

Update from CLJSTC Special Meeting on 8/31/20

By: Mark Ness

There were four main topics that were discussed at the Chisago Lakes Joint Sewage Treatment Commission ("CLJSTC") special meeting. They were Union Contract Negotiations, Agreement for Services with Veolia Water North America – Central, LLC ("Veolia"), Chlorine Gas License (paragraph 4.10 in contract), and Severance Package with representative from Auditor. Please note that I did not vote at this meeting as I did not have the council's approval to do so.

Union Contract: The union contract negotiations have been put on hold (continued to the next meeting) because if Veolia takes over, we would not need to deal with that. The only remaining union employee has agreed to become a Veolia employee. They only have the detail of vacation to work out with the transition.

Agreement for Services: The approval of the contract with Veolia came before the CLJSTC. A revised version of the contract was received at the meeting. I asked a couple questions which were:

- Based on paragraph 2.17 if they wanted to specify the schedule that Veolia needed to provide the reports. The Chisago City, City Administrator indicated that they had discussed this and they prefer to leave it open ended because if they want a different schedule, they will not need to amend the contract.
- How were the ownership and use of the vehicles going to be handled? They indicated that this contract is for labor only. The CLJSTC will maintain ownership of the vehicles and Veolia will use them and maintain insurance for them. The CLJSTC will also maintain insurance on it.

The annual fee for the next 5 years is \$614,667.00. Any increase in the annual fee is done through negotiation. The term of the agreement is for 5 years with an autorenewal unless we provide written notice no later than 120 days prior to the renewal date.

The contract is scheduled to go into effect on September 14, 2020. Since the most recent version of the contract was given at the beginning of the meeting, the motion that was made and passed unanimously was to pass the contract pending the approval of the subcommittee's review.

There was reference to the amount that costs will go up. They had indicated around 20-25 cent per thousand increase. I was unclear what the thousand was. However, please note that on September 21 at 4 there will be a budget meeting with the regular meeting at 5:30. I believe that we should have a representative there to hear what the outcome is.

Chlorine Gas License: It was brought up that according to paragraph 4.10 in the contract that the CLJSTC would bear the cost to obtain the permit or upgrade the facility to meet the EPA standards. The CLJSTC passed unanimously for Veolia to apply for the permit for the cost up to \$10,000 contingent on signing the contract.

Severance Package-Auditor Representative: Chairperson Kevin Stenson received a call from the CLJSTC's auditor (Abdo, Eick, & Meyers) that they think they should be in on calculating and guiding the payout of the severance package and benefits to the CLJSTC employees. They said that it is better to have it done right upfront then to have to fix it later. The CLJSTC unanimously gave a preliminary approval to proceed with this. They will get the full cost and final approval of this action will be discussed at the September 21, 2020 meeting.

***Draft Agreement For
Operation Services***

THIS AGREEMENT is entered into this ____ day of August 2020, by and between

Chisago Lakes Joint Sewage Treatment Commission, —with its mailing address at 31505 Lofton Avenue, Chisago City, Minnesota (hereinafter the “OWNER”)

and

VEOLIA WATER NORTH AMERICA – CENTRAL, LLC, with its principal address at 700 Butterfield Road, Lombard, IL 60148 (hereinafter “VWNA”).

WHEREAS, OWNER owns and provides for the operation of water and wastewater system, including maintenance, repair, expansion administration, billing, collection, customer service and permitting functions; and,

WHEREAS, OWNER desires to employ VWNA to perform labor associated with the operation of OWNER’s wastewater treatment facility and certain customer service functions for the compensation provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, OWNER and VWNA agree as follows:

1. General
 - 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
 - 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by OWNER shall remain the exclusive property of OWNER unless specifically provided for otherwise in this Agreement.
 - 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.
 - 1.4 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
 - 1.5 All notices shall be in writing and transmitted to the party’s address stated above. All notices shall be deemed given when delivered, if delivered personally or by

courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or received by the party for which notice is intended if given in any other manner.

- 1.6 This Agreement, including Appendices A through D, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms “VWNA” and “OWNER” shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
 - 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
 - 1.8 It is understood that the relationship of VWNA to the OWNER is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that VWNA is to supply professional engineering services to OWNER unless specifically stated in this Agreement to the contrary.
 - 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney’s fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.
 - 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
 - 1.11 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary.
 - 1.12 This Agreement shall be interpreted in accordance with its plain meaning and not strictly for or against either party hereto.
2. VWNA’s Services – General
- 2.1 VWNA shall provide a sufficient number of certified and qualified personnel who meet relevant State of Minnesota requirements and certifications regarding

wastewater treatment operations and are capable and demonstrate experience necessary to operate the facilities covered by this Agreement. VWNA intends to maintain current staffing levels at the time of the execution of this Agreement but retains the ability to modify staffing levels as necessary with the approval of OWNER.

- 2.2 VWNA shall provide ongoing training and education for appropriate personnel in all necessary areas of modern wastewater process control, maintenance, safety, and supervisory skills.
- 2.3 VWNA shall develop and/or supply and utilize computerized programs for process control and cost accounting, and laboratory Quality Assurance/Quality Control. Such programs shall be capable of readily providing historical data and trends.
- 2.4 Within forty-five (45) days after VWNA begins service under this Agreement, VWNA will provide a physical inventory of the OWNER's vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
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- 2.56 VWNA shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by OWNER and assist OWNER in enforcing existing equipment warranties and guarantees.
- 2.67 VWNA shall provide the OWNER with documentation that preventive and corrective maintenance is being performed on OWNER's owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be determined by the OWNER.
- 2.78 VWNA shall operate, maintain and/or monitor the Project on a 24-hour per day, seven day per week schedule, but the facilities will only be staffed Monday through Friday for eight (8) hours a day. VWNA staff will be available as necessary on weekends and after typical operation hours. VWNA shall respond within forty (40) minutes of being notified of an emergency at the facility.
- 2.89 Visits may be made at a reasonable time by OWNER's officers so designated by the OWNER's representative. Keys for the Project shall be provided to OWNER by VWNA for such visits. All visitors to the Project shall comply with VWNA's operating and safety procedures.
- 2.910 VWNA will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to OWNER regarding the need, if any, for OWNER to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to

VWNA's operations hereunder and federal regulations promulgated pursuant to the Americans With Disability Act ("ADA"). Nothing herein shall be construed to place upon VWNA a duty to find and report violations of either the safety laws or the ADA at the Facility.

- 2.101 VWNA may modify the process and/or facilities to achieve the objectives of this Agreement and charge the Costs to OWNER; provided, however, no modification shall be without OWNER's prior written approval if the complete modification Cost shall be in excess of Two Thousand Five Hundred Dollars (\$2,500).
- 2.112 In any emergency affecting the safety of persons or property, VWNA may act without written amendment or change order, at VWNA's discretion, to prevent threatened damage, injury or loss. VWNA shall notify OWNER of the existence of an emergency as soon as reasonably practicable. VWNA shall be compensated by OWNER for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include VWNA's non-labor direct Costs for the emergency work. VWNA shall be obligated to perform emergency work related to the wastewater services it provides under this Agreement. Nothing contained in this Section shall impose upon VWNA a duty to perform any emergency work unrelated to the wastewater services it provides under this Agreement- and failure to perform any such emergency work shall not impose upon VWNA any liability for errors and omissions.
- 2.123 VWNA will prepare required routine and monthly reports, including Daily Monitoring Reports, and submit them to OWNER for signature and transmittal to appropriate authorities.
- 2.134 VWNA will provide or contract for the provision of laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.145 VWNA will, at OWNER's cost, provide for the collection and hauling of solid waste, screenings, grit, sludge and scum ("Waste") to OWNER's existing or approved disposal sites. It shall be the sole right and responsibility of OWNER to designate, approve or select disposal sites to be used by VWNA for OWNER's waste materials. All Waste and/or byproduct treated and/or generated during VWNA's performance of services is and shall remain the sole and exclusive property of OWNER. All manifests or other documentation required for disposal of Waste shall be signed by or in the name of the OWNER.
- 2.158 VWNA shall use reasonable efforts consistent with best industry practices and the Agreement to control odors from the Facility. VWNA, in conjunction with OWNER, shall develop a program that identifies procedures for certifying and

documenting odor complaints, and shall establish procedures to address recurrent failures of the odor control program.

2.169 VWNA shall comply with the requirements of OWNER regarding affirmative action and provisions for minority hiring.

2.1720 VWNA shall provide OWNER with a full accounting of all expenditures at intervals and in sufficient detail as may be determined by OWNER, and assist OWNER in the preparation of annual operating budgets.

2.1824 VWNA employees operating at the Facility shall remain solely the employees of VWNA. VWNA shall remain solely responsible for its employees' compensation and benefits.

2.19 VWNA shall process utility locate tickets issued under Gopher State One Call as detailed in Exhibit B (the "Locates"). Increases in the number of Locates shall be subject to the Change in Scope provisions of Section 7.

3. VWNA's Scope of Services - Wastewater

3.1 This Article shall apply to VWNA's services for the OWNER's wastewater treatment system.

3.2 Within the design capacity and capabilities of the wastewater treatment plant described in detail in Appendix B, VWNA will manage, operate and maintain the wastewater treatment plant designed to treat 2.46 million gallons a day and/or 3,508 lbs/day Carbonaceous Biochemical Oxygen Demand ("CBOD") so that effluent discharged from the Plant's outfalls meets the requirements specified in Appendix C-1. VWNA shall monitor all wastewater entering the Plant and treat all such wastewater in accordance with the terms of this Agreement and applicable law.

3.3 VWNA shall clean and/or jet the collection system on an as-needed basis. VWNA shall be under no obligation to proactively clean, jet, or otherwise maintain the collection system.

3.34 Except as otherwise provided herein, VWNA will pay all labor Costs incurred in normal Wastewater operations. Maintenance and repair costs remain the responsibility of OWNER.

4. OWNER's Duties

- 4.1 The OWNER shall fund all necessary Capital Expenditures, which will be performed by VWNA under a written change order to this Agreement. Priority shall be given to safety and the ADA related expenses described in Section 2.910. Any loss, damage, or injury resulting from OWNER's failure to provide or fund capital improvements when reasonably requested by VWNA shall be the sole responsibility of OWNER.
- 4.2 The OWNER shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to OWNER and are not transferred to VWNA under this Agreement.
- 4.3 The OWNER shall pay all sales, excise, *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon VWNA's net income and/or payroll taxes for VWNA employees. In the event VWNA is required to pay any sales tax or use taxes on the value of the services provided by VWNA hereunder or the services provided by any subcontractor, such payments shall be reimbursed by the OWNER unless the OWNER furnishes a valid and properly executed exemption certificate relieving the OWNER and VWNA of the obligation for such taxes. In the event the OWNER furnishes an exemption certificate which is invalid or not applicable to services by VWNA, the OWNER shall indemnify VWNA for any taxes, interest, penalties, and increment costs, expenses or fees which it may incur as a result of VWNA's reliance on such certificate.
- 4.4 ~~The OWNER/VWNA shall provide VWNA/the OWNER, within a reasonable time after request and on an "as available" basis, with the temporary use of any piece of OWNER's heavy equipment that is available in use by VWNAe so that VWNA may to discharge its obligations under this Agreement in the most cost effective manner. The repair and maintenance of such heavy equipment shall remain the responsibility of OWNER.~~
- 4.5 OWNER shall provide all registrations and licenses for OWNER's vehicles used in connection with the Project.
- 4.6 OWNER shall provide for VWNA's exclusive use of all vehicles and equipment presently in full-time use at the Project.
- 4.7 OWNER shall provide for VWNA's entry into existing disposal sites for disposal of garbage, screenings, grit, sludge and scum.
- 4.8 OWNER shall provide the Project with appropriate security personnel and/or devices to protect against any losses resulting from the theft, damage, or unauthorized use of property owned by OWNER and shall accept liability for

such losses except to the extent such losses are directly caused by the negligent acts or omissions of VWNA.

- 4.9 OWNER warrants that during the interim period between the Request for Proposal and September 30, 2020, the plants, facilities and equipment have been operated only in the normal course of business, all scheduled and proper maintenance have been performed and there are no issues known to OWNER regarding the condition of the Project, and facilities composing the Project and/or any equipment used by the Project. OWNER warrants and agrees that it will turnover the plants, facilities and equipment to VWNA in good working order and in compliance with the NPDES Permit(s) and all other applicable laws, rules and regulations.
- 4.10 OWNER shall be responsible for paying all Cost associated with: (i) bringing the Project into compliance with Title III, Section 112 of the Federal Clean Air Act (hereinafter "Risk Management Program"); or (ii) converting the Project from gaseous chlorine to sodium hypochlorite, including any Cost associated with design, engineering, or construction related thereto. OWNER acknowledges and agrees that OWNER shall be responsible for any fines or civil penalties imposed by any regulatory or enforcement agencies resulting from OWNER's failure to implement the Risk Management Program or convert the Project as referenced above.
- 4.11 The OWNER shall keep in force any project warranties, guarantees, easements and licenses that have been granted to OWNER and are not transferred to VWNA under this Agreement.
- 4.12 The OWNER shall continue to be responsible and pay for the general administration and enforcement of (i) the water, wastewater, collection and distribution systems, (ii) OWNER's Industrial Pretreatment Program, (iii) new water and sewer connections unless VWNA is retained to perform such functions as a Change in Scope hereunder, and (iv) long-term System and Service Area planning. Typical administration costs associated with the above activities include costs such as the services of the auditor, lawyer, and liability insurance.

5. Compensation

- 5.1 VWNA's compensation under this Agreement shall consist of an Annual Fee. The Annual Fee for the period ~~September 14, 2020 through September 13, 2020~~ shall be Six Hundred Fourteen Thousand, Six Hundred Sixty Seven Dollars \$_____. (~~\$614,667.00~~).
- 5.24 The services being provided under this Agreement are based on reasonably expected overtime for normal breakdowns or services required after hours. Any additional expenses including straight or over-time wages caused by severe

weather, a disaster or unplanned event that may be recovered through billing any third party including the State or Federal Government FEMA funds will be billed to the OWNER for reimbursement.

5.35 The Annual Fee shall be negotiated each year at least four (4) months prior to the anniversary of this Agreement's effective date. Should OWNER and VWNA fail to agree, the Annual Fee will be adjusted by multiplying the existing Annual Fee by the percentage increase in the Consumer Price Index for ECI, Total Compensation, private workers, Utilities (CIU2014400000000I (B)), as published by the U. S. Department of Labor Statistics for the twelve (12) months prior to the beginning of the period for which an adjusted Annual Fee is being calculated.

6. Payment of Compensation

- 6.1 One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable on the first of the month for each month that services are provided.
- 6.2 All other compensation to VWNA is due upon receipt of VWNA's invoice and payable within fifteen (15) days after the OWNER approves of the invoice at OWNER's monthly meeting.
- 6.3 Any monies payable pursuant to Section 4.3 will be paid within sixty (60) calendar days after the end of each Agreement year.
- 6.4 OWNER shall pay interest at an annual rate equal to Wall Street Journal plus four percent (4%), said rate of interest not to exceed any limitation provided by law, on payments not paid and received within fifteen (15) after the OWNER approves of the invoice at OWNER's monthly meeting, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

6.5 OWNER agrees to pay, separately from the monthly installment of the Annual Fee, for any authorized maintenance and repair expenditures incurred by VWNA. VWNA will submit monthly invoices detailing the maintenance and repair expenditures incurred.

7. Scope Changes

- 7.1 A Change in Scope of services shall occur when and as VWNA's costs of providing services under this Agreement change as a result of:
 - 7.1.1 any change in Project operations, personnel qualifications or staffing or other cost which is a result of an Unforeseen Circumstance;
 - 7.1.2 increases or decreases in the user base, as detailed in Exhibit B;

7.1.3 increases or decreases of not less than ten percent (10%) in the influent flow or loadings as demonstrated by a twelve month floating average compared to the twelve month period ending on the effective date of this Agreement (baseline flow and loading information is located in Appendix C-1).

7.1.4 increases or decreases in rates or other related charges (including taxes) imposed upon VWNA by a taxing authority - excluding taxes based on VWNA's net income; ~~and/or~~

7.1.5 any increase of not less than ten percent (10%) in the number of Locates in any single month over the average number of monthly locates in the year prior to the Commencement Date; and/or

~~7.1.6~~ OWNER's request of VWNA and VWNA's consent to provide additional services.

7.2 For Changes in Scope described in Sections 7.1.1 through, and including, 7.1.3, the Annual Fee shall be increased (or decreased) by an amount equal to VWNA's additional (reduced) Cost associated with the Change in Scope plus ten percent (10%). Modifications of the Annual Fee as a result of conditions described in Section 7.1.3 shall be retroactive to the beginning of the twelve-month comparison period.

7.3 For Changes in Scope described in Section 7.1.4, the Annual Fee shall be increased (or decreased) by an amount equal to VWNA's additional (reduced) Cost associated with such Change in Scope.

7.4 OWNER and VWNA shall negotiate an increase in VWNA's Annual Fee for Changes in Scope based on Section 7.1.~~6~~5.

8. Indemnity, Liability and Insurance

8.1 VWNA hereby agrees to indemnify and hold OWNER harmless from any liability or damages for bodily injury, including death, property damages and pollution damages which may arise from VWNA's negligence or willful misconduct under this Agreement; provided, VWNA shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault.

8.2 OWNER agrees to indemnify and hold VWNA harmless from any liability or damage or bodily injury, including death, property damages and pollution damages which may arise from all causes of any kind other than VWNA's negligence or willful misconduct, including, but not limited to, breach of a OWNER warranty.

- 8.3 Unless covered by the indemnities contained in Sections 8.1 and 8.2 above and the insurance policies provided by the parties herein, neither VWNA nor the OWNER shall be liable to the other in any action or claim for consequential, incidental or special damages, loss of profits, loss of opportunity, loss of product or loss of use. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies, which are inconsistent with these terms, are waived.
- 8.4 VWNA shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after January 1, 2021, of the effluent quality requirements provided for in Appendix C-1 that are a result of VWNA's negligence. OWNER will assist VWNA to contest any such fines in administrative proceedings and/or in court prior to any payment by VWNA. VWNA shall pay the cost of any such contest. VWNA shall not be liable for any permit exceedances for any parameter, including but not limited to ammonia, not within permit limits within one (1) year prior to the Commencement Date for a period of either (i) one (1) year following the Commencement date, or (ii) until capital improvements identified by VWNA to address the exceedances are implemented, whichever is later.
- 8.5 VWNA shall not be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring as a result of the failure or malfunctioning of OWNER's supervisory control and data acquisition ("SCADA") system. VWNA shall not be responsible for providing for or certifying the security of OWNER's SCADA systems and shall not be liable in the event of any cybersecurity incident on OWNER's SCADA system (including, but not limited to, unauthorized access, viruses, malware, or ransomware attacks).
- 8.6 OWNER shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on OWNER and/or VWNA that are not a result of VWNA's negligence or are otherwise directly related to the ownership of the Project and shall indemnify and hold VWNA harmless from the payment of any such fines and/or penalties.
- 8.7 To the fullest extent permitted by law and notwithstanding any other provision of this Agreement, VWNA's liability for performance or non-performance of any obligation arising under the Agreement (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) including, but not limited to its indemnity obligations specified in Section 8.1 of the Agreement, shall not exceed \$1,500,000.00 ~~the Annual Fee for the first year of the Initial Term~~ cumulatively for the duration of the Agreement, provided that the foregoing limitation shall not apply to any losses resulting from the gross negligence or

willful misconduct of VWNA or VWNA's subcontractors, employees or agents in breach of VWNA's obligations under this Agreement.

8.8 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix D. Each party shall provide the other party with satisfactory proof of insurance.

8.9 The provisions of Sections 8.1 through 8.8 above shall survive the termination of the Agreement.

9. Term, Termination and Default

9.1 The initial term of this Agreement shall be five (5) years commencing ~~_____~~ September 14, 2020 ("Initial Term"). Thereafter, this Agreement shall be automatically renewed for one (1) successive term of five (5) years unless canceled in writing by either party no less than one hundred and twenty (120) days prior to expiration.

9.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by OWNER for nonpayment of VWNA's invoices, in which case termination may be immediate by VWNA, only after allowing the other party forty-five (45) days to cure or commence taking reasonable steps to cure the breach.

9.3 In the event that this Agreement is terminated for any reason prior to the ending date of the Initial Term, OWNER shall pay to VWNA any funds identified in Section 6.2 that have not been paid to VWNA through the date of termination.

9.4 Upon notice of termination by OWNER, VWNA shall assist OWNER in assuming operation of the Project. If additional Cost is incurred by VWNA at request of OWNER, OWNER shall pay VWNA such Cost within 15 days of invoice receipt.

9.5 Upon termination of this Agreement and all renewals and extensions of it, VWNA will return the Project to OWNER in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by VWNA for use in the operation or maintenance of the Project shall remain the property of VWNA upon termination of this Agreement unless the property was directly paid for by OWNER or OWNER specifically reimbursed VWNA for the cost incurred to purchase the property or this Agreement provides to the contrary.

9.6 Following termination of this Agreement, upon OWNER's request, VWNA shall provide OWNER with a copy of data generated in connection with VWNA's operation of the Facility.

10. Disputes and Force Majeure

10.1 In the event activities by employee groups or unions cause a disruption in VWNA’s ability to perform at the Project, OWNER, with VWNA’s assistance or VWNA at its own option, may seek appropriate injunctive court orders. During any such disruption, VWNA shall operate the facilities on a best efforts basis until any such disruptions cease.

10.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

CHISAGO LAKES JOINT SEWAGE TREATMENT COMMISSION _____ OWNER

~~{VEOLIA ENTITY}~~ VEOLIA WATER NORTH AMERICA – CENTRAL LLC

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

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CERTIFICATE OF COUNSEL

The undersigned, as counsel for the Chisago Lakes Joint Sewage Treatment Commission _____ (“OWNER”) in this transaction, hereby certifies that (s)he has examined the circumstances surrounding the selection of Veolia Water North America –

| Central, LLC~~[VEOLIA ENTITY]~~ (“VWNA”) and the award and letting of the foregoing
| contract to VWNA by OWNER, and has found that said selection and award process comply
| with the procurement laws of the State of _____ Minnesota and OWNER.

Counsel for OWNER

Date: _____

APPENDIX A

DEFINITIONS

- A.1 “Adequate Nutrients” means plant influent nitrogen, phosphorus and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- A.2 “Annual Fee” means a predetermined, fixed sum for VWNA’s services. The Annual Fee includes Cost and profit.
- A.3 “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of OWNER’s Certificate of Approval. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.
- A.4 “Capital Expenditures” means any expenditures for (1) the purchase of new equipment or facility items that cost more than Two Thousand Five Hundred Dollars (\$2,500); or (2) major repairs which significantly extend equipment or facility service life and cost more than Two Thousand Five Hundred Dollars (\$2,500) or (3) expenditures that are planned, nonroutine and budgeted by OWNER.
- A.5 “Commencement Date” shall mean _____, September 14, 2020.
- A.6 “Cost” means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.
- A.7 “Direct Cost” means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.
- A.8 “Maintenance” means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by VWNA to maximize the service life of the equipment, sewer, vehicles and facilities.
- A.9 “Pretreatment” means [RESERVED].

- A.10 “Project” means all equipment, vehicles, grounds, rights of way, sewers and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of such.
- A.11 “Repairs” means those nonroutine/nonrepetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
- A.12 “Unforeseen Circumstances” shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of VWNA; and (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

APPENDIX B

DESCRIPTION OF PROJECT

- a. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate OWNER's Wastewater Treatment Plant located at:

31505 Lofton Avenue North
Chisago City, MN 55013

- b. All equipment, grounds and facilities now existing within the present property boundaries of pumping stations and described as follows:

1. Chisago City Main Lift Station
2. Corridor Lift Station (old treatment plant)
3. Lindstrom Main Lift Station
4. Chisago Lakes Main Lift Station
5. Andrews Avenue Lift Station
6. County Road 30 Main Lift Station
7. Stacy Main Lift Station
- ~~8. County Road 84 Main Lift Station~~
9. 8.

- c. All gravity sewers, force mains, and manholes in service on the Commencement Date.

1. Approximately 74,935 feet forced mains
2. Approximately 38,783 feet of gravity sewers
- ~~2.3.~~ Manholes located within the main sewer system as of the date of this Agreement

- d. Utility locate tickets issued under Gopher State One Call

- a. "Locates" consists of the following items:

- i. Watermain, curb stops, gate valves, service lines (up to the curb stop)
- ii. Sanitary sewer gravity and force mains, manholes
- iii. Grinder pumps: electrical, curb stops, dry wells, service lines (up to the grinder pump)
- iv. Decorative lighting (except areas maintained by the local electrical company)
- v. Storm watermains, manholes, catch basins, outfalls within the water and sanitary sewer service area

APPENDIX C-1

NPDES PERMIT AND
WASTEWATER TREATMENT CHARACTERISTICS

- C-1.1 VWNA will operate so that effluent will meet the requirement of NPDES Permit No. MN005808 (issued March 1, 2016) a full and complete copy of which is adopted by reference herein as of the date hereof. VWNA shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the wastewater influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into OWNER's sewer system violate any or all regulations as stated in OWNER's Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BOD₅ and/or suspended solids exceeds the Project design parameters which are 2.46 million gallons of flow per day, 3,508 pounds of BOD₅ per day monthly average, N/A pounds of suspended solids per day on a monthly average and a daily peaking factor of N/A times flow; (4) if the wastewater treatment facility and/or associated appurtenances is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond VWNA's control.
- C-1.2 In the event any one of the Project influent characteristics, suspended solids, BOD₅ or flow, exceeds the design parameters stated above, VWNA shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters By</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then VWNA will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

- C-1.3 VWNA shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.
- C-1.4 The Annual Fee for services under this Agreement is based upon the following:

Project influent characteristics as best they can be established from the few records available:

Flow	1.152 mgd
CBOD	312mg/L
TSS	621 mg/L
Ammonia	28.5 mg/L
Phosphorus	7.6 mg/L

The above characteristics are the actual twelve (12) months' average for the period ended July 31, 2020. Any change of 10 percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a Change in Scope (See Article 9).

APPENDIX D

INSURANCE COVERAGE

VWNA SHALL MAINTAIN:

1. Statutory workers compensation for all of VWNA employees at the Project as required by the State of Minnesota.
2. Commercial general liability insurance, insuring VWNA's negligence, in an amount of \$5,000,000 combined single limits for bodily injury and/or property damage.
3. Automobile liability insurance for all owned (if any), non-owned and hired automobiles in and amount of \$1,000,000.

OWNER SHALL MAINTAIN:

1. Statutory workers compensation for all of OWNER's employees associated with the Project as required by the State of Minnesota
2. Property insurance on a "special form causes of loss" form or its equivalent for OWNER's owned, leased, rented or personal property at replacement cost with business interruption coverage.
3. Automobile liability insurance for all owned (if any), non-owned and hired automobiles in an amount of \$1,000,000.

Each party shall cause the other party to be added as additional insured on the above insurance policies (except workers compensation) and shall provide the other party at least thirty (30) days notice of the cancellation of required policies or, if a party receives less than thirty (30) days notice of cancellation from its insurance carrier, as much notice as is possible. Each Party shall waive subrogation in favor of the other Party. Additionally, each Party's insurance policies shall waive, or be endorsed to waive, rights of recovery by subrogation in favor of the other Party.