

AGREEMENT  
for  
OPERATIONS, MAINTENANCE and  
MANAGEMENT SERVICES for  
The City of Bisbee

---

**AGREEMENT FOR OPERATIONS, MAINTENANCE  
AND MANAGEMENT SERVICES**

**THIS AGREEMENT** is made and entered into this 20<sup>th</sup> day of November 2018, (“Effective Date”) by and between City of Bisbee, whose address for any formal notice is 1415 Melody Lane Bldg. G, Bisbee, AZ 85603 (“Owner”) and Operations Management International Inc., whose address for any formal notice is 9191 S. Jamaica Street, Englewood, CO 80112 (“Contractor”), collectively referred to as the “Parties”.

**STATEMENT OF PURPOSE**

**WHEREAS**, the Owner owns certain facilities and systems which are further described in **Appendix C**; and

**WHEREAS**, Owner desires to employ Contractor to perform certain operation and maintenance services as further described in **Appendix A** under the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, Owner and Contractor agree as follows:

**1. DEFINITIONS**

- 1.1 “Adequate Nutrients” means plant influent nitrogen, phosphorous, and iron contents proportional to BOD<sub>5</sub> in the ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts BOD<sub>5</sub>.
- 1.2 “Base Fee” means the compensation paid by Owner to Contractor for the labor direct and indirect costs for to base services defined in **Appendix A** of this Agreement for any contract year of the Agreement. The Base Fee for the initial contact year is noted in D.1.1. For each subsequent contract year, the Base Fee will be determined in the manner set forth in **Appendix D**. The Base Fee does not include payments for services requested by Owner that are incidental to or outside the Scope of Services as defined in **Appendix A**.
- 1.3 “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of any of Owner’s Permits as listed in **Appendix F**. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- 1.4 “BOD<sub>5</sub>” means Biochemical Oxygen Demand over a five (5) day period
- 1.5 “Budgeted Operational Costs” mean costs to operate and maintain the plant, excluding the Base Fee, and capital expenditure budgets as noted in Section 1.6 below. Budgeted Operational Costs shall be broken out as follows: 1) Repairs up to \$5,000 and 2) Other.

- 1.6 “Capital Expenditures” means any expenditures for (i) the purchase of new equipment or facility items that cost more than Five Thousand Dollars (\$5,000.00); (ii) Major Repairs that significantly extend equipment or facility service life and cost more than Five Thousand Dollars (\$5,000.00); or (iii) expenditures that are planned, non-routine, and budgeted by Owner. Capital Expenditures are not Repairs. Owner is responsible for payment of Capital Expenditures, unless otherwise agreed to by the Parties.
- 1.7 “Change in Scope” means events or services beyond the Scope of Services set forth in **Appendix A**.
- 1.8 “Commencement Date” means the date services will begin for the Owner under this Agreement as defined in Section 2.1
- 1.9 “Initial Term” means the first term of the Agreement as defined in Section 2.1.
- 1.10 “Permit” means the permits issued to the Owner for the operation of its facilities and services. This includes the NPDES Permit Nos. AZ0026077, State Permit Nos. P100983, R100983, Water Supply Permits, or any permits required for the operation of the potable water system. Copies of these Permits are included in **Appendix F**.
- 1.11 “Preventive Maintenance” means routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or Contractor to maximize the service life of the equipment, sewer, vehicles, and facility.
- 1.12 “Project” means all equipment, vehicles, grounds, and facilities described in **Appendix C** and **Appendix E**.
- 1.13 “Renewal Term” means any additional term of this Agreement beyond the Initial Term of the Agreement as defined in Section 2.1.
- 1.14 “Repairs” means non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or necessary to avert a failure of the equipment, sewer, vehicle, or facility or some component thereof.
- 1.15 “Unforeseen Circumstances” means any event or condition that has an effect on the rights or obligations of the Parties under this Agreement or the Project beyond the reasonable control of the party, which constitutes a justification for a delay in or non-performance of action required by this Agreement. Unforeseen Circumstances include, but are not limited to:

- 1.15.1 an act of God, landslide, lightening, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war blockade, sabotage, insurrection, riot or civil disturbance or a pandemic event;
- 1.15.2 any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, state, provincial, federal or other governmental body;
- 1.15.3 labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strike or work slowdowns or stoppages by employees of Contractor;
- 1.15.4 the presence of Biologically Toxic Substances in the influent or the presence of hazardous wastes, materials or liquids in the influent or raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project; and/or
- 1.15.5 loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

## 2. TERM

The Initial Term of this Agreement will be for five (5) years commencing on ~~November 20, 2018~~ <sup>January 1, 2019</sup> (the "Commencement Date"). Thereafter, this Agreement will be automatically renewed for successive terms of five (5) years each ("Renewal Term"), unless cancelled by either party not less than one hundred twenty (120) calendar days prior to expiration.

- 2.1 Either party may terminate this Agreement for a material breach by the other party if the other party fails to correct the breach within thirty (30) calendar days after receiving written notice of the breach. In the event of a breach by Owner for non-payment of Contractor's invoices, Contractor may terminate this Agreement if Owner fails to make outstanding payments on non-contested amounts within ten (10) calendar days after receiving written notice of the breach.
- 2.2 Upon notice of termination by Owner, Contractor shall assist Owner in assuming operation of the Project. If Contractor incurs additional cost at the request of Owner, Owner shall pay Contractor for the total cost incurred within fifteen (15) calendar days of invoice receipt.
- 2.3 Upon termination of this Agreement and all renewals and extensions of it, Contractor shall return the Project to Owner in the same condition as it was upon the Commencement Date of this Agreement, excluding ordinary wear and tear. Equipment and other personal property purchased by Contractor for use in the routine operation or maintenance practices of the Project and billed to the Project will become the property of the Owner upon termination of this Agreement. However, any equipment or personal property purchased by Contractor and not billed to the

WA

Project will be the property of Contractor and removed from the Project by Contractor at the termination of this Agreement.

### **3. SERVICES AND STANDARD OF PERFORMANCE**

3.1 Contractor shall perform the services set forth in **Appendix A** for the facilities described in **Appendix C**, within the design capacity and capability of these facilities as further described in **Appendix B**.

3.2 Contractor shall perform the services with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services.

### **4. OWNER RESPONSIBILITIES**

4.1 Unless specifically stated otherwise in the Agreement and the Appendices attached hereto, the Owner shall provide to Contractor, as set forth in Appendix D, sufficient funds to pay Budgeted Operational Costs, and pay for all Capital Expenditures which are not included as Budgeted Operational Costs. Contractor will communicate with Owner if either category of the Budgeted Operational Costs are to be exceeded and, subject to the approval requirements set forth in Section A.1.2.14, Owner will be responsible for providing funding for such excess costs. Any loss, damage or injury resulting from Owner's failure to provide Capital Expenditures and/or funds when reasonably requested by Contractor shall be the sole responsibility of Owner.

4.2 Electricity will be paid by the Owner.

4.3 The Owner shall maintain and renew, with respect to all existing portions of the Project, warranties, guarantees, easements, permits, authorizations and licenses granted to the Owner, to the extent the maintenance is not a responsibility of Contractor under this Agreement. All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or subsequently acquired by Owner will remain the exclusive property of Owner unless specifically agreed upon in writing by the Parties.

4.4 The Owner shall pay all amounts associated with the occupancy or operation of the Project and the performance of the obligations as listed in **Appendix A** including, but not limited to, all excise, ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project. Taxes imposed upon Contractor's net income and/or payroll taxes for Contractor employees are not included.

4.5 The Owner shall provide Contractor within a reasonable time after request, any piece of Owner's heavy equipment that is available so that Contractor may discharge its obligations under this Agreement in the most cost-effective manner. In emergency situations, Owner will use its best efforts to provide the requested equipment within one (1) hour of the request.

- 4.6 When applicable, the Owner shall provide all registrations, licenses and insurance for Owner's vehicles and heavy equipment used in connection with the Project.
- 4.7 The Owner shall provide Contractor use of all vehicles and equipment currently in use at the Project, including the vehicles described in **Appendix E**. Vehicles and equipment will be in road safe condition. Contractor will be responsible for the cost of operation, maintenance and fuel for vehicles and equipment, unless otherwise agreed to between the Parties. Owner shall retain title and ownership of the vehicles and equipment provided. Use of the vehicles and equipment by Contractor will be limited to duties within the course and scope of this Agreement, unless otherwise agreed to in writing by the Parties. The Parties may supplement this Agreement to provide for an agreed schedule of replacement of the vehicles and equipment and provision of any other insurance coverage deemed necessary or appropriate, subject to an opinion of nationally recognized bond counsel that such change will not adversely impact the tax-exempt status of bonds issued to finance the Project.
- 4.8 The Owner agrees to not offer employment or other compensation to Project Management personnel of Contractor directly working on this Project, for a period of two (2) years after the end date of this Agreement or re-assignment of Project personnel from this Project.
- 4.9 Owner shall provide to Contractor all data in Owner's possession relating to the Project, including, but not limited to, operations and maintenance manuals, warranties or any other data necessary to operate, manage and maintain the Project. Contractor may reasonably rely upon the accuracy and completeness of the information provided by the Owner.
- 4.10 Owner warrants that during the interim period between the initial Project inspection by Contractor during the bidding process and the commencement of Contractor's services identified in **Appendix A**, the Project, facilities and equipment have been operated only in the normal course of business, all scheduled and proper maintenance has been performed, and there are no issues known to Owner regarding the condition of the facilities or the Project and/or any equipment used by the Project or facilities. Owner warrants and agrees that it will turn over the Project, facilities and equipment to Contractor in good working order and in compliance with the NPDES permit(s) and all other applicable laws, rules and regulations. In the event Owner fails to comply with the provisions of this clause, Owner will be liable for all costs incurred by Contractor resulting from such failure.

## **5. COMPENSATION AND PAYMENT**

**Appendix D** describes compensation for services.

## **6. INDEMNITY AND LIABILITY**

- 6.1 To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, and hold harmless OWNER, its departments, officers, officials, and employees and volunteers without limitation from and against any and all claims (including, but not

limited to, workers' compensation or disability claims), damages, losses, liabilities, fees, fines or expenses, including, but not limited to, reasonable attorney fees, and court costs, (collectively "Claims) relating to, arising from, resulting from any and all claims, damages, losses, liabilities, fee, fines or expenses that are attributable to bodily injury, personal injury, sickness, disease, death or damage to, or destruction of, tangible or intangible property including, without limitation, the loss of use therefrom, to the proportionate extent caused by any negligent act, error, mistake or omission of CONTRACTOR, its officers, officials, employees, members, guests, invitees, participants, agents, vendors, subcontractors or anyone for whose acts CONTRACTOR may be liable.

6.2 Owner, to the fullest extent allowable by law, agrees to indemnify and hold Contractor harmless from any claim, liability or damages for property damage or bodily injury, including death, which may arise, except to the proportionate extent caused by the negligence or willful misconduct of Contractor, its employees or its subcontractors.

6.3 In no event will either party, its subcontractors or their officers or employees be liable for the other party's incidental, special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.

6.4 Contractor's responsibility is to operate the facilities in compliance with current laws and regulations, to the extent of their design and physical capacity. It is not part of Contractor's scope to test for or eliminate water borne bacteria or viruses except as required by current laws and regulations. It is not part of Contractor's scope to comply with new regulations that contain permit limits or Maximum Contaminant Levels that are beyond the capability of the Owner's facilities.

## **7. HAZARDOUS SUBSTANCES**

7.1 If Contractor encounters or suspects asbestos or hazardous substances in any form on the facilities, Contractor will stop its own work in the affected portions of the facilities to permit testing and evaluation.

7.2 If Contractor suspects asbestos on the facilities, Owner will have, in a timely manner, a qualified contractor perform remediation services. Contractor will have no obligation to resume its performance of the services until it receives adequate proof that the affected area is treated.

7.3 If Contractor suspects hazardous substances other than asbestos on the facilities where Contractor performs services, the Parties may agree for Contractor to conduct tests to determine the extent of the hazardous condition and recommend necessary remedial measures. Contractor will perform these services under a separate agreement negotiated by the Parties and for an additional fee.

7.4 Contractor will not be liable for any delays in performing the services caused by or related to the presence of asbestos or another hazardous substance.

- 7.5 Contractor assumes no risk and/or liability for any hazardous waste or conditions present at the facilities prior to the commencement of this Agreement or for any hazardous waste or conditions attributable to any party other than Contractor.
- 7.6 In the event that Owner requests Contractor, in the performance of the services set forth herein, to execute Hazardous Waste Manifests on its behalf, Owner must execute a Letter of Authorization, the form of which will be agreed upon by both Parties, delegating such authority to Contractor prior to Contractor undertaking this duty.
- 7.7 The Parties agree that in the performance of services by Contractor under this Agreement, Owner is requesting Contractor to undertake inherently unsafe obligations for Owner's benefit involving the presence or potential presence of hazardous substances. Therefore, Owner agrees to hold harmless, indemnify, and defend Contractor from and against any and all claims, losses, damages, liability, and costs including, but not limited to, costs of defense arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, unless such liability arises out of the negligence or willful misconduct of Contractor, its employees or its subcontractors in the performance of services under this Agreement.

## **8. FINES AND CIVIL PENALTIES**

- 8.1 Contractor will be liable for fines or civil penalties, to a maximum aggregate of \$100,000 per year, which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance for reasons resulting from Contractor's breach, negligence or willful misconduct during the term of this Agreement. Owner will assist Contractor to contest any such fines in administrative proceedings and/or in court prior to any payment by Contractor. Contractor shall pay the costs of contesting any such fines.
- 8.2 Contractor will not be liable for fines or civil penalties that result from violations (i) that occurred prior to the Commencement Date of this Agreement; (ii) for the effects of prior violations that have contributed to the assessment of any fine or civil penalty caused by Contractor's negligent operations; (iii) penalties that result from inadequate infrastructure or investment in the technology necessary to comply with permit requirements and/or changes in applicable regulations or (iv) are otherwise directly related to the ownership of the Project.

## **9. INSURANCE**

- 9.1 Contractor shall provide the following insurance policies throughout the term of the Agreement, and shall provide to Owner an ACORD-form Certificate of Insurance (COI) demonstrating compliance with this provision:

- 9.1.1 Worker's Compensation providing statutory coverage and Employer's Liability Insurance providing limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease-each employee, and One Million Dollars (\$1,000,000) disease-policy limit.
- 9.1.2 Business Automobile Insurance providing Two Million Dollars (\$2,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of Contractor owned or leased motor vehicles, including onsite and offsite operations. Limits may be satisfied using primary and excess/umbrella policies.
- 9.1.3 Commercial General Liability Insurance providing limits of Five Million Dollars (\$5,000,000) per occurrence and aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of Contractor or any of its employees or subcontractors for whom Contractor is legally liable. Limits may be satisfied through the use of primary and excess/umbrella policies
- 9.1.4 Contractor's Pollution Liability (CPL) Insurance providing limits of Two Million Dollars (\$2,000,000) per claim and aggregate. CPL coverage will provide for liability due to pollution conditions caused by or exacerbated by Contractor and will include coverage related to the remediation of pollutants and for third-party claims alleging bodily injury and/or damage to third-party property due to pollutants. Claims made coverage will include a retroactive date that predates all Work executed per this Agreement.
- 9.2 Contractor shall add Owner and Owner's directors, officers, employees, and representatives as additional insured in Contractor's commercial general liability, automobile liability, excess/umbrella, and contractor's pollution liability policies.
- 9.3 Contractor's commercial general liability, automobile liability, employer's liability, excess/umbrella, and contractor's pollution liability policies will be primary and non-contributory to any other coverage available to Owner.
- 9.4 Contractor's policy will provide at least thirty (30) days written notice to Owner prior to any cancellation, non-renewal or material change in coverage contemplated in Section 9 (except ten (10) days' notice for non-payment of premium).
- 9.5 Owner shall maintain the following insurance policies throughout the term of the Agreement, and shall provide Contractor with a COI to demonstrate compliance with this provision:
  - 9.5.1 "All Risk" Property Insurance covering all property on a replacement cost basis and including Owner-supplied vehicles and equipment for the full fair market value of such property.

9.5.2 Liability Insurance covering all motor vehicles and equipment provided by Owner and operated by Contractor under this Agreement.

9.6 Owner and Contractor shall provide a waiver of subrogation against the other insurance policies required under Section 9, and each party shall waive any claim against the other arising in contract or in tort that are covered by their respective insurance policies identified under Section 9.

9.7 Certificates of Insurance (“COI”).

9.7.1 The Parties shall provide a COI evidencing the required insurance policies and endorsements reflecting the coverage requirements herein, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 9 and its subsections. Certificates of insurance will reference the project name as identified on the first page of this Agreement.

9.7.2 In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.

9.7.3 In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy’s(ies’) renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party’s receipt.

**10. LABOR DISPUTES**

In the event activities by Owner’s employee groups or unions causes disruption in Contractor’s ability to perform its obligations under this Agreement, Owner, with Contractor’s assistance, or Contractor at its own option, may seek appropriate injunctive court orders during any such disruption. Contractor shall operate the facilities on a best efforts basis until any such disruptions cease, but Contractor will not be obligated to assure compliance with all contract conditions.

**11. UNFORESEEN CIRCUMSTANCE**

11.1 Neither party will be liable for damages, delays, or failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The party invoking this clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) business days after its occurrence and shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance.

11.2 In the case of Unforeseen Circumstances, Owner agrees to pay any costs (including without limitation all overtime charges and additional equipment charges) incurred by Contractor in connection with the Unforeseen Circumstance.

## **12. ACCESS TO FACILITIES AND PROPERTIES**

12.1 Owner will make its facilities accessible to Contractor as required for Contractor's performance of its services and will secure access to any other Owner property necessary for performance of Contractor's services.

12.2 Contractor will provide 24-hour per day access to Project for Owner's personnel. Owner's employees, designated by Owner's Representative, may visit the Project at any time. Contractor will provide Owner keys for the Project. All visitors to the Project shall comply with Contractor's operating and safety procedures.

## **13. CHANGES**

13.1 Owner and Contractor, from time to time, may make changes to this Agreement or to any of the services performed under this Agreement. The Parties must mutually agree upon all changes. Changes must be in writing in the form of a change order, modification or amendment to the Agreement executed by both Parties and are subject to receiving an opinion of nationally recognized bond counsel that the change(s) will not affect the tax-exempt status of any bonds financing the Project.

13.2 Owner and Contractor may agree to out of scope services performed under the terms of this Agreement. The Parties must mutually agree upon out of scope services. Out of scope services must be in writing. Compensation for the out of scope services will be invoiced to Owner in an amount equal to the actual increase in Contractor's costs because of the out of scope services plus fifteen percent (15%), unless otherwise agreed to by the Parties, and will be due and payable by Owner commencing the month following the out of scope services. For any out of scope services for which the amount of additional compensation is subject to agreement by the Parties, such change will be subject to an opinion of nationally recognized bond counsel that such change in compensation will not adversely affect the tax-exempt status of bonds issued to finance the Project.

13.3 In the event scope of services change ("Change in Scope"), Contractor will be entitled to additional compensation in the amount of the actual additional costs Contractor incurs because of the Change in Scope unless specifically stated otherwise in this section. For any change in scope for which the amount of additional compensation is subject to agreement of the Parties, the change will be subject to an opinion of nationally recognized bond counsel that such change in compensation will not adversely affect the tax-exempt status of bonds issued to finance the Project. The occurrence of one or more of the following events will constitute a Change in Scope:

13.3.1 Any change in Project operations, personnel qualifications, required certification, staffing or other cost that is a result of an Unforeseen Circumstance. Contractor's will invoice Owner the amount equal to actual

additional Contractor's cost-plus fifteen percent (15%). The invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs.

- 13.3.2 Any change in Project operations, personnel qualifications, required certification, staffing or other cost that is a result of the issuance of a new permit or a permit renewal.
- 13.3.3 Increases of ten percent (10%) or more in the Wastewater Treatment Plant influent flow or loadings, as set forth in **Appendix B**, as demonstrated by a twelve (12) month floating average compared to the prior twelve (12) month period. The Parties must mutually agree upon compensation for the Changes in Scope.
- 13.3.4 Increases in Contractor's health care costs above the applicable CPI or ECI for the twelve (12) month period for which the annual increase is calculated. In the event health care costs increase, Contractor is entitled to increase its Base Fee in excess of the formula set forth in Appendix D.4, in an amount equal to the actual increase in costs.
- 13.3.5 Increases or decreases in rates or other related charges (including taxes) imposed upon Contractor by a taxing authority, excluding taxes based on Contractor's net income. In the event rates or other related charges change, the Parties may increase or decrease the Base Fee by an amount equal to cost differential associated with the change.
- 13.3.6 Support services provided by Contractor for Owner's capital projects. Parties must mutually agree upon compensation for the Changes in Scope.

#### **14. REPRESENTATIONS OF CONTRACTOR**

Contractor warrants that it will take no position inconsistent with it being a service provider to the Owner.

#### **15. WARRANTIES**

- 15.1 To the best of its knowledge, Contractor warrants that all materials and equipment furnished under this Agreement will be of good quality and free from defective workmanship and materials.
- 15.2 Contractor shall pass through to Owner the warranty extended by the manufacturer for all products, equipment, systems or materials.
- 15.3 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.

#### **16. NO THIRD PARTY BENEFICIARIES**

This Agreement gives no rights or benefits to anyone other than Owner and Contractor and has no third party beneficiaries.

**17. JURISDICTION**

This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

**18. SEVERABILITY AND SURVIVAL**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions will not be impaired thereby.

**19. AUTHORITY**

Both Parties represent and warrant to the other party that the execution, delivery and performance of this Agreement have been duly authorized by the responsible parties thereof. Both Parties warrant that all required approvals have been obtained and the executing party in Section 27 has authority to bind the party.

**20. NOTICE**

Whenever either party desires to give notice to the other, notices must be in writing, sent by certified United States mail with return receipt requested, hand delivered or by national commercial express delivery service, to the addresses listed in introductory paragraph of this Agreement. Notice will be deemed given upon receipt by any method of delivery authorized in this provision.

**21. NO WAIVER**

The failure of any party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that party to require performance or to resort to a remedy at any time thereafter, nor will the waiver by any party of a breach be deemed to be a waiver of any subsequent breach. A waiver will not be effective unless it is in writing and signed by the party against whom the waiver is being enforced.

**22. SURVIVAL OF PROVISIONS**

Any terms or conditions of this Agreement that require acts beyond the date of its termination will survive the termination of this Agreement, will remain in full force and effect unless and until the terms of conditions are completed, and will be fully enforceable by either party.

**23. ASSIGNMENT**

Neither party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the prior written consent of the other party. Any unauthorized assignment is void and unenforceable.

These conditions and the entire Agreement is binding on and inures to the benefit of the parties and their respective permitted successors, and assigns.

**24. NO CONFLICT OF INTEREST FOR FUTURE WORK**

The services performed by Contractor under this Agreement do not preclude Contractor from proposing on or for providing services to Owner in the future. Information and knowledge gained by Contractor in providing the Services under this Agreement will not constitute a conflict of interest in proposing on or providing any additional services for Owner.

**25. DISPUTE RESOLUTION**

The Parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

**26. CAPTIONS AND HEADINGS**

The captions and headings of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

**27. ENTIRE AGREEMENT**

This Agreement, together with all Appendices attached hereto, contains all representations and the entire understanding between the Parties with respect to the subject matter of this Agreement. This Agreement and its Appendices replace any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement. The Parties mutually declare there are no oral understandings or promises not contained in the Agreement, which contains the complete, integrated, and final agreement between the Parties.

The following Appendices are hereby made a part of this Agreement:

- Appendix A Scope of Services**
- Appendix B Capacity and Characteristics**
- Appendix C Location of Project**
- Appendix D Compensation and Payment**
- Appendix E Project Vehicles and Equipment**
- Appendix F Permits**

IN WITNESSETH WHEREOF, the Parties execute below:

**CONTRACTOR**

Name:   
Title: VICE PRESIDENT  
Date: 12/6/18

**OWNER**

Name:   
Title: Mayor  
Date: November 26, 2018

Attest:

  
Ashlee Coronado, City Clerk

## **APPENDIX A - SCOPE OF SERVICE**

Contractor shall perform the following services for the benefit of the Owner:

### **A.1 GENERAL**

#### **A.1.1 Staff**

- A.1.1.01 Staff the Project with a sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement.
- A.1.1.02 A designated Project Manager with appropriate certification required by the State of Arizona will be in responsible charge of the facility from at least Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Working hours for other staff will be determined based on facility needs, in coordination with the City. Contractor shall be responsive to alarms and emergency calls 24 hours per day, 7 days per week, within one (1) hour of its occurrence. Contractor shall designate a minimum of one (1) staff member as standby to respond to alarms and emergency calls.
- A.1.1.03 Place at each permanently staffed Project facility, a copy of Contractor's corporate safety program and provide all employees training specific to this Program, within forty-five (45) days from the effective date of this Agreement. Owner will pay the cost of any capital improvement required at the Project to bring the facilities within OSHA compliance.
- A.1.1.04 Provide and document job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, regulatory compliance, laboratory, and energy management. Where the law or regulation requires employees to hold current licenses, certificates or authority to perform the work required of their respective positions, Contractor shall provide the training and agree with the employee to a reasonable time frame for the employee to qualify for such certificate, license or authority.
- A.1.1.05 Comply with all State and Federal requirements regarding affirmative action and provisions for minority hiring.

#### **A.1.2 Alterations, Repairs and Maintenance**

- A.1.2.01 Alter, as needed, the process and/or facilities to achieve the objectives of this Agreement. No alteration will be executed without Owner's written approval if alteration will cost in excess of Five Thousand Dollars (\$5,000.00), with the exception of repairs included under Budgeted Operational Costs Repair fund of \$75,000.
- A.1.2.02 Perform Preventative Maintenance and Repairs for the Project, subject to the approved annual budget.

- A.1.2.03 Pay all Budgeted Operational Costs for the year set forth in this Agreement, except for electricity, which shall be provided for by the Owner.
- A.1.2.04 Maintain aesthetics of the facilities, including maintaining all facilities in a clean, neat and orderly fashion.
- A.1.2.05 Keep administrative and other occupied spaces clean, dry, and habitable. Other spaces and floors will be free of sewage, screenings, sludge and debris.
- A.1.2.06 Equipment, tools, and material will be properly stored.
- A.1.2.07 Keep trees and shrubs trimmed, maintain grass, and keep other grounds free of noxious weeds.
- A.1.2.08 In any emergency affecting the safety of persons or property, or regulatory compliance, Contractor shall act without written amendment or change order, at Contractor's discretion, to prevent threatened damage, injury or loss; In the event emergency expenditures exceed Five Thousand Dollars (\$5,000.00) in aggregate, Contractor shall obtain prior approval from Owner. Contractor will notify Owner of the emergency as soon as reasonably possible, and Owner will compensate Contractor for any emergency work notwithstanding the lack of written amendment or change order. Such compensation will include Contractor's direct actual costs for the emergency work plus fifteen percent (15%).
- A.1.2.09 Utilize Owner provided security devices during Contractor's hours of operation to protect against any losses resulting from theft, damage or unauthorized use of the Project. Existing security devices include fencing, lockable structures, and limited intrusion alarm. Upon exiting the Project, Contractor shall lock all Project gates and structures and activate any security alarms
- A.1.2.10 Contractor will provide Owner within the first ninety (90) days after contract award, recommended capital improvements Contractor believes are required for any of the facilities under the contract. Contractor shall not be relieved of his responsibilities to perform if the recommendations are not implemented by the Owner, however Owner shall be solely responsible for any and all costs, expenses, damages, losses related to the failure to authorize such improvement.
- A.1.2.11 Contractor shall provide a computerized maintenance system to document equipment inventory, condition, maintenance and repair activities, and laboratory management systems.
- A.1.2.12 The Owner may from time to time, desire for Contractor to provide for and finance Capital Expenditures on behalf of Owner. In such circumstances, Contractor shall perform and/or finance such improvements in accordance with mutually agreed upon terms and conditions negotiated between the

Parties. In the event that Contractor is unable to perform or finance such improvements or the parties are unable to reach agreement on terms for the services to be performed, Owner shall not be relieved of its obligations relating to Capital Expenditures under the terms of this Agreement

A.1.2.13 Contractor will assist Owner in preparation of annual operating budgets as needed, which will be subject to Owner's approval.

A.1.2.14 Contractor will operate the Project within the annual operating budget and the capital budget approved by the Owner, unless Contractor obtains Owner approval to exceed such budget. (Owner approval will not be required for amounts expended that exceed the operating budget by \$5,000 and the capital expenditure budget by \$5,000). Contractor will obtain Owner approval before disposing of a Capital Asset.

## **A.2 WASTEWATER TREATMENT PLANT**

A.2.1 Within the design capacity and capability of the Wastewater Treatment Plant (the "WW Plant"), manage, operate, and maintain the WW Plant so that effluent discharged from the WW Plant meets of the Clean Water Act and the requirements specified in NPDES Permit No. AZ0002607 and other applicable/related permits issued by EPA, the State or local authorities, unless one or more of the following occurs: (i) WW Plant influent does not contain Adequate Nutrients to support operation of the WW Plant's biological processes and/or contains Biologically Toxic Substances or other substances that may cause pass-through or interference that cannot be removed by the existing processes and facilities; (ii) discharge into Owner's sewer system that violate any or all regulations as stated in the applicable Sewer Ordinance and, (iii) the flow, influent biochemical demand (BOD<sub>5</sub>,) and/or total suspended solids (TSS) exceeds the WW Plant's design parameters and other parameters that exceed the plant's Maximum Allowable Headworks Loadings; in which case **Appendix B** specifies responsibilities and remedies.

A.2.2 Within the design capacity and capability of the WW Plant, operate the WW Plant in a manner that minimizes odor and noise.

A.2.3 Prepare and submit to Owner for transmittal to appropriate agencies, all regulatory reports pertaining to routine operation and maintenance of the facilities specified in this Agreement.

A.2.4 Comply with all current local, State and Federal notice and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Plant.

A.2.5 Assist the Owner with the NPDES permit renewal process by providing Project information within Contractor's possession and control. Any additional assistance requested by the Owner will constitute a Change in Scope.

A.2.6 Provide for the disposal of screenings, grit, scum, sludges, and biosolids (collectively, "Residuals") to existing disposal sites. Any change in the cost of this service due to increased or unusual quantities of material, or increases in landfill rates, hauling costs, or

tipping fees will be approved as provided in A.1.2.14 and paid by the Owner. Owner and Contractor agree that Owner is the owner and Generator of the Residuals.

- A.2.7 If Contractor uses land application as the method for disposal of biosolids, Contractor shall comply with the State and Federal regulations, including 40 CFR 503 applicable to the land application method. Specifically, Contractor shall assist Owner in securing all permits and land use agreements, perform soils and biosolids testing, and report the volume and quantity of biosolids land applied. Contractor may use the existing Owner secured permits and land application sites.
- A.2.8 Where applicable, monitor and report the volume and nature of septic tank hauler discharges.
- A.2.9 Perform all laboratory testing and sampling currently required by the State and Federal Clean Water Act, NPDES Permit, NPDES referenced documents and all Federal or State issued permits. Contractor will provide additional laboratory testing and sampling requested by the Owner. This additional testing will constitute a Change in Scope.
- A.2.10 Provide and document all Preventive Maintenance for the WW Plant. Owner will have the right to inspect these records during normal business hours.
- A.2.11 Provide and document Repairs for the WW Plant. Contractor will provide Owner with a monthly report on the expenditures of Repairs.

## APPENDIX B - CAPACITY AND CHARACTERISTICS

### B.1 CAPACITY AND CHARACTERISTICS OF WASTEWATER TREATMENT PLANT

B.1.1 Wastewater Treatment Plant Design Capacity is described as follows:

Parameter	Plant
Flow, million gallons/day	0.81
BOD <sub>5</sub> , pounds per day	2,026
TSS, mg/L	2,026
Daily Peaking Factor	2.1

All parameters will be based on the design average dry weather flow with the Daily Peaking Factor being the multiplier applied to the design average dry weather flow.

B.1.2 Contractor will not be responsible for fines or legal action resulting from discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period.

B.1.3 The Base Fee for services under this Agreement is based on actual plant conditions over the previous 12 months, including flows and loads. Any deviation in excess of 10% of the average wastewater flows and loads over the previous 12 months will require both parties to mutually agree on a commensurate adjustment to the Base Fee. Such adjustment will not reflect, in whole or part, the net income or net losses of the Project.

## APPENDIX C - LOCATION OF PROJECT

- C.1 Contractor agrees to provide the services necessary for the operation, maintenance, and management of the facilities described in **Appendix C**.
- C.1.1 All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's WW Plant located at:

940 Purdy Lane, Bisbee AZ

## **APPENDIX D - COMPENSATION, PAYMENT AND BASE FEE AND BUDGETED OPERATIONAL COST ADJUSTMENT FORMULA**

### **D.1 COMPENSATION AND COSTS**

D.1.1 For the first year of this Agreement, Owner shall pay to Contractor \$731,000 representing a Base Fee of \$ \$462,000 and \$269,000 for Budgeted Operational Costs. Subsequent years' base fees and Budgeted Operational Costs shall be determined as specified in Appendix D.4.

D.1.1.01 From the Base Fee the Contractor will pay its direct and indirect expenditures for Project including management labor, employee benefits, and training for employees of the Contractor. Contractor represents that any compensation, including bonuses, that it pays to its employees will not reflect, in whole or part, the net profits or losses of the Project.

D.1.1.02 The Contractor will pay Budgeted Operational Costs specified in the Agreement and Appendices thereto from the amount stated in D.1.1 for such purpose. The Budgeted Operational Costs shall be allocated as follows:

(a) Repairs Expenditures - \$75,000

(b) Other Expenditures - \$194,000

D.1.1.03 The services provided under this Agreement assume reasonably expected overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages caused by Unforeseen Circumstances will be billed to the Owner for reimbursement of the actual costs incurred.

D.1.1.04 If, at any time, during the first twelve months following the Commencement Date, (i) Contractor discovers new information about the condition of the Project or facilities that materially differs from the information reasonably available to Contractor prior to execution of this Agreement; and (ii) such information substantially impacts the ability of Contractor to meet the performance objectives described herein or causes a material increase in the costs incurred by Contractor to meet such performance objective, Contractor will be entitled to an equitable adjustment mutually agreed upon by both Parties that reflects the actual increase in the Contractor costs.

### **D.2 CHANGES IN COMPENSATION**

D.2.1 Changes in the Base Fee will be negotiated annually, three (3) months prior to anniversary of the Commencement Date hereof. Base Fee adjustments will be negotiated taking into consideration changes and expected changes that impact the Contractor's costs to operate the Project, and will be subject to an opinion from nationally recognized bond counsel that such changes do not adversely affect the tax-exempt status of bonds issued to finance the Project. Owner and Contractor agree that good faith negotiations

resulting in mutual agreement are the preferred methodology to be used to determine changes in the Base Fee and Budgeted Operational Costs. In the event that Owner and Contractor fail to agree, the Base Fee and Budgeted Operational Costs will be adjusted using the Base Fee and Budgeted Operational Costs Adjustment Formula shown in Appendix D.4. Upon each contract year renegotiation, Contractor shall continue to invoice Owner at the previous amount until written agreement between the Parties as to the new contract year Base Fee and Budgeted Operational Costs, upon which Contractor shall issue an invoice retroactively adjusting the previous contract year Base Fee amount.

D.2.2 The Parties will negotiate compensation for Changes in Scope in accordance with Appendix B.

### **D.3 PAYMENT OF COMPENSATION**

D.3.1 One-twelfth (1/12) of the annual Base Fee for the current year will be invoiced on the first of the month preceding the month that services are provided. One-twelfth (1/12) of the annual Budgeted Operational Costs for the current year will be invoiced on the first of the month preceding the month that services are provided. For Repairs, Contractor shall submit to Owner a spreadsheet along with corresponding invoices detailing the actual costs of Repairs with invoices.

D.3.2 All other compensation to Contractor is due on receipt of Contractor's invoice and payable within fifteen (15) calendar days.

D.3.3 Owner shall pay interest at an annual rate equal to nine percent (9%), subject to limitation provided by law, on payments not paid and received within fifteen (15) calendar days. Interest will be calculated from the due date of the invoice. Unpaid compensation, inclusive of interest, will be paid no later than the earlier of (i) five years after the original due date for payment, and (ii) the termination date of the Agreement.

D.3.4 In the event of a contested billing, Owner may only withhold the contested portion from payment. The Owner will pay Contractor the undisputed portion in accordance with Appendix D.3.2. Interest will accrue on any contested portion of the billing and shall be immediately payable if the contested billing is resolved in favor of Contractor. No interest will be due on any contested portion of the billing if the contested portion is mutually resolved.

#### **D.4 BASE FEE AND BUDGETED OPERATIONAL COST ADJUSTMENT FORMULA**

$$ABF = BF \times AF$$

Where:

BF = Base Fee and Budgeted Operational Costs specified in Appendix D.1.1

ABF = Adjusted Base Fee and Budgeted Operational Budget

AF = Adjustment Factor as determined by the formula:

AF =  $(((ECI) .50 + (CPI) .50)) + 1.02$

ECI = The twelve-month percent change (from the 2nd quarter of the prior year to the 2nd quarter in the current year) in the Employment Cost Index for Total Compensation for Civilian Workers, Not Seasonally Adjusted as published by U. S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU101000000000A.

CPI = The twelve-month percent change (from June of the prior year to June of the current year) in the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR000SA0.

## **APPENDIX E - PROJECT VEHICLES AND EQUIPMENT**

No vehicles will be purchased by Contractor for this Project.

Owner will permit the use of City-owned vehicles for Contractor, including:

- 2 pick-up trucks
- Dump truck
- Front-end loader

## **APPENDIX F - PERMITS**

### **Attachments:**

- AZPDES Permit Fact Sheet



# FACT SHEET

## ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM (AZPDES)

This document gives pertinent information concerning the reissuance of the AZPDES permit listed below. This facility is a wastewater treatment plant (WWTP) with a design capacity of 1.22 million gallons per day (mgd) and thus is considered to be a major facility under the NPDES program. The effluent limitations contained in this permit will maintain the Water Quality Standards listed in Arizona Administrative Code (A.A.C.) R18-11-101 et. seq. This permit is proposed to be issued for a period of 5 years.

Permittee's Name:	City of Bisbee
Permittee's Mailing Address:	118 Arizona Street Bisbee, Arizona 85603
Facility Name:	San Jose Wastewater Treatment Plant (WWTP)
Facility Address or Location:	940 Purdy Lane Bisbee, Arizona 85603
County:	Cochise County
Contact Person(s): Phone/e-mail address	Ms. Suzanna Vetter, Operator (520) 432-3737 / svetter@bisbeeaz.gov
AZPDES Permit Number:	A70026077
Inventory Number:	100983

### I. STATUS OF PERMIT(S)

AZPDES permit applied for:	Renewal
Date application received:	June 16, 2017
Date application was determined administratively complete:	July 14, 2017
Previous permit number (if different):	N/A
Previous permit expiration date:	December 13, 2017