

CONSULTANT SERVICE CONTRACT

This Contract is made this 5th day of August, 2019, by and between the CITY OF NORTHFIELD, a Minnesota municipal corporation, 801 Washington Street, Northfield, MN 55057, (“CITY”), and Jacobs Engineering Group, a corporation under the laws of the State of Texas, 1999 Bryan Street, Suite 1200, Dallas, Texas 75201 (“CONSULTANT”); (collectively the “PARTIES”).

WHEREAS, CITY requires certain professional services in conjunction with a Wastewater Treatment Plant Operation and Facility Study (the “Project”); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to CITY’s authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT’s effort required to perform its services under this Contract exceeds the estimate which formed the basis for CONSULTANT’s compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph J of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Workers' Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.
2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's coverage shall be primary and

noncontributory in the event of a loss.

3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles
Umbrella or Excess Liability	\$1,000,000

4. Professional/Technical (Errors and Omissions) Liability Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per wrongful act or occurrence; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed \$50,000 without the written approval of CITY. If CONSULTANT desires authority from CITY to have a deductible in a higher amount, CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that CITY can ascertain the ability of CONSULTANT to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this contract

and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. Technology Errors and Omissions Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Technology Errors and Omissions Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, cloud computing, extortion and network security. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per occurrence; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater.
6. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto as Exhibit 2.
7. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY.
8. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
9. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract.
10. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
11. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
12. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.
13. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.

14. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.
15. Effect of Failure to Provide Insurance. If CONSULTANT fails to provide the specified insurance, then CONSULTANT will defend, indemnify and hold harmless CITY and CITY's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to CITY (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of CONSULTANT, its subcontractors, agents, employees or delegates. CONSULTANT agrees that this indemnity shall be construed and applied in favor of indemnification. CONSULTANT also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, CITY may require CONSULTANT to:

- a. Furnish and pay for a surety bond, satisfactory to CITY, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from CONSULTANT's insurance company.

CONSULTANT will take the action required by CITY within Fifteen (15) days of receiving notice from CITY.

16. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

SECTION II – CITY'S RESPONSIBILITIES

- A. CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY's Public Works Director/City Engineer, in accordance with Section III of this Contract.

- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT's performance of the services detailed in Exhibit 1, attached hereto.
- D. David Bennett, P.E., CITY's Public Works Director/City Engineer, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to the Project and CONSULTANT's services. Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's Public Works Director/City Engineer and expenses within thirty days after the date of CONSULTANT's invoice, CONSULTANT may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, June 1, 2020, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Seven (7) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute

default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.

- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's Public Works Director/City Engineer prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's Public Works Director/City Engineer as determined by CITY.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSULTANT'S indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT

against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

CITY:

David Bennett, P.E., Public Works Director/City Engineer
City of Northfield
801 Washington Street
Northfield, MN 55057
Phone: 507-645-3006
Email: David.Bennett@ci.northfield.mn.us

CONSULTANT:

John Borghesi
Jacobs Engineering Group

1295 Northland Drive
Mendota Heights
Phone: 651-688-8772
Email: john.borghesi@jacobs.com

- D. **Dispute Resolution.** CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.
- F. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
- G. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.]

- H. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- I. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- J. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.
- K. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- L. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- M. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- N. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

- O. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.
- P. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- Q. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- R. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- S. **Governing Law.** This Contract shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- T. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the CITY would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the CITY, except as required by the terms of this Contract.
- U. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

- V. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- W. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- X. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- Y. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- Z. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- AA. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- BB. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or

earlier termination), shall survive such expiration.

CC. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

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SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT: JACOBS ENGINEERING GROUP

By: _____

(Signature)

Date: _____

Title: _____

Print Name: _____

By: _____

(Signature)

Date: _____

Title: _____

Print Name: _____

CITY OF NORTHFIELD:

By: _____

Rhonda Pownell, Its Mayor

Date: _____

By: _____

Deb Little, Its City Clerk

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services:

Scope of Work

Prepared for City of Northfield, Minnesota

Project Understanding

We have read the project description of the previous Request for Proposal of the Wastewater Treatment Plant Operational Analysis. The City is interested in knowing the overall status of utility operations, maintenance practices, asset conditions, and risks through an expert analysis by a firm with expertise in all aspects of wastewater treatment operations.

Jacobs has what we believe to be a unique team within the industry: a group of water and wastewater experts dedicated solely to providing O&M consulting to our clients, drawing upon the more than 25 years of experience from operating hundreds of treatment plants all over the world. Supporting this team is our world class engineering division, plus the bench strength of our award winning contract operations division, providing clients like you with unmatched capabilities to solve nearly any challenge. With this team, we apply an evaluation approach that follows a nearly identical approach to what we apply to ourselves when conducting strict internal audits, or when evaluating new projects for contract bidding. This ensures you are getting the best we have to offer in terms of due diligence, tools and benchmarking.

Specifically, on audits with multiple components like yours, we engage a team of specialists that each focus on predetermined elements of plant operations, and then synthesize those individual findings into a cohesive and complete analysis. The team, analysis, recommendations and reporting all follow this division of labor:

- Management/Staffing
- Process Control and Regulatory Compliance for Wastewater Treatment
- Maintenance Practices/CMMS/Condition Assessment

Each subject is described briefly in this scope. Additional scope items may be included if desired, including knowledge capture and training, long term support services, engineering design work, construction management, facilities planning, distribution system modelling, etc.

The objective of the evaluation will be to investigate the current situation at your treatment plant, and to quickly make clear and implementable recommendations to bring your operations in line with regulatory requirements and industry standards and prepare for the future. We stand ready to provide hands-on support to make those recommended changes as part of additional support services as requested.

Task 1 - Data Collection

The focus of this task will be to gather detailed information about the current staffing levels, work practices, callout locations and frequency etc. so that meaningful analysis and performance evaluations can be conducted in Task 2. The Jacobs team will provide the City staff with a list of requested data (such as Table 1 shows).

Preferably, this information and data can be reviewed prior to the site visits to allow the Jacobs team to develop targeted questions for your staff and prioritize activities during the visit. It is also likely that additional information and data will be requested throughout the assignment, but we strive to keep onerous data gathering tasks to a minimum for our clients and can adjust to gaps as needed.

TABLE 1

Data and Information Requested

-
- | | |
|---|---|
| • Organizational charts | • Current O&M budget |
| • Job descriptions | • Current capital improvement plan (CIP) |
| • Staff resumes indicating skills, experience & certification | • Detailed O&M expenditures for past 3 to 5 years |
| • Callout data for past 2 years (breaks, work orders) | • List of capital expenditures for past 10 years |
| • Condition and performance data | • Cybersecurity gaps or audits |
| • Maintenance agreements | • Preventive maintenance job plans and schedules |
| • Service interruption records | • Preventive and corrective maintenance records |
| • Previous reports/studies of the system | • Description of predictive maintenance methods |
| • Asset register with age, material, size, etc. | • O&M Manuals |
| • Levels of Service & performance measures (targets & actual) | • Description of CMMS, GIS, CIS |
| • Standard operating procedures | • Description of SCADA system and PCS |
| • Customer/new service policies and procedures | • Workflows by team |

Deliverable

Prioritized data request list

Task 2 - Operational Assessment

The Jacobs review team will conduct four days of site tours at the City facilities and conduct interviews with a selection of staff in order to supplement the data collected previously. These interviews will also question the staff about certain aspects of the information received. Subjects discussed may include, but are not limited to:

- Sampling procedures
- Testing procedures
- Current control philosophy
- Operating strategies
- Emergency and failure response plans/procedures

- SCADA controls and cybersecurity gaps

It is important to understand how the plant and overall treatment system is currently operating. During the site evaluation, the project team will gather information on current operational practices, the mode of operation of the treatment facility, and any problems/issues operators and mechanics may face.

Compliance and Laboratory

Compliance is the goal of any treatment plant staff, so a review of how the team is meeting this goal is vital to determine how functional it is and where the gaps may be. Knowledge of the water quality goals, permits, laboratory and sampling procedures is a key indicator, along with a brief review of process data, lab bench sheets and standards, and staff interviews. A review of the operator log book is often instructive, along with a look at past reported non-compliance and monthly regulatory reports.



Our review team includes a regulatory expert, familiar with conducting regulatory audits. They may also review the lab information management systems and other document storage techniques, and reporting methods since regulators are just as interested in the quality of reporting as they are in the quality of effluent.

Management and Staffing Levels

Staffing is the biggest single cost for most facilities, but also the source of most of your value to your customers so it deserves expert attention in evaluations such as this. Since each department or technical function largely defines the staffing needs at a plant, all of our reviewers will be engaged in this part of the evaluation. The team will spend time onsite collecting data, conducting interviews with a cross section of the staff, and field verifying key parameters that we have found to carry significant risk or impacts on staffing levels.

Next, the team looks at the organizational structure related to the plant and the job duties in this structure, compared to the capabilities and fit of the actual staff available.

Finally, we benchmark staffing levels and minimum skillsets against metrics that we use when determining staffing levels for our own operations, taking into account the many site-specific constraints unique to every plant we visit. A great deal of judgement goes into this part of the study which only experience can provide, since it is almost as much art as it is science. This is one area where the real world experience of a company like Jacobs adds tremendous value to the assessment.

Process Evaluation

Our project team also collects process data for review, and looks for operational problems and their relationship to the process control strategy and communication among staff, as well as skill set gaps given the level of sophistication of the treatment process, available treatment capacity and degree of automation.

We make a special point of looking for the bottlenecks in the process that can be opened or mitigated at low cost or with only operational changes. In the case of Northfield, that will likely include extra attention to the biologically active filters (BAF) system and the biosolids processes which experienced a recent failure. This is once again based upon our decades of operating plants for clients where capital and operating funding is limited, but permit compliance simply must be achieved. Our skills at optimizing process control often leads to savings of between 10-20% in direct operating expenses (chemicals, power, and solids management) but our focus is on helping you maintain safety and compliance at all times.

Maintenance Practices

As with process and operations issues, maintenance practices play a key role in the functionality of the plant staff and the ability of the plants to meet regulatory compliance requirements. The complexity and quantity of equipment maintenance needs, and current performance indicators (PM/CM ratio, backlog, etc) are reviewed to determine an appropriate staffing level, support needs (outside contractors, training, materials, etc.) and proficiency needs. The CMMS systems are reviewed to obtain much of this information, and the extent to which it is utilized is often instructive regarding the overall efficiency of maintenance practices. The condition assessment in Task 3, coupled with staff interviews, are enough to provide a high level picture of the function of this department, and to prioritize maintenance needs.



Deliverable

Internal site visit reports and technical models as appropriate

Task 3 - Condition Assessment

Equipment List Verification and Asset Registry Development

The biggest issue with building a high-performance maintenance management program and completing the initial condition assessments is knowing what assets you own and the condition they are in.

Therefore, the first step in this process is to ensure that you have all your assets accounted for in your CMMS.



Our condition and risk assessment team was recognized at the 2016 Reliability Conference in Las Vegas with the distinguished Best Solution Award in the Work Execution Management for Asset Management and Asset Integrity Projects category. The example project cited was for a massive condition assessment program at the Shell Technology Center in Houston, TX that involved over 20,000 assets on a 200-acre site, as well as integration into the client's computerized maintenance management system.

Jacobs proposes using OMNI mobile forms for quick asset data gathering. This application is initially setup with your hierarchical structure, asset types, locations, etc. The data gathering crew goes into the field and enters assets based on the asset definition created for the City. An example would be Pump #1 at the ABC lift station. The data gatherer would enter the pump name (Pump #1), add the location, and then enter nameplate data for Pump #1 if available.

This method is very efficient and captures all the data needed, including a picture. Once the data collection is completed, the data collected, in Excel or Access format, is mapped to the CMMS upload template and pushed into the City's CMMS.



Condition Assessment

Once we have a complete list of assets, we can then update the OMNI forms for field assessments. Condition assessments are used to understand the condition of your assets in the system. If a Utility

understands the condition of their assets, they can also more accurately estimate the repair and replacement plan. Jacobs follows the *International Infrastructure Management Manual (IIMM)* process which has been in use for over 20 years.

Once the assets and associated asset types have been captured, asset type evaluation criteria can be developed. The asset type evaluation criteria are presented as a series of condition-related questions with a variety of possible answers and comments. Asset management team members used Jacobs' *Asset Condition Evaluation System (ACES)* to record asset condition by selecting the appropriate answer from the list of choices based on the actual conditions present (usually from an expert's visual inspection), and supported with measurements of vibration, thermography, insulation resistance, and other factors as appropriate. Each of the evaluation criterion can have a possible score of 1 to 5, where 1 is the preferred condition and 5 is the least preferred condition. The evaluation team selects the score from the range of answers available from ACES based on their observations, tests, experience, and information gathered from operations staff.

Con- dition Score	Description	Estimated % of Remaining Service Life
1	Indicates the asset is in Like New Condition . Continuation of current maintenance and operating procedures is recommended.	90 or greater
2	Indicates the asset is in Good Condition . Some minor additional maintenance may be required, along with the current maintenance and operating procedures.	75
3	Indicates the asset is in Fair Condition . These assets have one or more issues that require immediate attention. It is possible that the current maintenance and operating procedures or intervals may need to be modified or adjusted to avoid recurrence of identified issues.	50
4	Indicates the asset is in Poor Condition . Planning for a major overhaul or replacement should begin. Review of current maintenance practices and procedures is recommended. If this is a critical asset, a predictive maintenance program should be evaluated to prevent the asset from reaching this condition in the future.	30
5	Indicates the asset is in Very Poor Condition . Failure of the asset is imminent or has already occurred. Greater than 50 percent of the asset requires replacement. If this is a critical asset, a comprehensive maintenance program should be evaluated to prevent the asset from reaching this condition in the future.	5 or less

An example asset evaluation criteria for a Submersible Pump is shown below:

Asset Type PUMP-SUBMERSIBLE

Question	Condition Weight	Overriding?	Answer
Acceptable Noise	1		1 Yes
			5 No
All Components	1		1 Yes
			5 No
All Safety Features Present	1		1 Yes
			5 No
Chain/Cables/Rails	1		1 Excellent
			2 Minor Wear
			3 Moderate Wear
			4 Major Wear
			5 Failure Imminent
Check Valve Operates Properly	1		1 Excellent
			2 Good, Slight Seepage
			3 Requires Maintenance
			4 Steady Leak
			5 Failure
Corrosion - Metal	1		1 Like New
			2 Minor Corrosion
			3 Pitting And Some Metal Loss
			4 Significant Metal Loss
			5 Severe Pitting
Insulation Resistance (1 Meg Ohm)	3	Yes	1 > 10 Meg Ohm
			5 <= 10 Meg Ohm
Obsolescence	1		1 Current, Supported
			3 Not Current, Support Available
			5 Obsolete, Not Supported
Volt and Amp Balance	1	Yes	1 V < +/- 1%; A < +/- 5%; FLA
			5 V > 1%; A > 5%

Each asset is assigned a typical asset lifecycle (example below). These values are for example purposes and will be developed with City staff.

An asset may be designated as a 20-year life asset; however, after condition monitoring, the asset may function properly for 35 years. Similarly, an asset designated with a 20-year life may fail in 15 years. Therefore, it is important to include condition to forecast equipment failure and repair/replacement schedules. IIMM age reduction factors are utilized for this step.

Asset Type	Typical Life	Estimated Cost	Asset Type	Estimated Cost	Typical Life
ACTUATOR	15	\$9,000	MOTOR	\$10,000	20
ATS	15	\$50,000	PIPE	\$50,000	50
AUGER	12	\$15,000	PLC	\$8,000	7
BAR SCREEN	20	GLWAJ	PUMP-CENT	\$120,000	20
CONTROL PANEL	10	\$35,000	PUMP-VERT TURBINE	\$175,000	20
FAN	7	\$40,000	TRANSFORMER	\$125,000	20
FLOW METER	10	\$15,000	VALVE	\$20,000	25
GEARBOX	15	\$10,000	VALVE-CHECK	\$35,000	25
GENERATOR	35	\$300,000	VALVE-KNIFE	\$10,000	15
HVAC	10	\$20,000	VALVE-SLUICE	\$175,000	20

To refine the date of rebuild or replacement, additional condition assessments should be performed to track and trend deterioration rates. In doing this, the rebuild and replacement plan can be adjusted annually with the most up-to-date condition data.

Condition is also half the equation for calculating asset risk, where risk = likelihood of failure (typically from the condition score) x consequences of failures (defined by the utility). So once the condition assessment is complete, it is a simple exercise to estimate the relative risks of all evaluated assets, which helps define priorities for capital repairs or replacement, and helps determine how daily maintenance decisions are made.

Deliverables

For this task, the deliverables would include:

- Asset registry from the equipment list verification task, uploaded into the City CMMS;
- Condition assessment report in electronic format, with visual assessment ratings for most assets, plus additional inspection criteria as appropriate for major assets;
- Risk analysis workshop of City assets.

Task 4 - Recommendations and Reporting

Jacobs will prepare a summary report of findings and recommendations. Our recommendations will be based on review of the information provided, on-site evaluations, and the results obtained in our analyses of the facilities. The outline of a typical Operational and Organizational Assessment Report is shown below.

Outline of Operational and Organizational Assessment Report

Results of Current Practices and Infrastructure Audit:

- *Operational approach*
- *Maintenance management*
- *Regulatory issues*
- *Critical infrastructure*

Results of Staff Benchmarking Analyses:

- *Alternative organizational models*
- *Staffing levels*

Recommendations:

- *Recommended next steps*
- *Prioritized implementation*

Deliverables

Jacobs will prepare Draft and Final Reports with sections addressing the topics listed below. In addition, we will present the findings of the study to the City professional staff for in-depth discussion.

Compensation

Compensation shall be based on hourly labor billing rate, plus direct expenses, for the actual services performed. Proposed billing rates are:

Resource	Hourly Billing Rate
Project Manager	\$220
Senior Engineer	\$220
Maintenance Lead	\$210
Operations Lead	\$195
Project Engineer	\$185
Condition Assessment Specialist	\$165
Staff Engineer	\$155
Junior Engineer	\$115
Contracts and Accounting	\$100
Administrative Assistant	\$80

Direct expenses shall include travel reimbursement for time on site at Northfield's facilities. Total labor and expenses shall not exceed \$135,000 without prior approval by City of Northfield. We expect to be able to accomplish this project in under 6 months from the Notice to Proceed.

Similar Project Experience

The following table highlights just some of our most recent condition assessments and process evaluations for clients like the City. We have the industry-leading expertise you need for a cost effective and quality project.

Client	WWTP	O&M Org Design	Regulatory Compliance	Process Evaluation	Risk Analysis	CMMS	Maintenance Practices	Condition Assessment
Alexandria Sanitation Authority, VA WWTP	X		X	X	X	X	X	
Alpha Coal, WV IWWTP	X				X	X	X	
Arkona, Ontario WWTP	X	X	X	X	X	X	X	X
Ave Maria, FL WWTP	X	X	X	X	X	X	X	X
Avondale, AZ WWTP	X				X			
Barnesville, GA WWTP	X	X	X	X	X	X	X	
Baton Rouge, LA (3 WWTPs)	X	X	X		X	X	X	
Cairo, Egypt	X		X					
Carol Stream, IL WWTP	X	X	X	X	X	X	X	X
Chobani Industrial WWTP, ID	X			X	X			
Cincinnati, Metropolitan Sewer District	X	X	X		X	X	X	X
Columbus Department of Utilities, OH	X	X	X		X	X	X	X
Consol Coal, WV	X	X	X	X	X	X	X	
Corunna, Ontario WWTP	X	X	X	X	X	X	X	X
Courtright, Ontario WWTP	X	X	X	X	X	X	X	X
Dow Sadara WWTP, KSA	X		X	X	X			
Duncan, OK WWTP	X	X	X	X	X	X	X	X
DuPont Spruance; Richmond, VA	X	X	X	X	X	X	X	
Exxon Mobil Industrial WWTP, TX	X				X			
Fairfax, VA WWTP	X				X			
Farmington, NM WWTP and WTPs	X	X	X	X	X	X	X	X
Fayetteville, AR Noland WWTP	X	X	X	X	X	X	X	X
Fayetteville, AR Westside WWTP	X	X	X	X	X	X	X	X
Fort Lupton, CO WWTP	X	X	X	X	X	X	X	X
Fulton County, GA WWTPs (3 plants)	X	X	X	X	X	X	X	
Gippsland, Australia WWTP	X				X			X

Optional Task

Facility Plan Update Scope of Work

As an optional task following the Operational Assessment and Condition Assessment, Jacobs will prepare a Facility Plan Update Memorandum. The work tasks for the Facility Plan Update include:

1. Review Section 3 Evaluation of Existing Facilities included in the 2016 Facility Plan. Identify updates and revisions to the evaluation based on the findings of the Condition Assessment work performed by Jacobs. Add missing items that are uncovered as part of the Condition Assessment work.
2. Review Section 4 Facility Plan Improvement Alternatives included in the 2016 Facility Plan. Identify updates and revisions to the alternatives developed for the following treatment processes:
 - a. Biosolids Storage and Treatment Facilities
 - b. Influent Lift Pumps
 - c. Biological Aerated Filters
 - d. Ultraviolet (UV) Disinfection
 - e. Water Supply System
 - f. Blowers

Identify additional improvement alternatives that are uncovered as part of the Operational Assessment and Condition Assessment. Provide updated cost estimates for updates and revisions that are identified.

3. Review Section 5 Project Costs and Funding included in the 2016 Facility Plan. Provide updated cost summary based on the updates and revisions identified for the Facility Plan Update.
4. Summarize the findings in a draft and final Facility Plan Update Memorandum.

Assumptions

1. The Facility Plan Update will not include review, updates or revisions to the planning period, customer/user projections, wastewater flows, wastewater loadings, biosolids production projections, and effluent limits.
2. The Facility Plan Update will consider the treatment processes described above as well as new items that may be identified in the Operational Assessment and Condition Assessment. Alternatives related to building rehabilitations, building mechanical (HVAC and plumbing), and SCADA upgrades are not included.

Compensation

Compensation shall be based on hourly labor billing rate, plus direct expenses, for the actual services performed. Direct expenses shall include travel reimbursement for time on site at Northfield's facilities. Total labor and expenses shall not exceed \$30,000 without prior approval by City of Northfield.

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, CITY will compensate CONSULTANT in accordance with the schedule of fees below for the time spent in performance of services under this Contract, provided that under no circumstances shall CONSULTANT's total charges to CITY, including expenses, exceed \$ \$165,000.00 ("maximum price"), unless such charges in excess of the maximum price are authorized in writing by the Public Works Director/City Engineer before they are incurred by CITY.

CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the schedule of fees included herein, provided that no bill/invoice submitted to CITY shall exceed a percentage of the maximum price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the Public Works Director/City Engineer as determined by CITY.

CITY shall be entitled to withhold five percent (5%) of the maximum price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the Public Works Director/City Engineer.

Resource	Hourly Billing Rate
Project Manager	\$220
Senior Engineer	\$220
Maintenance Lead	\$210
Operations Lead	\$195
Project Engineer	\$185
Condition Assessment Specialist	\$165
Staff Engineer	\$155
Junior Engineer	\$115
Contracts and Accounting	\$100
Administrative Assistant	\$80