



Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: August 27, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 12

INITIATED BY: Jonathan Mirgeaux

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



TO: Board of Public Works
FROM: Jonathan Mirgeaux, Noblesville Utilities
SUBJECT: Agreement with Donohue & Associates for Design Services for Plant Solids
Process Improvements BOT Project
DATE: 8/22/24

Noblesville Utilities is requesting Board approval of a Services Agreement with Donohue & Associates, Inc. for an hourly not-to-exceed fee up to amount of \$199,300, to support the Solids Process Improvements project at the wastewater treatment plant. The Solids Process Improvements project is proceeding under the Build – Operate – Transfer (BOT) delivery model. Thieneman Construction has been preliminarily selected and the project has entered the Scoping Phase.

It should be noted that the scope of work is for conceptual design through the project's Scoping Phase. Additional design services may be required during latter phases of work. While the scope is not fully set, the overall project construction costs were estimated to target \$6,000,000.

Thank you for your consideration.



SERVICES AGREEMENT

This Services Agreement (hereinafter referred to as “Agreement”), entered into by and between the **City of Noblesville, Indiana, a municipal corporation** (hereinafter referred to as “City”) and **Donohue and Associates, Inc.**, hereinafter referred to as “Contractor”), and its successors and assigns, is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.1 The “Agreement”, as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include this Services Agreement and the **Exhibit A** attached hereto, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.
- 1.2 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.3 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.4 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City’s representatives having drafted all or any portion of this Agreement.
- 1.5 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

SECTION II. DUTIES OF CONTRACTOR

- 2.1 Contractor shall provide services as specified in **Exhibit A**, attached hereto and incorporated into this Agreement.

SECTION III. TERM

- 3.1 The term of this Agreement shall begin upon execution and terminate December 31st, 2024, (“Termination Date”) unless terminated earlier in accordance with this Agreement.

SECTION IV. COMPENSATION

- 4.1 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in **Exhibit A**.

Compensation shall not exceed One Hundred Ninety-Nine Thousand, Three Hundred Dollars (\$199,300).

- 4.2 Funding for a multi-year agreement is not guaranteed. All of the City's obligations under this Agreement shall be subject to annual appropriation and shall not constitute a general obligation or indebtedness of the City.

SECTION V. GENERAL PROVISIONS

- 5.1 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the City. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.
- 5.2 Subcontracting.
Approval required. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- 5.3 Necessary Documentation. N/A
- 5.4 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period copies thereof, if requested, shall be furnished at no cost to City.
- 5.5 Ownership.
- 5.5.1 "Works" means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.
- 5.5.2 All Works made or created by Contractor, either solely or jointly with City, in the course of Contractor's performance of services under this Agreement shall be

deemed to be works for hire and are and shall be the exclusive property of City. At City's request, Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in City. Without the prior written consent of City, Contractor shall not use, copy or prepare derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor's possession or control. Any loss or damage shall be restored at Contractor's expense. City shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards, and retain its rights in its standard drawing details, designs, specifications, databases, computers software and any other proprietary property. City shall not reuse any such documents or other deliverables pertaining to the Project for any purpose other than that for which such documents or deliverables were originally prepared. Any alteration or reuse of the Works by the City or others acting through the City shall be at the City's sole risk.

5.6 Insurance.

Minimum Insurance Requirements. Prior to commencing Work, the Contractor shall purchase and maintain from insurance companies lawfully authorized to do business in Indiana policies of insurance acceptable to the City, which afford the coverages set forth below. Insurance shall be written for not less than limits of liability specified or required by law, whichever coverage is greater, and shall include coverage for Contractor's indemnification obligations contained in this Agreement. Certificates of Insurance acceptable to the City shall be given to the City prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Each policy must be endorsed to provide that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City; provided however that such policies may be cancelled with only ten (10) days' prior notice for non-payment of premium. The required coverages and limits which Contractor is required to obtain are as follows:

A. Commercial General Liability

Limits of Liability:	\$2,000,000 General Aggregate
	\$2,000,000 Products & Completed Ops.
	\$1,000,000 Bodily Injury / Prop. Damage
	\$1,000,000 Personal / Advertising Injury
	\$1,000,000 Each Occurrence

B. Auto Liability

Limits of Liability: \$500,000 Per Accident
Coverage Details All owned, non-owned, & hired vehicles

C. Workers Compensation and Employer's Liability

As required by Indiana law.

D. Professional/Errors & Omissions Liability

Limits of Liability \$1,000,000 Each Occurrence
\$2,000,000 Aggregate

All coverage provided above shall be endorsed to include the City as an additional insured except for the Worker's Compensation / Employer's Liability and Professional/Errors & Omissions policy.

5.7 Termination for Cause or Convenience.

5.7.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

5.7.2 This Agreement may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with City prior to termination. If City terminates for convenience, Contractor's compensation shall be equitably adjusted.

5.7.3 Upon receipt of notice of termination for default or for City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all Works and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.7.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been made for the convenience of City. In such event, adjustment of the price provided for in this

Agreement shall be made as provided in Section 5.7.1 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

- 5.8 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.
- 5.9 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and its board, agents and employees of any of them ("Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and court costs and other expenses, arising out of or resulting from any negligent acts, errors, or omissions of the Work. The Contractor's indemnification under this Section shall survive both final payment and the termination of this Agreement.
- 5.10 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Contractor:
Donohue and Associates, Inc.
Attn: Jeremy Roschyk
101 West Ohio Street
Suite 1650
Indianapolis, IN 46204

To City:
Noblesville Utilities
Attn: Jonathan Mirgeaux
197 Washington St
Noblesville, IN 46060

Courtesy Copy:
City Attorney
16 S. 10th Street
Noblesville, IN 46060

- 5.11 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by City or Contractor as a result of such failure to proceed shall

be borne by Contractor, and Contractor shall make no claim against the City for such costs. City may withhold payments on disputed items pending resolution of the dispute.

- 5.12 Non-discrimination. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 5.13 Conflict of Interest.
- 5.13.1 Contractor certifies and warrants to City that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.
- 5.13.2 For purposes of compliance with IC 36-1-21, Contractor certifies and warrants to City that Contractor, or a person who wholly or partially owns Contractor, is not a relative, as that term is defined by IC 36-1-21-3, of an elected official of Noblesville, Indiana.
- 5.14 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 5.15 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party’s reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 5.16 Applicable Laws; Forum.
- 5.16.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the

Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Contractor to determine whether the provisions of the Agreement require formal modification.

5.16.2 This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the City of Noblesville, County of Hamilton. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

- 5.17 Waiver. City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of City's rights or remedies.
- 5.18 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.19 Attorneys' Fees. Contractor shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.20 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City or the Contractor.
- 5.21 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by City.
- 5.22 Debarment and Suspension
- 5.22.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

- 5.22.2 Contractor certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.
- 5.22.3 Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certifications were erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
- 5.22.4 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.
- 5.23 Compliance With E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program (“Program”). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- 5.23.1 Contractor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractor subsequently learns is an unauthorized alien. If Contractor violates this Section 5.23, City shall require Contractor to remedy the violation not later than thirty (30) days after City notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, City shall terminate the contract for breach of contract. If City terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to City for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.
- 5.23.2 If Contractor employs or contracts with an unauthorized alien but City determines that terminating the contract would be detrimental to the public interest or public property, City may allow the contract to remain in effect until City procures a new contractor.
- 5.23.3 Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 5.23, Contractor may terminate its contract with the subcontractor for such violation.
- 5.23.4 Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming

Contractors enrollment in the Program, unless the Program no longer exists, shall be filed with City prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

Donohue & Associates, Inc. ("Contractor")

By: 

Date: July 16, 2024

Printed: Jeremy Roschyk, P.E.

Title: Vice President

Approved by the Board of Public Works and Safety of the City of Noblesville this _____ day of _____ 202_.

JACK MARTIN, PRESIDENT

JOHN DITSLEAR, MEMBER

LAURIE DYER, MEMBER

ROBERT J. ELMER, MEMBER

RICK L. TAYLOR, MEMBER

ATTEST:

EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): DONOHUE & ASSOCIATES, INC.
By (Written Signature): 
(Printed Name): JEREMY ROSCHYK
(Title): VICE PRESIDENT

Important - Notary Signature and Seal Required in the Space Below

STATE OF WISCONSIN
COUNTY OF SHEBOYGAN



Subscribed and sworn to before me this 16th day of July,
20 24.

My commission expires: 05/13/2028 (Signed) Cody L. Hendler

a. Residing in Sheboygan County, State of Wisconsin

EXHIBIT A

PART 1 PROJECT DESCRIPTION / SCOPE OF SERVICES / TIMING

A. PROJECT DESCRIPTION

Donohue and Associates, Inc. (Donohue) has prepared a conceptual design for the plant dewatering improvements in a technical memorandum dated February 2023. This technical memorandum also defined the basis of design for the mechanical components as well as electrical, I&C, structural and HVAC improvements. Likewise, a technical memorandum dated August 2023 that outlined improvements to the WAS thickening and a technical memorandum dated March 2024 presented numerous improvements to upgrade the solids handling building to meet current NFPA 820 requirements.

The City of Noblesville (OWNER) is contracting with Donohue and Thieneman Inc. (TCI), for engineering and construction of these improvements through a Build, Operate, and Transfer (BOT) contract to finalize and construct these improvements. Since the preparation of these technical memorandums, the OWNER has identified additional improvements needed for their grit system. Overall, the improvements include the following:

- Sludge Dewatering: Replace the existing belt filter press and belt conveyor with screw presses and a progressing cavity pumping system to transfer the sludge to the sludge barn. Improvements to the sludge barn are also included.
- WAS Thickening: Replace the gravity belt thickener with a rotary drum thickener.
- NFPA 820 Improvements: Upgrade the solids handling building so that the building does not include hazardous rated areas.
- Replace existing grit washing equipment.

B. SCOPE OF SERVICES

Basic Services to be provided by Donohue for this Project under this Agreement are as follows:

1. Project Development and Management
 - 1.1 Assign Jeremy Roschyk, PE as the Project Manager who will coordinate activities and serve as the liaison between the OWNER and the Donohue.
 - 1.2 Assign Greg Garnes, PE as the internal Project Manager to coordinate activities with Thieneman (TCI), OWNER, and Donohue and also serve as a liaison between OWNER and Donohue.
 - 1.3 Prepare a Project Plan including project team, roles, work outline, schedule, tasks and budgets.
 - 1.4 Hold internal Kick-off meeting.
 - 1.5 Provide monthly progress reports.
 - 1.6 Prepare Subconsultant Agreements.
 - 1.7 Update Project Plan throughout project.

EXHIBIT A

2. Scoping (Process Design and Layout) Phase Services

- 2.1 Review applicable studies, reports, facility drawings and design summaries, and other facility information.
- 2.2 Perform preliminary equipment selection based on preferences of OWNER's staff and Donohue recommendations from previous technical memorandums.
- 2.3 Prepare, and/or update and review unit process design calculations.
- 2.4 Geotechnical engineering services for subsurface geotechnical exploration are not required for this project.
- 2.5 Develop operation and control strategies.
- 2.6 Prepare flow sheets for the proposed improvements and conduct an internal flow sheet review meeting.
- 2.7 Prepare preliminary process and instrumentation diagrams (P&IDs) after the flow sheet meeting.
- 2.8 Develop new process motor list and other electrical loads.
- 2.9 Coordinate with solids handling equipment manufacturers for the polymer feed requirements and develop polymer feed calculations.
- 2.10 Identify major utilities and their approximate locations within the Project site limits.
- 2.11 Prepare preliminary layout drawings for project facilities and conduct an internal preliminary layout review meeting.
- 2.12 Perform an internal quality review of the preliminary layout drawings, project design description, and preliminary opinion of the probable construction cost.
- 2.13 Submit up to three (3) printed sets (half size drawings) and/or a PDF copy of the process design and layout phase submittal to the OWNER and TCI for review and comment.
- 2.14 Conduct a Process Design and Layout Review Workshop with the OWNER's representatives and TCI to get their review comments and input on any necessary changes for the Project design. Prepare workshop notes documenting proposed changes to the process design and layout phase completion documents and incorporate comments and any necessary changes into the design.

C. SCOPE OF SERVICES ASSUMPTIONS

1. Design services do not include services for the determination of or remediation at the project site of hazardous materials or conditions.
2. Any field services required for completion of the design are not included in this Scope of Services and will be provided by Owner, TCI or as part of a separate agreement, including: topographic survey, utility locates, geotechnical services, etc.
3. The scope of services referenced above specifically include the development of design documents through the Scoping Phase and do not include any of the following:
 - a. Final Design Phase document development

EXHIBIT A

- b. Permitting Services
 - c. Bidding Services
 - d. Construction Related Services
 - e. Resident Project Representative Services
4. Force Majeure: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party. If either party is delayed by force majeure, the party affected shall provide written notification to the other party immediately. The party shall do everything possible to resume performance. The notification shall provide evidence of the force majeure event to the satisfaction of the other party. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

D. PROJECT TIMING

Donohue shall be authorized to commence the Services set forth herein upon execution of this Agreement. Scoping (Process Design and Layout) Phase Services identified in this Exhibit A will be complete by August 30, 2024.

Donohue's services under this Agreement will be considered complete upon completion of the Process Design and Layout Review Workshop and Donohue has delivered workshop notes for use by OWNER and TCI in development of their BOT Agreement.

PART II OWNER RESPONSIBILITIES

- A. In addition to other responsibilities of OWNER set forth in this Agreement, OWNER shall:
1. Identify a person authorized to act as the OWNER's representative to respond to questions and make decisions on behalf of OWNER, accept completed documents, approve payments to Donohue, and serve as liaison with Donohue as necessary for Donohue to complete its Services.
 2. Furnish to Donohue copies of existing documents and data pertinent to Donohue's Scope of Services, including but not limited to and where applicable: previous facility plan and PER studies; design and record drawings for existing facilities; monthly reports of operation in Microsoft Excel format; equipment operation and maintenance (O&M) manuals; property descriptions; land use restrictions; surveys and topographical survey information; geotechnical; and environmental studies or assessments.

EXHIBIT A

3. OWNER shall be responsible for all requirements and instructions that it furnishes to Donohue pursuant to this Agreement, and for the accuracy and completeness of all reports, data, programs, and other information furnished by OWNER to Donohue pursuant to this Agreement. Donohue may use and rely upon such requirements, instructions, reports, data, programs, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations provided by OWNER applicable to the furnished items.
4. Provide to Donohue existing information regarding the existence and locations of utilities and underground facilities.
5. Provide Donohue safe access to premises necessary for Donohue to provide the Services.
6. Inform Donohue whenever OWNER observes or becomes aware of a Hazardous Environmental Conditions, that may affect Donohue's Scope of Services or time for performance.

PART III
COMPENSATION, BILLING AND PAYMENT

- A. Compensation for the work as defined in the Scope of Services (Part I) of this Agreement shall be in accordance with Donohue's standard chargeout rates in effect at the time the Services are performed. Routine expenses will be billed at cost and subconsultant costs will include a 10% markup. The total cost for these Services and expenses will not exceed \$199,300.
- B. Donohue will bill Owner monthly, with net payment due in 30 days.
- C. Donohue will notify Owner if Project scope changes require modifications to the above-stated contract value. Services relative to scope changes will not be initiated without written authorization from Owner.

APPROVED FOR OWNER

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED FOR DONOHUE

By:  _____

Printed Name: Jeremy Roschyk _____

Title: Vice President _____

Date: July 15, 2024 _____

Donohue & Associates, Inc.
2024 Billing Rates

Employee Classification	Hourly Billing Rate
Engineer/Specialist IX	\$280
Engineer/Specialist VIII	\$260
Engineer/Specialist VII	\$240
Engineer/Specialist VI	\$225
Engineer/Specialist V	\$205
Engineer/Specialist IV	\$190
Engineer/Specialist III	\$175
Engineer/Specialist II	\$155
Engineer/Specialist I	\$135
Technician II	\$120
Technician I	\$100
Administrative Assistance III	\$100
Administrative Assistance II	\$90
Administrative Assistance I	\$80

Notes:

Labor charge-out rates are for normal work week.
Billing rates are in effect for 2024 and may be adjusted annually to reflect labor cost increases.
Mileage is billed at the current IRS stipulated rate.
Printing and shipping are billed at cost.