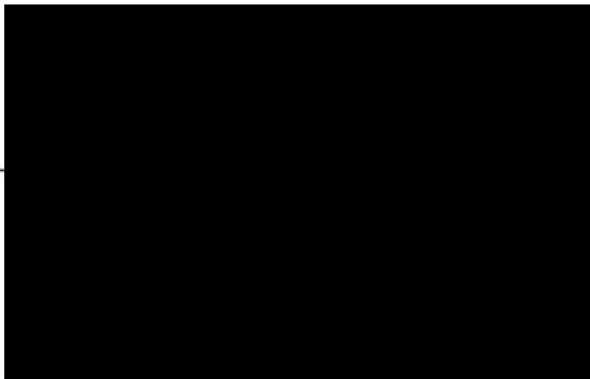
Executed Change Orders
Design Engineering Services Agreement Article 31 "Special Terms and Conditions"
Design Engineering Services Agreement Articles 1 through 30 and 32
EXHIBIT B Compensation and Payment
EXHIBIT A Services
Other contract documents

31. SPECIAL TERMS AND CONDITIONS



None

32. ENTIRE AGREEMENT This Agreement contains all of the promises, representations and understandings of the Parties and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written. This Agreement shall not be altered, changed, or amended except as set forth in a written amendment to this Agreement, duly executed by both Parties. The attached **EXHIBIT C** ("Change Order"), incorporated herein by reference, is the preferred form for such use.



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EXHIBIT A
SERVICES

Services:

See attached Exhibit A

Schedule:

See attached Exhibit A

Deliverables:

See attached Exhibit A

[REDACTED] Project Manager

Name	[REDACTED]
Title	Process Engineer, Water
Address	[REDACTED]
Phone Number	[REDACTED]
Email Address	[REDACTED].com

Client Project Manager

Name	[REDACTED]
Title	[REDACTED] Joint Wastewater Treatment Plant Plant Manager
Address	[REDACTED]
Phone Number	[REDACTED]
Email Address	[REDACTED]

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[REDACTED]

JOINT WASTEWATER TREATMENT PLANT

Producing clean water for the environment

July 22, 2022

[REDACTED]

[REDACTED]

**Subject: Construction Engineering Services Proposal
Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work Project**

Dear [REDACTED],

I am pleased to inform you that the Joint Board of Commissioners of the [REDACTED] Joint Wastewater Treatment Plant, at its July 21, 2022 regular meeting, awarded your firm the work associated with the subject Engineering Services Proposal. The award is based upon your firm performing the tasks included in the scope of work delineated in your proposal dated July 19, 2022. It is understood that the total estimated fee for completing the scope of work outlined in the proposal is \$431,979.

We look forward to working with [REDACTED] to complete this critical work. If you have any questions or comments relating to this award, please contact me.

Sincerely,

[REDACTED]

Plant Manager




July 19, 2022



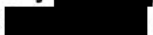


RE: Professional Construction Engineering Services for the Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work Project

Dear Tim:

 is hereby presenting this Proposal for construction engineering services for the Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work Project.

Project History

The  Joint WWTP entered into a professional services agreement for design engineering services of the Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work Project on April 16, 2020. Bid documents were completed by  on May 17, 2022. It is anticipated, the Joint Board will award the project to  on July 21, 2022. Construction services are expected to begin in August 2022 and continue for 620 calendar days.

At this time, we are presenting the scope of work and estimated hours and fee for providing construction engineering services and supplemental technical support during construction as described below.

Scope

The scope of work is attached. Following is a listing of the major scope items.

- Review of contractor's shop drawing submittals. A total of 100 submittals with 50% resubmittals are anticipated for a total of 1,267.50 hours are anticipated.
- Interpretation of plans and specifications for requests for information (RFIs). A total of 25 RFIs at 8 hours per RFI for a total of 200 hours are anticipated.
- Preparation of contract change orders and field modifications assistance. A total of 10 change orders at 10 hours per change order for a total of 100 hours are anticipated.
- Site visit by design staff in support of Resident Project Representative (RPR) and attendance at monthly project meetings. A total of 600 hours are anticipated. It is our understanding that the Joint WWTP will be providing the RPR.

- ████████ will provide assistance to ████████ WWTP staff for coordination with the Indiana Michigan Power. A total of 16 hours are anticipated.
- ████████ will provide technical support during construction to prepare a supplemental drawing and a manufacturer specification to facilitate a Request for Proposal (RFP) for additional work associated with the existing Digester No. 1 and No. 2 mixing system.

Fees

██████████ proposes a fee of \$431,979 to perform the construction engineering services for the Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work Project summarized above. A more detailed summary of the tasks showing the related fees is attached.

Schedule

It is anticipated, the Joint Board will award the project to ██████████ on July 21, 2022. Construction services are expected to begin in August 2022 and continue for 620 calendar days. The estimated hours and fee are based on construction being completed within the 620 calendar days.

Conclusion

Please let us know if you have any questions or comments regarding this proposal. We would be happy to meet with you to discuss this further. Please contact ██████████ at ██████████ or at ██████████.com if you have questions or would like to arrange a meeting. We thank you for this opportunity and look forward to working with you on this project.

Sincerely,

██████████ L ██████████, ██████████

██████████

██████████ P. E.

Project Manager

██████████

██████████ P.E.

Vice President

Enclosures

Cc: File

**ATTACHMENT
SCOPE OF WORK**

[REDACTED] Joint Wastewater Treatment Plant
Construction Engineering Services – Scope of Work
Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work
July 19, 2022

INTRODUCTION

[REDACTED] has completed plans and specifications for construction of the Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work project. The Scope of Work describes the follow-up engineering services proposed for construction services.

The construction phase services will be divided into two components as follows:

- A. Office Services and Meetings: [REDACTED] will assist with preconstruction activities, review and approve shop drawings, review RFI's, review change orders, attend periodic progress meetings, and prepare record drawings.
- B. On-Site Services: [REDACTED] will be the Owner's Representative during the construction period as described in specifications Section 00700, General Conditions, Article 9 of this project. It is understood that [REDACTED] will not provide a full time Resident Project Representative (RPR) and that [REDACTED] will provide an individual to serve this function.
- C. Additional Digester No. 1 and No. 2 Appurtenances: [REDACTED] will provide technical support during construction to prepare supplemental drawings and specifications to facilitate a Request for Proposal (RFP) for additional work associated with the existing Digester No. 1 and No. 2 mixing system.

The estimated hours and fee for the construction engineering services is included as an Attachment.

PHASE A – CONSTRUCTION SERVICES

[REDACTED] will provide [REDACTED] with office construction phase services to support the [REDACTED] and the field construction management efforts.

TASK 1 – PRECONSTRUCTION ACTIVITIES

Objective: Assist [REDACTED] with resident engineer mobilization, information and documentation systems, and the preconstruction meeting.

Approach: [REDACTED] will assist [REDACTED] with preconstruction activities including documentation systems, preconstruction activities, and resident engineer mobilization.

Input:

I-1.1 [REDACTED] input

Activities:

- A-1.1 Prepare document control system
- A-1.2 Prepare Notice to Proceed and Agreement forms
- A-1.3 Attend preconstruction meeting

Products:

P-1.1 Computerized document control system

TASK 2: CONSTRUCTION ENGINEERING

Objective: Provide [REDACTED] with office engineering services during construction.

Approach: [REDACTED] will review, approve, and process shop drawings and operation & maintenance (O&M) manual submittals, will respond to RFI's, and will review contractor's Pay Requests with assistance from the RPR. An estimate of shop drawing hours based on the technical specification sections is included with Attachment B. The hours are based on the review of one original submittal and one re-submittal.

Input:

I-2.1 Submittals of shop drawings and RFI's

Activities:

A-2.1 Reviews, processing, and approval of shop drawings, responses to RFI's, review of contractor's pay requests.

Products:

P-2.1 Reviewed shop drawings and responses to RFI's

TASK 3: REVIEW CHANGE ORDERS

Objectives: Review submitted change orders for adherence to contract documents. [REDACTED] will process and review information received from the contractor throughout the project regarding items and products specified in the contract documents. [REDACTED] will offer its opinion to [REDACTED] on proposed change orders.

Approach: [REDACTED] will review change orders and provide comments to [REDACTED]

Input:

I-3.1 Submitted change orders

I-3.2 Contract documents

Activities:

A-3.1 Review submitted change orders

Products:

P-3.1 Responses to potential change orders and opinions on adherence to contract documents.

P-3.2 Recommendations to [REDACTED]

TASK 4: PREPARE RECORD DRAWINGS

Objective: Document the constructed project for historical and archival purposes.

Approach: Utilizing [REDACTED] mark-ups and the contractor's mark-ups, [REDACTED] will prepare record drawings of the construction project.

Input:

- I-4.1 [REDACTED] mark-ups
- I-4.2 Contractor's mark-ups.

Activities

- A-4.1 Prepare record drawings.

Products:

- P-4.1 Record Drawings in paper format and electronic pdf files.

TASK 5: PROJECT MANAGEMENT

Objective: Ensure adherence to project budget and schedule.

Approach: [REDACTED] will provide reasonable project management functions to keep the project on schedule and within budget. Progress meetings will be held with the contractor and [REDACTED] at critical milestones including when plant operations are impacted by connections to existing facilities.

Product:

- P-5.1 Meeting Minutes

PHASE B – ON-SITE CONSTRUCTION ASSISTANCE

TASK 1: ON-SITE ASSISTANCE

Objective: Provide technical support during critical construction activities for technical assistance and for start-up activities.

Approach: [REDACTED] will provide part time technical specialists for construction observation as necessary during critical construction activities. The Contract Time is estimated as 560 calendar days for substantial completion and 620 calendar days for final completion. The engineering costs are estimated based on 546 hours of on-site services.

Part-time observation tasks will include specialty staff to assist [REDACTED] on site representative. Scheduling of specialty observation will be coordinated with [REDACTED] as required to verify that the products' installation is in conformance with the contract documents and is coordinated with associated systems.

[REDACTED] will attend monthly progress meetings, review progress and on-site operations, and rejection of work. [REDACTED] will also provide specialty staff to verify testing and start-up of equipment.

Input:

- I-1.1 Construction management experience.

Activities:

- A-1.1 Assist [REDACTED] on-site representative to observe construction progress.
- A-1.2 Attend monthly progress meetings.
- A-1.3 Verify testing and start-up of equipment.

Products:

P-1.1 Minutes of progress meetings to document construction activities during [REDACTED] site visits.

PHASE C – SUPPLEMENTAL SERVICES

TASK 1: ADDITIONAL DIGESTER NO. 1 AND NO. 2 APPURTENANCES

Objective: Provide technical support during construction to prepare supplemental drawings and specifications to facilitate a Request for Proposal (RFP) for additional work associated with the existing Digester No. 1 and No. 2 mixing system.

Approach: [REDACTED] will utilize the Field Report that was furnished by Evoqua June 2, 2022, that included recommendations and proposal to replace the existing 3-way lubricated plug valves, system governors, relief globe valves, various O-Rings as well as cleaning of the mixing lances and adjustment of pressure settings.

Input:

I-1.1 Evoqua Field Report date June 2, 2022

I-1.2 Follow up discussions with Evoqua representatives and [REDACTED] staff

Activities:

A-1.1 Confirm site conditions and obtain updated information from Evoqua

A-1.2 Prepare supplemental drawings and specifications

A-1.3 Request RFP for additional work from Contractor

A-1.4 Coordinate review and approval from [REDACTED] for the additional work

A-1.5 Facilitate Change Order and scheduling of work with Contractor

Products:

P-1.1 Supplemental Drawings and Specifications

**ATTACHMENT
ESTIMATED HOURS AND FEE**

Joint Wastewater Treatment Plant
Construction Engineering Services - Estimated Hours and Fee
Influent Pumping Improvements, CHP Upgrade and Miscellaneous Work
July 19, 2022

Phase / Tasks	Project Manager	Project Engineer (s)	Senior Engineer	Civil Engineer	Mechanical Engineer	Architectural Engineer	Structural Engineer	Electrical Engineer	CAD	Hours	Direct Labor \$'s
Office Services											
Construction Activities	24.00	12.00	4.00	2.00	2.00	2.00	2.00	2.00	0.00	50.00	\$2,673
Construction Engineering - Shop Drawings & Details	322.00	325.50	150.00	51.00	280.50	32.00	122.50	164.00	20.00	1,467.50	\$82,980
Field Change Orders	10.00	20.00	10.00	5.00	5.00	5.00	10.00	15.00	20.00	100.00	\$5,567
Prepare Record Drawings	4.00	20.00	4.00	4.00	2.00	2.00	4.00	4.00	80.00	124.00	\$5,467
Project Management	42.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	42.00	\$2,315
Subtotal	402.00	377.50	168.00	62.00	289.50	41.00	138.50	185.00	120.00	1,783.50	\$99,002
On-Site Construction Assistance											
Site Construction Observation and Monthly Meetings	100.00	168.00	80.00	42.00	21.00	21.00	42.00	126.00	0.00	600.00	\$34,259
Subtotal	100.00	168.00	80.00	42.00	21.00	21.00	42.00	126.00	0.00	600.00	\$34,259
Supplemental Services											
Verify firm site conditions and coordinate with geotechnical consultant	1.00		16.00							17.00	\$1,245
Prepare Supplemental Drawings and Specifications	10.00	60.00	20.00						80.00	170.00	\$7,059
Obtain RFP from Contractor	2.00	8.00	4.00							14.00	\$649
Obtain geotechnical review and approval from BHSJ	4.00	10.00	4.00							18.00	\$820
Obtain field Change Order and scheduling of work with Contractor	4.00	8.00	4.00							16.00	\$759
Subtotal	21.00	86.00	48.00	0.00	0.00	0.00	0.00	0.00	80.00	235.00	\$10,532
Total	523.00	631.50	296.00	104.00	310.50	62.00	180.50	311.00	200.00	2,618.50	\$143,793

Multiplier	3.00
Labor Summary:	
Phase A	\$297,006
Phase B	\$102,777
Phase C	\$31,596
Total Labor	\$431,379
ODC's:	
Express Mail & Printing	\$600
Total ODC's	\$600
Total Estimated Fee	\$431,979

EXHIBIT B
COMPENSATION AND PAYMENT

1 **COMPENSATION** The Services set forth in **EXHIBIT A** will be compensated on the following basis:

Advance retainer of [\$ 0] The advance retainer is to be applied to the final invoice. Any remainder will be returned to Client within 30 days of receipt of final payment.

Time & Material - See Section 2.1 for Hourly Labor Rates

Time and Materials with a Not-to-Exceed ("NTE") amount of (\$ 431,979). The Hourly Labor Rates (if applicable) are as in Section 2.1 below. Reimbursable expenses are included in the overall NTE cap.

Lump Sum [\$]:

Milestone/Deliverable & Date	Payment Amount
	\$ 0

Cost Plus Fixed Fee: [Cost \$ 0 and Fee \$ 0]

Other: .

--

2. **RATE SCHEDULE** Compensation shall be based on the following Hourly Labor Rate Schedule: **INTENTIONALLY OMITTED.**

2.1 **HOURLY LABOR RATE SCHEDULE**

	\$
--	----

2.2 **OTHER HOURLY LABOR RATE CATAGORIES** If additional labor categories are authorized during the performance of this Agreement, compensation for each additional category will be negotiated at the time the additional Services are authorized.

2.3 **ANNUAL HOURLY LABOR RATE ADJUSTMENTS** The Hourly Labor Rate Schedule is adjusted each calendar year to reflect updated labor cost categories. Labor cost of Services authorized in subsequent calendar years will be based on the applicable Hourly Labor Rate Schedule for those years.

3. **REIMBURSEABLE EXPENSES** Reimbursable expenses are expenditures made by [REDACTED] for goods, travel expenses and vendor services in support of the performance of the Services. Such expenditures will be billed at the actual cost to [REDACTED].

4. **CHANGE ORDERS** The Parties may at any time and by written agreement make changes in the Services, Project Schedule, Deliverables, Compensation or other terms and conditions in this Agreement. The Parties shall effect such change through the use of a written Change Order. **EXHIBIT C** is the preferred form for such use.

5. **INVOICING** [REDACTED] will invoice Client on a monthly basis unless otherwise set forth herein.

6 **PAYMENT**

6.1 If payment is based on Time and Materials with a NTE, once [REDACTED] reaches the NTE, [REDACTED] will stop further Services pending a Change Order to adjust the budget and schedule for the continued performance of the Services.

6.2 Timely payment is a material term of this Agreement. Client shall pay all undisputed portions of [REDACTED] invoices within 30 days of receipt without holdback or retention. Client shall notify [REDACTED] within fourteen (14) days of the receipt of the invoice of any disputed items. Such notice must be accompanied by a detailed description of any disputed items and include supporting documentation as well as references to the provision(s) of this Agreement which permit a holdback or retention. If such notice is not provided within fourteen (14) days, Client waives its rights to dispute the invoice. Undisputed amounts remaining unpaid 30 days after the invoice date shall bear interest at the rate of 1.5% per month on the unpaid balance and [REDACTED] may suspend the Services pending receipt of such payment. In addition, [REDACTED] retains its unrestricted rights under Article 23 (Termination) of the Agreement.

6.3 If the Project is suspended by Client for more than 30 days, [REDACTED] shall be paid for all Services performed prior to the effective date of suspension within 30 days of such suspension. Upon resumption of the Project, [REDACTED] shall be entitled to an equitable adjustment in cost and schedule to compensate [REDACTED] for expenses incurred as a result of the interruption and resumption of the Services.

6.4 To the extent that completion of the Services is delayed beyond the original scheduled completion date and such delay is not the fault of [REDACTED] an equitable adjustment shall be made to [REDACTED] Compensation and Project Schedule.

6.5 Except as otherwise specifically provided herein, Client shall pay or reimburse [REDACTED] as appropriate, for all categories of taxes other than income tax, including without limitation, sales, consumer, use, value added, gross receipts, privilege, and local license taxes related to the Services.

6.6 Client shall make payments to [REDACTED] using one of the following methods:

6.6.1 [REDACTED] LOCKBOX:

[REDACTED]

6.6.2 ELECTRONIC FUNDS TRANSFER/ACH PAYMENT:

Account Name: [REDACTED]
Bank Name: [REDACTED]
Address1: [REDACTED]
Address2: [REDACTED]
City/State/Zip: [REDACTED]
Account Number: [REDACTED]
ABA Routing Number: [REDACTED]

6.6.3 WIRE TRANSFER:

Account Name: [REDACTED]
Bank Name: [REDACTED]
Address: [REDACTED]
City/State/Zip: [REDACTED]
Account Number: [REDACTED]
ABA Routing Number: [REDACTED]
SWIFT Code: [REDACTED]

6.6.4 Questions related to payment can be sent to:

Supervisor by phone at (804) 515-8490 or by email at
[@.com](mailto: @.com)

(End of page)

[Redacted]

[Redacted] s [Redacted] e
Date

[Redacted] Project Name: _____
[Redacted] Project No.: _____
Change Order No.: _____

EXHIBIT C

SAMPLE CHANGE ORDER FORM

In accordance with the Consulting Services Agreement dated ___ 20__ between _____ ("Client"), and _____, a _____ corporation, (" [Redacted] " this Change Order, with an effective date of _____, 20__ modifies that Agreement _____ as follows:

1. Changes to the Services:

2. Change to Deliverables:

3. Change in Project Schedule (attach schedule if appropriate):

4. Change in CONSULTANT's Compensation:

The Services set forth in this Change Order will be compensated on the following basis:

- No change to Compensation
- Time & Material (See **EXHIBIT B** for the Hourly Labor Rate Schedule)
- Time and Materials with a Not- to-Exceed amount of \$ _____. The Hourly Labor Rate Schedule is set forth in **EXHIBIT B** (if applicable). Reimbursable expenses are included in the overall Not to Exceed cap.
- Lump Sum \$ _____

Milestone/Deliverable & Date	Payment Amount
	\$

- Cost Plus Fixed Fee:** Cost \$ _____ and Fee \$ _____

Therefore, the total authorized Compensation, inclusive of this Change Order is \$ _____.

5. Project Impact:



Client's Name
Date

6. **Other Changes** (including terms and conditions):

7. All other terms and conditions of the Agreement remain unchanged.

8. Each Party represents that the person executing this Change Order has the necessary legal authority to do so on behalf of the respective Party.



CLIENT:

Signature

Signature

Printed Name

Printed Name

Printed Title

Printed Title

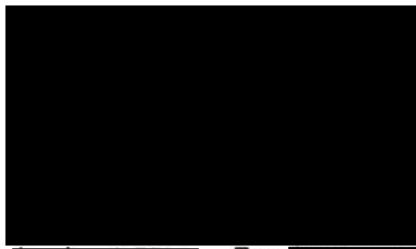
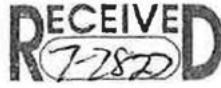
Date

Date

Address

Address

[End of Agreement]



Tel [redacted] Fax [redacted]

Letter of Transmittal

Date: July 26, 2022
Project No.: 60689320
Client Phone Number: [redacted]
Project Name: [redacted] Joint WWTP
Influent Pumping Improvements, CHP Upgrades, and Miscellaneous Work Project

[redacted] Joint WWTP
 [redacted]
 [redacted]

We are sending you Attached Under separate cover via _____ the following items:

- Shop Drawings Prints Specifications Literature _____
- Documents Tracings Permit Application _____
- Copy of Letter Sample(s) Catalogs Other Agreement _____

Quantity	Description
1	Agreement

are transmitted as checked below:

- For approval For record For your information
- As requested For review and comment Approved as noted
- Signature required Return required _____

ments:

im,

Attached for your review is [redacted] standard agreement for the design services during construction for the Influent Pumping improvements, CHP Upgrade and Miscellaneous Work Project. If you find this acceptable please sign and retain for your records. Please email a scan of the signed page. If you have any questions, comments or issues please let us know.
 Sincerely,



File _____

Signed: _____