



### AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Wastewater Plant Construction Management Services, CDM Smith		
Presenter & Title:	Bob VanGyseghem, Superintendent of Water and Wastewater. Rich Babica, Public Works Director		
Date:	6/21/17		
<b>Please Check Appropriate Box:</b>			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting	<input type="checkbox"/>	Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting	<input type="checkbox"/>	Special City Council Meeting
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	Other -
Associated Strategic Plan Goal/Objective: Vision 5: Manage City resources and assets to effectively deliver core services, provide for capital investment, and meet community needs and desires. Goal E: Develop and provide funding for capital investments and projects that consider a variety of local capital needs and those mandated by State/Federal Agencies.			
Estimated Cost: 1,048,622	Budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Executive Summary:</b>			
<p>Based on direction given by the City Council at the June 12, 2017 Committee of the Whole Meeting, city staff and Amrou Atassi with CDM Smith have developed a scope of services needed for Construction Management Services for the improvements to the Wastewater Treatment Plant. The scope of services are broken down further into the number of projected hours needed over the course of the projected 18 months of construction. The Superintendent of Water and Wastewater and the Director of Public Works will be actively involved in monitoring the scope of services and hours billed to control costs without impacting the quality of the end product.</p> <p>The scope of services and fees negotiated amount to \$1,048,622. This amount represents 8.4% of the projected cost of construction which is \$12,500,000</p> <p>The cost for this contract will be funded as part of the Illinois Environmental Protection Agency Water Pollution Control Loan Program</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution</li> <li>• Construction Management Service Contract</li> </ul>			
<b>Recommendation / Suggested Action:</b> <i>(how item should be listed on agenda)</i>			
Staff requests that the City Council authorize the City Administrator to enter into a Professional Services Agreement with CDM Smith, Chicago, IL to perform Construction Management Services for the 2017 WWTP Facility Update/Improvement Project in an amount not-to-exceed \$1,048,622.			

**RESOLUTION NO. 2017-68**  
**RESOLUTION AUTHORIZING EXECUTION OF**  
**Construction Management Services Contract, CDM Smith**

---

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS**, as follows:

**SECTION 1:** That the City Administrator is hereby authorized to execute, on behalf of the City of Geneva, a contract with CDM Smith, in the form attached hereto as Exhibit "A", relating to Construction Management Services for improvements to the Wastewater Treatment Plant.

**SECTION 2:** This Resolution shall become effective from and after its passage as in accordance with law.

**PASSED** by the City Council of the City of Geneva, Kane County, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2017

**AYES: \_\_ NAYS: \_\_ ABSENT: \_\_ ABSTAINING: \_\_ HOLDING OFFICE: \_\_**

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**STANDARD FORM OF AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

THIS IS AN AGREEMENT made as of June 20, 2017 between City of Geneva ("OWNER") and CDM Smith Inc. ("ENGINEER").

OWNER's Project is generally identified as follows the construction phase services of Wastewater Treatment Plant Facility Improvements (the "Project").

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing of services by ENGINEER to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

**ARTICLE 1 – SCOPE OF SERVICES**

- 1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in Exhibit A (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

**ARTICLE 2 – TIMES FOR RENDERING SERVICES**

- 2.1 Specific time periods and/or specific dates for the performance of ENGINEER's Services are set forth in Exhibit A.
- 2.2 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.3 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.4 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation.

**ARTICLE 3 – OWNER'S RESPONSIBILITIES**

OWNER shall:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and

decisions with respect to ENGINEER's services for the Project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any relevant, material defect or nonconformance in ENGINEER's Services or in the work of any Contractor employed by Owner on the Project.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

#### **ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES**

- 4.1 Methods of Payment for Services of ENGINEER.
  - 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit A. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.
  - 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Payments are due within 30 days of receipt of invoice.
  - 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

## ARTICLE 5 – GENERAL CONDITIONS

### 5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

### 5.2 Technical Accuracy

Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

### 5.3 Opinions of Probable Construction Cost

Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### 5.4 Compliance with Laws and Regulations, and Policies and Procedures

5.4.1 Engineer and Owner shall comply with applicable Laws and Regulations.

5.4.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

5.4.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

5.4.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

5.4.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

5.4.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the

- Construction Contract Documents, other than those made by Engineer or its Consultants.
- 5.4.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- 5.4.8 Engineer's services do not include providing legal advice or representation.
- 5.4.9 Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- 5.4.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 5.5 Termination

The obligation to provide further services under this Agreement may be terminated:

- 5.5.1 For cause,
- a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 5.5.2 For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- 5.5.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose

value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

#### 5.5.4 Payments Upon Termination:

- a. In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 5.6.
- b. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 5.5.4.a, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs.

### 5.6 Use of Documents

- 5.6.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.6.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- 5.6.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 5.6.4 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or

adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.

5.6.5 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.7 Controlling Law

This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

5.8 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.9 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

5.10 Successors and Assigns

5.10.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.10.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.10.3 Unless expressly provided otherwise in this Agreement:

- a. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.
- b. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

#### 5.11 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

#### 5.12 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 5.13 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

#### 5.14 Environmental Site Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

#### 5.15 Insurance

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

5.16 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.17 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.18 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.19 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.20 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.21 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.22 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General

Conditions. The term “*defective*” will be used in this Agreement as defined in the Standard General Conditions.

5.23 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.24 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

## ARTICLE 6 – DEFINITIONS

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.2 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq, (“CERCLA”) [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §v1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.3 Construction Cost – ♦

The total cost to OWNER of those portions of the entire Project designed or specified by

---

♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

- 6.4 Constructor  
Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- 6.5 Contractor - ♦  
The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.
- 6.6 Documents  
As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.
- 6.7 ENGINEER's Subcontractor.  
A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.
- 6.8 Reimbursable Expenses.  
The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.
- 6.9 Resident Project Representative - ♦  
The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").
- 6.10 Standard General Conditions - ♦  
The Standard General Conditions of the Construction Contract (No. C-700) of the Engineers Joint Contract Documents Committee.
- 6.11 Total Project Costs - ♦  
The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals

---

♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

6.12 Work - ♦

The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

**ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS**

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

Exhibit A - Engineer's Services, Owner's Responsibilities, Time for Performance, Method of Payment, and Special Provisions.

This Agreement (consisting of Pages 1 to 11 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

ENGINEER:

By:  
Title:  
Date:

By: Amrou Atassi  
Title: Associate  
Date:

Address for giving notices:

Address for giving notices:

125 South Wacker Drive, Suite 700

Chicago, IL 60606

# City of Geneva Wastewater Treatment Facilities Improvements – Construction Management Services - Exhibit A – Scope of Services, Owner’s Responsibilities, Time of Performance, and Method of Payment

This Exhibit A to the Agreement between the City of Geneva, Illinois (Geneva) and CDM Smith Inc. (CDM Smith) contains the scope of services, schedule, and fee, for Construction Services (General Services and Resident Project Representative (RPR) Services) for the Wastewater Treatment Facilities Improvements Project. For the purposes of this Exhibit A, the following definitions apply:

- “OWNER” refers to the City of Geneva
- “ENGINEER” refers to CDM Smith Inc.
- “Contract Documents” refers to the:
  - City of Geneva Wastewater Treatment Facilities Improvements Bid Package, IEPA Loan No.: L1755415, Construction Drawings and Project Manual Volumes I, II, and III, Issued January 2017

## SCOPE OF SERVICES

The scope of services for this Project includes:

- Task 1 – General Services
- Task 2 – RPR Services
- Task 3 – Project Controls
- Task 4 – State Revolving Fund (SRF) Loan Administration
- Task 5 – Startup and Operations Assistance

This construction services scope of work adheres to the contractual language requirements set forth by the Illinois Environmental Protection Agency (IEPA), such that the construction services fee will be eligible for reimbursement under the IEPA’s SRF loan program, if the OWNER so chooses.

### Task 1 – General Services

Task 1 consists of the following subtasks:

- Task 1.1 – General Administration of Construction Contract
- Task 1.2 – Construction Document Control System
- Task 1.3 – Conformed Contract Documents
- Task 1.4 – Visits to Site and Observation of Construction
- Task 1.5 – Design Clarifications and Interpretations; Field Orders
- Task 1.6 – Change Orders, Claims, and Time Extensions
- Task 1.7 – Shop Drawings
- Task 1.8 – Substitutes

- Task 1.9 – Inspections and Tests
- Task 1.10 – Applications for Payment
- Task 1.11 – Contractor’s Completion Documents
- Task 1.12 – Substantial Completion
- Task 1.13 – Final Notice of Acceptability of the Work
- Task 1.14 – Pre-Construction and Progress Meetings
- Task 1.15 – Record Contract Documents
- Task 1.16 – Factory Testing

### **Task 1.1 – General Administration of Construction Contract**

Under this task, ENGINEER will consult with and advise OWNER and act as the OWNER’s representative as provided in the Standard General Conditions of the Contract Documents. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions will not be modified, except to the extent provided herein. All of OWNER’s instructions to Contractor will be issued through ENGINEER who will have authority to act on behalf of OWNER in dealings with the Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

### **Task 1.2 – Construction Document Control System**

ENGINEER will establish and maintain a construction document control system for organized management of the documents generated during construction. The construction document control system will consist of an electronic document filing system using CDM Smith’s electronic filing system, including ProjectWise and Excel/Contract Manager-based spreadsheets to log documents generated during construction. E-Room will be developed and maintained to facilitate transmittal of documents between the OWNER, ENGINEER, and Contractor.

The construction document control system will provide access to, and retrieval of, documents generated during construction, including, but not limited to:

- Change Order Requests (COR)
- Conformed Contract Documents
- Baseline Construction Schedule and Schedule Updates
- Correspondence
- Design Clarifications / Interpretations
- Field Orders
- Payment Applications
- Progress Meeting Minutes
- Progress Reports
- Requests for Information (RFI)
- Requests for Proposals (RFP) and Work Change Directives (WCD)
- Submittals

Separate tracking logs for each type of document, as appropriate, listed above will be maintained by the ENGINEER in spreadsheet format.

### **Task 1.3 – Conformed Contract Documents**

Under this task, ENGINEER will develop conformed Contract Documents of the bid documents incorporating the additions and revisions included in the addenda issued during the bidding period. These Documents will be provided to OWNER and ENGINEER for use during construction, and will be distributed to the Contractor as well. For the purposes of this task, it is assumed that four sets of Contract Documents (half size drawings) will be provided to the OWNER, in hard copy format. Three sets of Contract Documents (full sized drawings) will be provided to the Contractor.

### **Task 1.4 – Visits to Site and Observation of Construction**

ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of the Contractor's work. In addition, ENGINEER will provide the services of a full-time RPR at the site to assist ENGINEER and to provide more continuous observations of such work. RPR services are covered in Task 2 of this scope of services. The furnishing of such RPR services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph. Such visits and observations by ENGINEER and the RPR are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the RPR. Based on information obtained during such visits and such observations, ENGINEER will endeavor to determine, in general, if such work is proceeding in accordance with the Contract Documents and ENGINEER will keep OWNER informed of the progress of the work.

The purpose of ENGINEER's visits to and representation by the RPR at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the construction phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of the Contractor will conform, in general, to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by the Contractor. On the other hand, ENGINEER will not, during such visits or as a result of such observations of the Contractor's work in progress, supervise, direct or have control over the Contractor's work nor will ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, for safety precautions and programs incident to the work of the Contractor or for any failure of the Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to the Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

During such visits and on the basis of such observations, ENGINEER will have authority to disapprove of or reject the Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Duties, responsibilities and authority of the RPR are set forth in Task 2.

For the purposes of construction fee development, ENGINEER has assumed the following site visits:

- Process/Mechanical – 14 site visits
- Architectural – two site visits
- Structural – two site visits
- Electrical – eight site visits.
- Building mechanical and plumbing – two site visits
- Instrumentation and control – three site visits
- Civil/site – two site visits

### **Task 1.5 – Design Clarifications and Interpretations; Field Orders**

ENGINEER will issue necessary clarifications and interpretations (i.e., Requests for Information, or RFIs) of the Contract Documents as appropriate to support the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue field orders authorizing minor variations from the requirements of the Contract Documents, provided such field orders have no impact on either Contract Time or Contract Price.

For the purposes of construction fee development, ENGINEER has assumed review of 120 RFIs, and that each review will require 4 hours of labor effort to process.

### **Task 1.6 – Change Orders, Claims, and Time Extensions**

ENGINEER will recommend Change Orders and Work Change Directives to OWNER as appropriate, and will administer Change Orders and Work Change Directives as required.

Change order requests can be initiated by the OWNER, ENGINEER, or the Contractor. For the purposes of construction fee development, ENGINEER has assumed review of 18 change orders, and that each review will require 24 hours of labor effort to process.

ENGINEER will track all change orders, assigning a number to each proposed change, listing individual change order net extra/credit amounts, and maintaining the total net contract change. Upon receipt of a proposed change, ENGINEER and RPR will discuss the change with OWNER, and together will determine the manner in which to proceed.

If the proposed change is performed on a time and material basis, the RPR will monitor the Contractor's work and document the actual time and materials used. If the Contractor prepares a cost proposal for the contemplated work or submits a claim, the RPR will perform the first review and make a recommendation to the ENGINEER and OWNER. ENGINEER's subsidiary, CDM Smith Constructors Inc., may also be used to review Contractor-generated cost proposals.

Upon receipt of the RPR's recommendation, the ENGINEER, in conjunction with the OWNER, will determine the appropriate next steps, which may include any one of the following:

- Set up a negotiating session with the Contractor.

- Make a final recommendation to the OWNER and request formal approval to proceed.
- Cancel the proposed change or reject the Contractor's claim.

Upon receipt of OWNER's formal approval, the ENGINEER will notify the Contractor to proceed, and then prepare the necessary documents to execute the change order.

ENGINEER will render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER will be fair and not show partiality to OWNER or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity.

### **Task 1.7 – Shop Drawings**

ENGINEER will review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data that the Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

For the purposes of construction fee development, ENGINEER has assumed review of 180 shop drawings, O&M manuals, and other submittals, and that each review will require seven hours of labor effort to process. This effort is based on full cooperation of the Contractor in submitting complete and accurate submittals.

It should be noted that shop drawings, O&M manuals, and other submittals will be reviewed no more than twice at the OWNER's expense. All subsequent reviews will be performed at the Contractor's expense. OWNER will be reimbursed by the Contractor for all costs invoiced by ENGINEER for the third and subsequent reviews of all shop drawings, O&M manuals, and other submittals.

### **Task 1.8 – Substitutes**

ENGINEER will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to the Contract Documents occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

For purposes of construction services fee development, ENGINEER has assumed review of two substitutes or "or equal" materials and equipment submissions prepared by the Contractor and that each review will require 4 hours of labor effort to process.

### **Task 1.9 – Inspections and Tests**

ENGINEER will require special inspections or tests of the work as stated in the Contract Documents, and will receive and review certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with

the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER will be entitled to rely on the results of such tests.

### **Task 1.10 – Applications for Payment**

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

- ENGINEER will determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained herein are expressly subject to the limitations set forth in the following paragraph and other express or general limitations in this Agreement and elsewhere.
- ENGINEER will review record drawings and Contractor's Critical Path Method (CPM) schedule to verify that maintenance of the documents is commensurate with work completed.
- By recommending any payment, ENGINEER will not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or invoiced detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

### **Task 1.11 – Contractor's Completion Documents**

ENGINEER will receive, review, and transmit to OWNER, with written comments, maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under

Task 1.7 – Shop Drawings, and marked-up record Drawings) which are to be assembled by the Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine, generally, that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

### **Task 1.12 – Substantial Completion**

Following notice from the Contractor that the Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by the Contractor, will conduct an inspection to determine if the work is substantially complete. If ENGINEER considers the work substantially complete, after considering any objections of OWNER, ENGINEER will deliver a certificate of Substantial Completion to OWNER and the Contractor.

### **Task 1.13 – Final Notice of Acceptability of the Work and Contract Close-Out**

ENGINEER will conduct a final inspection to determine if the completed work of the Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to the Contractor. Accompanying the recommendation for final payment, ENGINEER will indicate that the work is acceptable (under the provisions of Task 1.10 – Applications for Payment), to the best of ENGINEER's knowledge, information, and belief, and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

ENGINEER will coordinate intermediate inspections, the final inspection, and closeout of the construction contract. ENGINEER will schedule joint inspections with OWNER, RPR, and the Contractor, prior to the OWNER's expected use of the Project. ENGINEER will provide to OWNER a report of the findings from the inspections, including recommendations as to the appropriate actions to be taken by the Contractor, OWNER, and/or ENGINEER. ENGINEER will meet with the OWNER to discuss all recommendations concerning the readiness of the Project for acceptance, in whole or in part.

When OWNER concurs with ENGINEER's recommendation of acceptance, ENGINEER will receive and process contract close out documents from the Contractor. ENGINEER, will, as part of close-out tasks, perform the following:

- Certify that all punch list work has been satisfactorily completed
- Collect all specified guarantees and warranties
- Verify receipt of all required maintenance and operation manuals
- Review Contractor as-built record drawings
- Ascertain that the requirements of agencies having jurisdiction have been complied with in accordance with Contract Documents
- Assess and recommend allowable time extensions and liquidated damages, as applicable
- Review and recommend the processing of final payments and the release of retentions

ENGINEER will provide a summary of above as documentation of close-out.

### **Task 1.14 – Pre-Construction and Progress Meetings**

ENGINEER will facilitate Project meetings as per Specification Section 01200 of the Contract Documents. Meetings to be held in accordance with the Contract Documents include:

- Pre-construction meeting
- Regular construction progress meetings
- Other status meetings as warranted over the duration of the Project

Meeting agendas and summaries will be provided by the ENGINEER as outlined in the Contract Documents.

### **Task 1.15 – Record Contract Drawings and Documents**

At the completion of construction, ENGINEER will prepare reproducible Record Contract Drawings indicating those changes made during the construction process based on construction records provided by the Contractor. The construction records will indicate construction changes, site observations, drawings, and other data. ENGINEER will provide the OWNER with four half size sets of Record Contract Drawings, as well as an electronic set. ENGINEER will not be responsible for any errors in, or omissions in, the information provided by the Contractor that is incorporated into the Record Contract Documents or other record documents.

### **Task 1.16 – Factory Testing**

CDM Smith will witness factory testing for the following components:

- Blowers and pumps – 40 hours
- SCADA – 24 hours

### **OWNER's Responsibilities**

ENGINEER's responsibilities as outlined in General Services subtasks 1.1 through 1.16 above are subject to the following OWNER's responsibilities:

- Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:
  - Data prepared by or services of others, including without limitation, explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys
  - Property, boundary, easement, and right-of-way information
  - Property legal descriptions
  - Zoning, deed and other land use restrictions
  - Other special data or consultations not covered in Article 3 of the Agreement between OWNER and ENGINEER

OWNER will be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

- Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.
- Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.
- Provide, as may be required for the Project:
  - Accounting, bond and financial advisory, independent cost estimating and insurance counseling services
  - Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor
  - Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.
- Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:
  - That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work, or
  - That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in the above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

- Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER will define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.
- Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER will reach agreement

on the terms of any such requested notice or certification and OWNER will authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

- If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the prime contractor, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.
- Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to above paragraphs) and other costs so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- Attend the pre-construction conferences, construction progress and other job-related meetings and Substantial Completion and final payment inspections.
- Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.

## Task 2 – Resident Project Representative Services

ENGINEER will furnish a full-time RPR, assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor. It is anticipated that the RPR will be on-site during critical portions of construction including inspection of equipment installation.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER will endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER will not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor will ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor, for safety precautions and programs incident to the work of the Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to the Contractor's performing and furnishing the work, or responsibility of construction for the Contractor's failure to furnish and perform the work in accordance with the Contract Documents.

The RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of the ENGINEER, and will confer with the ENGINEER regarding the RPR's actions. The RPR's dealings in matters pertaining to the on-site work will in general be with the ENGINEER and the Contractor, keeping the OWNER advised as necessary. The RPR's dealings with subcontractors will only be through or with the full knowledge and approval of the Contractor. The RPR will generally communicate with the OWNER with the knowledge of and under the direction of the ENGINEER.

Duration of RPR Services – RPR services are based on the following assumptions:

- A full time resident engineer/inspector will be provided for a total of eight (8) hours per day, Monday through Friday, excluding Federal holidays for 78 weeks, no more than 40 hours per week, during the substantial completion period.
- During the substantial completion to final completion, the following hours are assumed:
  - A part time resident engineer/inspector will be provided for ten hours per week, for 8 weeks, during the substantial to final completion period
- Additional RPR services, beyond those described above, will be provided for an additional cost.

The duties and responsibilities of the RPR are limited to those of the ENGINEER in the ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further described by the following subtasks:

- Task 2.1 – Schedules
- Task 2.2 – Conferences and Meetings
- Task 2.3 – Communications
- Task 2.4 – Shop Drawings and Samples
- Task 2.5 – Review of Work, Rejection of Defective Work, Inspections, and Tests
- Task 2.6 – Interpretation of Contract Documents
- Task 2.7 – Modifications
- Task 2.8 – Records
- Task 2.9 – Reports
- Task 2.10 – Payment Requests
- Task 2.11 – Certificates, Maintenance and Operation Manuals
- Task 2.12 – Completion

### **Task 2.1 – Schedules**

Under this subtask, the RPR will review the progress schedule, schedule of Shop Drawing submittals, and schedule of values prepared by the Contractor and consult with ENGINEER concerning acceptability and conformance with the Contract Documents.

### **Task 2.2 – Conferences and Meetings**

Under this subtask, the RPR will attend meetings, as appropriate, with the Contractor, such as preconstruction conferences, progress meetings, weekly or biweekly Contractor meetings, job conferences, and other Project-related meetings, and prepare and circulate meeting summaries, as applicable.

### **Task 2.3 – Communications**

Under this subtask, the RPR will:

- Serve as ENGINEER's liaison with the Contractor, working principally through the Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as the OWNER's liaison with the Contractor when the Contractor's operations affect the OWNER's on-site operations.

- Assist in obtaining from the OWNER additional details or information, when required for proper execution of the work.

### **Task 2.4 – Shop Drawings and Samples**

Under this subtask, the RPR will:

- Receive Samples which are furnished at the site by the Contractor, and notify the ENGINEER of availability of Samples for examination.
- Advise ENGINEER and the Contractor of the commencement of any work requiring a Shop Drawing or Sample if the submittal has not been approved by the ENGINEER.

### **Task 2.5 – Review of Work, Rejection of Defective Work, Inspections, and Tests**

Under this subtask, the RPR will:

- Conduct on-site observations of the work in progress to assist the ENGINEER in determining if the work is in general proceeding in accordance with the Contract Documents.
- Report to ENGINEER whenever RPR believes that any work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of work that the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- Verify that tests, equipment and system start-ups and operating and maintenance training are conducted in the presence of appropriate personnel and that the Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

### **Task 2.6 – Interpretation of Contract Documents**

Under this subtask, the RPR will report to the ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued by the ENGINEER.

### **Task 2.7 – Modifications**

Under this subtask, the RPR will consider and evaluate the Contractor's suggestions for modifications in the Contract Documents and report with RPR's recommendations to the ENGINEER. RPR will transmit to the Contractor in writing decisions as issued by the ENGINEER.

### **Task 2.8 – Records**

Under this subtask, the RPR will:

- Maintain orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change Directives,

Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to the Contractor and other Project-related documents.

- Prepare a daily report and maintain a daily diary / log book (in as much as a part-time presence on the site will allow), recording the Contractor's hours and staffing on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the ENGINEER for inclusion in the Project's construction document control system.
- Record names, addresses and telephone numbers of the Contractor, subcontractors, and major suppliers of materials and equipment.

### **Task 2.9 – Reports**

Under this subtask, the RPR will:

- Furnish monthly (or more frequent as warranted) reports as required of progress of the work and of the Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the work.
- Draft proposed Change Orders and Work Change Directives, obtaining backup material from the Contractor and recommend to the ENGINEER Change Orders, Work Change Directives, and Field Orders.
- Report immediately to the ENGINEER and the OWNER the occurrence of any accident.

### **Task 2.10 – Payment Requests**

Under this subtask, the RPR will review applications for payment with the Contractor for compliance with the established procedure for submission and forward with recommendations to the ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, construction schedule, work completed and materials and equipment delivered at the site but not incorporated in the work.

### **Task 2.11 - Certificates, Maintenance and Operations Manuals**

Under this subtask, the RPR will verify that certificates, maintenance and operation manuals, and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the ENGINEER for review and forwarding to the OWNER prior to final payment for the work.

### **Task 2.12 – Completion**

Under this subtask, the RPR will:

- Before ENGINEER issues a Certificate of Substantial Completion, submit to the Contractor a list of observed items requiring completion or correction.

- Observe whether the Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- Conduct a final inspection in the company of the ENGINEER, the OWNER, and the Contractor and prepare a final list of items to be completed or corrected.
- Observe whether all items on the final list have been completed or corrected and make recommendations to the ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

### Limitation of RPR Authority

The authority of the RPR is limited by the following:

- The RPR will not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by the ENGINEER.
- The RPR will not exceed limitations of the ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- The RPR will not undertake any of the responsibilities of the Contractor, subcontractors, suppliers, or Contractor's superintendent.
- The RPR will not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- The RPR will not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work.
- The RPR will not accept Shop Drawing or Sample submittals from anyone other than the Contractor.
- The RPR will not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the ENGINEER.

## Task 3 – Project Controls

Task 3 consists of the following subtasks:

- Task 3.1 – Schedule Tracking
- Task 3.2 – Budget Tracking

### Task 3.1 – Schedule Tracking

The Contractor will be responsible for creating and maintaining a CPM construction schedule, as specified in the Contract Documents. The CPM schedule will be developed by the Contractor within 30 days of receipt of the Notice-to-Proceed, and will include all tasks along with start and end dates and percentage complete. ENGINEER will use that schedule to track progress and to aid in reviewing payment applications, as well as to identify potential slippages in schedule and opportunities to minimize impact.

### Task 3.2 – Budget Tracking

ENGINEER will maintain a budget tracking system for the ENGINEER's fee. The budget tracking system will be used to identify potential out of scope items, including change orders, and impacts to the overall budget.

## Task 4 - State Revolving Fund Loan Administration

Under this task, ENGINEER will serve as liaison between the OWNER and the IEPA to assist in the administration of the SRF loan used to fund the Project. ENGINEER will be responsible for:

- Task 4.1 – Contractor Payroll Review and Certification
- Task 4.2 – Contractor Davis-Bacon Wage Compliance Verification
- Task 4.3 – Monthly Progress Reports/Invoicing

### Task 4.1 – Contractor Payroll Review

Per requirements of the SRF loan, the Contractor will submit weekly, for each week in which any work is performed, a copy of all payrolls. Such documentation will be available on request of IEPA or USEPA. As to each payroll copy received, ENGINEER will provide written confirmation indicating whether or not the Project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week.

### Task 4.2 – Contractor Davis-Bacon Wage Compliance Verification

ENGINEER, on behalf of the OWNER, will periodically interview a sufficient number of employees entitled to Davis-Bacon prevailing wages (covered employees) to verify that the Contractor and its subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. ENGINEER will use Standard Form 1445 or equivalent documentation to memorialize the interviews. ENGINEER will make copies of the SF 1445 available to USEPA on request.

ENGINEER will conduct interviews with a representative group of covered employees within two weeks of each Contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. ENGINEER will conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the Contractor or subcontractor is not complying with Davis-Bacon. ENGINEER will immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews will be conducted in confidence.

ENGINEER will periodically conduct spot checks of a representative sample of weekly payroll data to verify that the Contractor and its subcontractors are paying the appropriate wage rates. ENGINEER will establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by the Contractor and its subcontractors and the duration of the contract or subcontract. At a minimum, ENGINEER will spot check payroll data within two weeks of each Contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date for the contract or subcontract. ENGINEER will conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the Contractor or subcontractor is not complying with Davis-Bacon. In addition, during the examinations, ENGINEER will verify evidence of fringe benefit plans and payments thereunder by the Contractor and its subcontractors who claim credit for fringe benefit contributions.

ENGINEER will immediately report potential violations of the Davis-Bacon prevailing wage requirements to the OWNER, the appropriate U.S. EPA Davis-Bacon contact, and to the appropriate U.S. DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

### **Task 4.3 – Monthly Progress Reports/Invoicing**

As part of this subtask, ENGINEER will provide monthly progress reports/invoices to the OWNER in such format as required by 35 IAC Part 662, Section 662.630 such that eligible costs will be reimbursable under the SRF loan.

The monthly progress reports will include a breakdown of hours and cost spent for each task by person.

## **Task 5 – Startup and Operations Assistance**

Task 5 consists of the following subtasks:

- Task 5.1 – Startup and Operations Assistance

### **Task 5.1 – Startup and Operations Assistance**

As part of this subtask, a full time Senior Operations Specialist will be provided for eight (8) hours per day, Monday through Friday, excluding Federal holidays for 12 weeks, no more than 40 hours per week, during the plant startup period.

- 5.1.1 Start-up services are specifically intended to assist OWNER staff in the initial operations of the upgraded facility. ENGINEER's operations specialist will provide guidance only to facility staff consisting of on-site and offsite assistance through initial operation of the upgraded Wastewater Treatment Plant.
- 5.1.2 ENGINEER's operation specialist will provide the following during this task:
  - Monitor and recommend process optimization adjustments
  - Provide informal hands-on instruction to plant staff
  - Provide remote process optimization advisory services

## **SCHEDULE / TIME OF PERFORMANCE**

The construction contract allows 550 calendar days from the notice to proceed to final acceptance of the work by the OWNER. It is currently anticipated that construction would begin no later than October 23, 2017, and end no later than April 26, 2019.

The Construction Services, described herein, will commence upon award of a construction contract by the OWNER for the City of Geneva, Wastewater Treatment Facilities Improvements Project and will terminate upon completion of all tasks comprising the scope of services in this Exhibit A.

## **FEE / METHOD OF PAYMENT**

Construction services provided under this Agreement shall be compensated on a time and materials basis in proportion to services completed. Please see attached Exhibit B for cost breakdown. Payment for services performed will be made on a monthly basis.

**City of Geneva Wastewater Treatment Facility Improvements Project**  
**Exhibit B - Services During Construction Fee**

	Project	Project	Engineer /	Instrumentation	Junior	HVAC	Structual	Architectual	Process	Electrical	Cost Estimating	Startup	Admin	Total Labor	Total Labor	Total	Total
	Direction/QAQC	Manager	Inspector	& Control	Engineer							Assitance		Hours	Cost	Expenses	Cost
<b>PROJECT TASKS</b>																	
<b>Task 1 - General Services</b>																	
Construction meetings	32	80		10	100				16	16				254	\$ 41,410	\$ 5,000	\$ 46,410
Site visits during construction	12	16		24	60	16	16	16	72	64				296	\$ 48,282	\$ 10,000	\$ 58,282
Review and respond to contractor technical submittals		16		120	240	120	160	80	200	340			40	1316	\$ 209,928	\$ -	\$ 209,928
Review and respond to contractor requests for information	16	8		30	80	30	40	40	200	100			40	584	\$ 91,378	\$ -	\$ 91,378
Review and respond to requests for change Orders		8		24	80	16	16	16	80	144	48			432	\$ 70,162	\$ -	\$ 70,162
Attend Factory Witness Testing, Functional Demonstration Test				24					40					64	\$ 10,909	\$ 5,000	\$ 15,909
Prepare and submit draft and final Record Drawings		4		20	40		8		40				24	136	\$ 18,299	\$ 2,000	\$ 20,299
<b>Task 2, 3, and 4 - RPR Services, Project Controls, SRF Admin</b>																	
RPR Services and Project Controls	40	148	3,200		80								60	3528	\$ 433,385	\$ 10,000	\$ 443,385
<b>Task 5 - Startup and Operations Assistance</b>																	
Startup Assistance												480		480	\$ 74,869	\$ 18,000	\$ 92,869
<b>PROJECT TOTAL</b>	<b>100</b>	<b>280</b>	<b>3,200</b>	<b>252</b>	<b>680</b>	<b>182</b>	<b>240</b>	<b>152</b>	<b>648</b>	<b>664</b>	<b>48</b>	<b>480</b>	<b>164</b>	<b>7,090</b>	<b>\$ 998,622</b>	<b>\$ 50,000</b>	<b>\$ 1,048,622</b>